

# REAUTHORIZATION OF THE NATIONAL TRANSPORTATION SAFETY BOARD

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(111-84)

## HEARING BEFORE THE SUBCOMMITTEE ON AVIATION OF THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

January 27, 2010

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## CONTENTS

	Page
Summary of Subject Matter .....	vi
TESTIMONY	
Dillingham, Dr. Gerald, Director, Physical Infrastructure Issues, Government Accountability Office .....	2
Hersman, Deborah, Chairman, National Transportation Safety Board .....	2
PREPARED STATEMENTS SUBMITTED BY MEMBERS OF CONGRESS	
Carnahan, Hon. Russ, of Missouri .....	31
Costello, Hon. Jerry, of Illinois .....	32
Johnson, Hon. Eddie Bernice, of Texas .....	36
McMahon, Hon. Michael E., of New York .....	41
Mitchell, Hon. Harry E., of Arizona .....	44
Oberstar, Hon. James L., of Minnesota .....	45
Petri, Hon. Thomas E., of Wisconsin .....	50
Richardson, Hon. Laura, of California .....	56
PREPARED STATEMENTS SUBMITTED BY WITNESSES	
Dillingham, Dr. Gerald .....	60
Hersman, Deborah .....	85
SUBMISSIONS FOR THE RECORD	
Hersman, Deborah, Chairman, National Transportation Safety Board: .....	
Response to request for information from Rep. Cummings, a Represent- ative from the State of Maryland .....	27
Response to request for information from Rep. Richardson, a Represent- ative in Congress from the State of California .....	24
Responses to questions from Rep. Oberstar, a Representative in Con- gress from the State of Minnesota .....	93



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**  
**Washington, DC 20515**

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January 25, 2010

**SUMMARY OF SUBJECT MATTER**

**TO:** Members of the Subcommittee on Aviation  
**FROM:** Subcommittee on Aviation Staff  
**SUBJECT:** Hearing on the “Reauthorization of the National Transportation Safety Board”

**PURPOSE OF HEARING**

The Subcommittee on Aviation will meet on January 27, 2010, at 10:00 a.m., in room 2167 of the Rayburn House Office Building to consider the reauthorization of the National Transportation Safety Board (NTSB or “Board”). The Board’s authorization expired on September 30, 2008, and has not been reauthorized since.

**BACKGROUND**

The NTSB was created in 1967 as an independent agency within the newly-created U.S. Department of Transportation (DOT), and subsequently established as a completely independent agency in 1975, when it was removed from DOT and all administrative ties between the two agencies were severed. The Board is charged with investigating all civil aviation accidents<sup>1</sup> and certain railroad, highway, marine, and pipeline accidents, as stipulated by law.<sup>2</sup> The NTSB determines the probable cause of all civil aviation accidents and accidents in the other modes of transportation, conducts safety studies, and evaluates the effectiveness of other government agencies’ programs for preventing transportation accidents.

<sup>1</sup> The term “accident” includes damage to or destruction of vehicles in surface or air transportation or pipelines, regardless of whether the initiating event is accidental or otherwise. 49 U.S.C. § 1101 (2008).

<sup>2</sup> The Board must investigate a highway accident that it selects in cooperation with a State, including a railroad grade crossing accident; a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train; a pipeline accident in which there is a fatality, substantial property damage, or significant injury to the environment; a major marine casualty under regulations prescribed jointly by the Board and the Coast Guard; and any other accident related to the transportation of individuals or property when the Board decides the accident is catastrophic or involves problems of recurring character. 49 U.S.C. § 1131(a) (2008).

In addition, in 1996, the Aviation Disaster Family Assistance Act (Title VII of P.L. 104-264) authorized the Board to coordinate Federal assistance to victims and family members affected by major aviation accidents. When resources allow, the NTSB also provides family assistance for accidents in other transportation modes.

The Board also serves as the “court of appeal” for airmen, mechanics, and mariners whenever the Federal Aviation Administration (FAA) or the U.S. Coast Guard takes a certificate action.<sup>3</sup> The Board’s four administrative law judges issue decisions on appeals related to FAA actions, and these decisions may be further appealed to the full five-member Board. Actions to suspend or revoke merchant mariner credentials are heard first by the Coast Guard’s administrative law judges, and may be appealed to the Commandant of the Coast Guard. The ruling of the Commandant may then be appealed to the full five-member Board.

Most importantly, the NTSB makes safety recommendations, based on its investigations, to Federal, State, and local government agencies and to the transportation industry regarding actions that should be taken to prevent accidents. (The Board’s “Most Wanted List” of transportation safety improvements is listed on its website.)

Since 1967, the Board has investigated more than 132,000 aviation accidents,<sup>4</sup> and more than 10,000 accidents in other transportation modes. The Board also investigates accidents involving the transportation of hazardous materials, and is the sole U.S. accredited representative at foreign aviation accident investigations under the Convention on International Civil Aviation.<sup>5</sup>

The NTSB has no authority to issue substantive regulations covering the transportation industry. Therefore, its effectiveness is dependent upon timely accident reports and adoption of its safety recommendations. According to the NTSB, since its inception in 1967, it has issued more than 13,000 safety recommendations in all modes of transportation.<sup>6</sup> According to the NTSB, 38 percent of these recommendations have been in the area of aviation.

In general, the NTSB has been successful in achieving adoption of most of its recommendations. More than 82 percent of all recommendations made by the NTSB in all modes of transportation have eventually been adopted by the regulatory and transportation communities. However, the NTSB also states that it often takes an average of five years from the time the Board issues a recommendation until the recommendation is implemented to the Board’s satisfaction.

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<sup>3</sup> This means that under certain conditions (set forth in regulations) involving public safety, certification may be amended, revoked, or suspended by the FAA or Coast Guard.

<sup>4</sup> NTSB, Fiscal Year 2011 Budget Request, *Mission and Organization Overview*, (Sept. 14, 2009) at 10.

<sup>5</sup> Also known as the Chicago Convention. This set forth the purpose of the International Civil Aviation Organization.

<sup>6</sup> *Supra* note 4.

Status of Open Recommendations

Mode	Open Recommendations as of Jan. 2010
Aviation	578
Highway	317
Marine	48
Railroad	143
Pipeline	27
Intermodal	19
Total	1132

#### I. NTSB Structure

The NTSB is composed of five board members who are nominated by the President of the United States and confirmed by the Senate. No more than three members may be from the same political party, and at least three members must be appointed on the basis of technical qualification, professional standing, and demonstrated technical knowledge. All board members serve a five-year term. The President designates, and the Senate confirms, one of the five members to serve as Chairman for a term of two years. The President also designates one of the members to serve as Vice Chairman.

The current Chairman is Deborah A.P. Hersman (D). Chairman Hersman's two-year term as Chairman extends until July 28, 2011, and her term as a Member will expire on December 31, 2013 (she is currently serving a second five-year term). Chairman Hersman has been a Member of the NTSB since June 21, 2004. The current Vice-Chairman is Christopher A. Hart (D). Vice-Chairman Hart's two-year term as Vice-Chairman extends until August 18, 2010, and his term as a Member will expire on December 31, 2012. The only other Board member at this time is Robert L. Sumwalt (R), and his term as a Member will expire on December 31, 2011. Member Sumwalt previously served as Vice Chairman until August 2008. The President has two nominees pending Senate confirmation.

#### II. NTSB Operations

Each year, the NTSB investigates on average, approximately 1,800 aviation accidents and incidents, and dozens of railroad, highway, maritime, and pipeline transportation accidents. To leverage its limited resources, the Board typically designates other government agencies, organizations, corporations, or foreign authorities (e.g., in the case of investigations involving foreign aircraft) as parties to the investigation. According to the NTSB, the participation of these other parties not only greatly multiplies the Board's resources, it also ensures general agreement on the facts developed during an investigation, and allows first-hand access to information so that the parties can take appropriate and timely corrective actions.

The NTSB has wide discretion over which organizations it designates as parties, except by law, the Secretary of Transportation is a party to each aviation investigation.<sup>7</sup> Only those entities that can provide technical expertise required for the investigation are granted party status, and only

<sup>7</sup> 49 U.S.C. § 1132(c) (2008).

those persons who can provide the Board with needed expertise are permitted to serve on the investigative team.

When the NTSB is notified of a major accident, it launches a “go-team” that varies in size depending on the severity of the accident and the complexity of the issues involved. Go-teams consist of Board investigators who are experts in appropriate technical specialties, based on the mode of transportation and the nature of the accident. Each Board expert manages an investigative group made up of other experts from industry and government organizations that are parties to the investigation. Each Board expert prepares a factual report that is verified for accuracy by the party representatives in the group. The factual reports are placed in the publicly accessible docket and, after the completion of a formal technical review by the entire team, they constitute the factual record of the investigation.

After investigating an accident, the NTSB determines the probable cause and issues a formal report. Parties do not participate in the analytical or report-writing phases of NTSB investigations, although they may submit their proposed findings of probable cause, contributing factors, and proposed safety recommendations directly to the Board.

The NTSB is statutorily required to determine the probable cause of all civil aviation accidents. The Board asks the FAA to send inspectors to document the facts of certain aviation accidents, and the Board uses this information to make a determination of probable cause. In general, the Board relies on the FAA to conduct the on-scene investigation on its behalf for most non-fatal aviation accidents and for some fatal aviation accidents in which the cause is obvious and there is little chance of deriving a safety benefit from the investigation.

### **III. Marine Casualties: NTSB and the Coast Guard**

The NTSB and the Coast Guard both have jurisdiction to investigate marine casualties. However, the Board’s authority is limited by law (49 U.S.C. § 1131) to a “major marine casualty” under regulations jointly prescribed by the Board and the Coast Guard. Unlike investigations for other modes, NTSB investigations of major marine casualties do not have priority over any investigation conducted by the Coast Guard.

The NTSB and the Coast Guard approach marine casualty investigations by employing different processes and they often pursue different objectives. The Board is concerned that the procedures used by the Coast Guard may adversely impact investigations by the Board.

The NTSB is tasked solely with determining the probable cause of the accidents it investigates. Unlike the Coast Guard, the NTSB has no enforcement authority nor does it regulate the maritime industry. The Coast Guard, however, is tasked pursuant to chapter 63 of title 46 U.S.C. with examining the cause of marine casualties, but also with examining whether remedial action should be taken against a mariner, whether a civil penalty should be assessed, or whether a criminal act has occurred that should be referred for prosecution.

On September 12, 2002, the Chairman of the NTSB and the Commandant of the Coast Guard signed a Memorandum of Understanding (MOU) regarding coordination of marine accident investigations.

The 2002 MOU specified that the Coast Guard would immediately notify the NTSB of a major marine casualty or a casualty involving a public and non-public vessel (under the MOU, the term “major marine casualty” had the definition given to it by chapter 61 of title 46). After notification was made to the NTSB, and based on existing joint regulations, the conditions of the major marine casualty, and certain criteria provided in the MOU, the Commandant of the Coast Guard and the Chairman of the NTSB would determine which agency would act as the lead investigative agency.

To enable an assessment to be made of whether safety issues related to Coast Guard safety regulatory functions were potential factors in the casualty and might warrant an independent investigation by the NTSB, the MOU included a “bright line” test that assigned points based on specific circumstances. The bright-line chart attached to the MOU assigned scores for 12 criteria and incidents. If the score for a casualty totaled more than 100, the NTSB had the option to conduct a third-party review and lead the investigation with the Coast Guard acting as a party.

On May 20, 2008, the Subcommittee on Coast Guard and Maritime Transportation conducted a hearing entitled the “Coast Guard and National Transportation Safety Board Casualty Investigation Program.” After the hearing, the Coast Guard and NTSB revised the 2002 MOU between the two agencies. On December 19, 2008, the Commandant of the Coast Guard and the Chairman of the NTSB signed their updated MOU, which replaced the September 2002 MOU.

Importantly, the “bright line” test included in the 2002 MOU was omitted from the 2008 MOU. Further, the 2008 MOU requires each agency to notify the other of a major marine casualty, a significant marine casualty, or a casualty involving a public and non-public vessel. The 2008 MOU also specifies that the Chairman of the NTSB and the Commandant of the Coast Guard will continue to determine which agency will lead a casualty investigation. The MOU then states that the NTSB may lead the investigation of a “significant marine casualty,” which it defines in an appendix attached to the MOU as a casualty involving a vessel other than a public vessel that results in the loss of three or more lives, has 12 or more people injured, the sinking of the vessel, a serious threat to the environment, or a significant safety issue, as determined by the Commandant, related to Coast Guard marine safety functions.

#### **IV. NTSB Training Center**

The NTSB Training Center<sup>8</sup> provides training in transportation safety and accident investigation techniques to the NTSB’s own investigators and the transportation community. In September 2003, the NTSB Training Center opened in Ashburn, Virginia. The building houses the forward portion of the TWA flight 800 aircraft fuselage, laboratory spaces, meeting rooms, student and teacher work areas, and various offices including one of the Board’s aviation regional offices.

During consideration of the National Transportation Safety Board Reauthorization Act of 2006 (2006 Act) (P.L. 109-443), which was signed into law on December 21, 2006, concerns about the level of investigative resources being used to support the Training Center resulted in the inclusion of several provisions related to the Training Center. Specifically, the 2006 Act required the NTSB to: (1) develop a plan to achieve, to the maximum extent feasible, the self-sufficient operation of the Training Center; (2) submit a draft of the plan to the Government Accountability Office

<sup>8</sup> From its inception in 2003, through 2006, the current NTSB Training Center was named the NTSB Training Academy.

(GAO) for review and comment; and (3) submit a draft of the plan to the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science and Transportation.

The NTSB provided a draft business plan for the Training Center to GAO on March 28, 2007. According to GAO, the draft plan provided an overall strategy to outsource to a vendor: (1) the management and operations of the training center; and (2) development of new courses. Under this plan, the vendor would be responsible for managing the facility and courses, and renting out unused space under a revenue-sharing arrangement with NTSB. The plan projected yearly increases in the percentage of operating expenses (excluding rental costs) covered by revenue, with 100 percent coverage by the end of fiscal year (FY) 2010.

On April 18, 2007, the NTSB issued a Request for Proposals (RFP) for the Management and Operation of the NTSB Training Center. The scope of the work was divided into three primary functional areas: facility management, NTSB course and event management, and NTSB-sponsored course development.

On June 5, 2007, GAO provided comments to NTSB on the draft business plan. GAO concluded that the overall strategy presented in the plan -- to hire a vendor to operate the training center -- was reasonable. However, the draft plan provided too little rationale for its marketing and financial assumptions for GAO to assess the viability of this strategy. In particular, GAO noted that the draft business plan lacked sufficient data or analysis to determine whether it was likely to achieve its goal of recovering 100 percent of the Training Center's operating expenses by the end of FY 2010. Furthermore, GAO noted that even if the draft business plan achieved its goal of self-sufficient operations, about \$2.5 million each year would still have to be covered by annual appropriations because the plan's definition of "self-sufficiency" excluded NTSB's lease payments (i.e., space rental) from its expenses.

In July 2007, the NTSB evaluated the two proposals it received from vendors in response to the April RFP and determined that both proposals were unacceptable. Subsequent inquiries of organizations that chose not to respond to the RFP revealed that many of those groups chose not to make a proposal because they considered the revenue sharing concept to carry excessive business risk. As a result, the NTSB reevaluated the management approach to the Training Center. It considered an array of other actions, including those recommended by Congress and the GAO, and began to look for other Federal agency partners to share space at the Training Center.

In a revised Business Plan issued in March 2008, the NTSB reported that it has subleased the majority of the ground floor of the Training Center to the Federal Air Marshals Service (FAMS), a component of the Department of Homeland Security (DHS), for \$478,748 per year. In addition, the NTSB is in the process of finalizing an agreement with the DHS Office of Intelligence and Analysis, Training, and Professional Development to sublease approximately one-third of the second floor classroom space for \$275,000 per year. According to the GAO, these revenue recovery (sublease) efforts have been sufficient to allow NTSB to fund three full-time-equivalent (FTE) investigative staff.

The Training Center's deficit was \$1.9 million in FY 2009. GAO reports that the training center is now 80 percent utilized, between NTSB sub-leasing and classes taught. GAO believes that the NTSB fully implemented its recommendation to increase the use of the Training Center.

**V. Reauthorization Request**

**A. Funding**

In 2008, the NTSB submitted a reauthorization proposal, which included increased funding, staff, and statutory changes. NTSB staff indicates that it is largely requesting similar provisions included in its 2008 proposal. The table below shows the President's budget request for FY 2010, the FY 2010 appropriation level, and the authorization levels that are requested by the NTSB for FYs 2010 to 2014.

(Dollars in millions)	FY 2010 President's Budget	FY 2010* Enacted <sup>9</sup>	FY 2010 Auth. Request	FY 2011 Auth. Request	FY 2012 Auth. Request	FY 2013 Auth. Request	FY 2014 Auth. Request
Salaries and Expenses:							
Funding	95.4 <sup>10</sup>	98.05	99.2	117.368	120.258	122.187	124.158 <sup>11</sup>
Full-Time Employees	399	406	406	477	477	477	477
Yr.-to-Yr. Funds % Increase				18.3	2.5	1.6	1.6

\*The FY 2010 enacted level is the appropriated level, not the authorized funding level.

The President's FY 2010 budget request was \$95.4 million, \$2.65 million less than the FY 2010 enacted (i.e., appropriated) level. The NTSB's requested authorization levels for FY 2011 through FY 2014 are based on increasing the number of NTSB staff to 477 FTE employees, and sustaining that number through FY 2014. The Board's request is based on its current authorized staffing level, plus two FTE positions to support Title V - Rail Passenger Disaster Family Assistance of the Rail Safety Improvement Act of 2008 (P.L. 110-432).

**B. Aviation-Related Statutory Changes Proposed by NTSB**

**1. Authority to Investigate Incidents**

The Board requests explicit statutory authority to investigate incidents, as well as accidents. NTSB regulations currently define an "incident" as "an occurrence other than an accident, associated with the operation of an aircraft, which affects or could affect the safety of operations."<sup>12</sup>

<sup>9</sup> Consolidated Appropriations Act, 2010 (P.L. 111-117).

<sup>10</sup> Includes \$3 million for the pending headquarters move.

<sup>11</sup> In preparing its authorization request, the NTSB assumes salaries will increase by two percent and a non-pay inflation rate of .5 percent each year, and \$500,000 is added to the base in FY 2011 for lab updates.

<sup>12</sup> 49 C.F.R. § 830.2 (2008). Although the NTSB's regulations currently define an "incident" as an occurrence involving an aircraft, the NTSB states that, if it receives explicit statutory authority to investigate incidents, it will likely amend its regulations to define the term "incident" to apply to modes of transportation other than aviation, as well.

An example of an incident is if an unmanned aerial vehicle temporarily loses connectivity with the ground and strays into unauthorized airspace, but is eventually recovered without damage or fatalities. Although that is not an accident, the NTSB states that investigating its cause could yield useful safety information. The Board has operated for years with an understanding that it could investigate incidents such as this, even though it does not have clear statutory authority to do so.

Therefore, the NTSB argues that this proposed statutory change would not substantially alter the Board's current practices. The NTSB also believes that the proposed change would avoid efforts by other entities to thwart such an "incident" investigation by the Board, and permit the Board to amend its rules to bring it into compliance with the Chicago Convention and standards now imposed by the International Civil Aviation Organization. The GAO points out that at the same time the NTSB is seeking to expand its statutory authority related to "incidents" in all modes of transportation, the Board is also seeking to limit its requirements to investigate maritime and rail accidents. GAO also notes that the criteria for any investigation be transparent to ensure the best use of its scarce resources.

## **2. Subpoena Authority**

The Board requests explicit statutory authority to subpoena witnesses or evidence outside of a public hearing proceeding. The Board states that, on some occasions, attorneys have resisted its subpoenas for their clients' testimony or records, arguing that 49 U.S.C. § 1113(a)(2) only permits the NTSB to subpoena such testimony or things to a "hearing." For example, the NTSB states that, during its investigation of the November 7, 2007, collision of the *Cosco Busan* with the San Francisco-Oakland Bay Bridge, it was reluctant to seek enforcement in Federal court of its subpoena of the pilot's medical records because of the risk a Federal judge would read the Board's subpoena authority as not extending beyond a public hearing. Therefore, the Board's collection of medical records was delayed for over three weeks while it "negotiated" consent from the pilot of the *Cosco Busan* through his counsel.

## **3. Access to Financial Records**

The Board requests explicit authority to subpoena financial records, under the same conditions and protections as apply to law enforcement agencies under the Right to Financial Privacy Act (12 U.S.C. § 3401 et seq.). Occasionally in an accident investigation, primarily those addressing an aspect of human factors or human performance, Board investigators wish to review the credit card charges of an operator for the preceding 24 to 36 hours in formulating a 72-hour history on the operator. Currently, it may lack authority to do so without a Federal court order. For example, in the Lexington, Kentucky, Comair 5191 accident, the Board concluded it lacked the authority to subpoena the financial (credit card) records of the two pilots to examine whether the pilots took full advantage of their opportunity for adequate rest the night prior to the accident. (In short, the Board wanted to see if charge activity indicated the pilots had stayed up later than they should have.) Therefore, the investigators' access to such information was limited.

The Board is also concerned that it might not be able to access the financial records, and thus trace the financial trail, of an operator violating the terms of an operating certificate by "selling or renting" his operating certificate to other entities acting under his name.

According to the NTSB, the Right to Financial Privacy Act does not address accident investigations at all, and therefore does not provide NTSB with the same access granted “law enforcement” entities under the Right to Financial Privacy Act. The statutory change proposed by the Board would make clear it has access to such records, under the same conditions and protections law enforcement agencies are expected to follow under the Right to Financial Privacy Act.

#### 4. Access to Medical Records

The Board requests authority to receive medical information upon request and as necessary to further an accident investigation, under the same conditions and protections as a public health authority receives such information under the Health Insurance Portability and Accountability Act (HIPAA) (P.L. 104-191).

The NTSB states that it has numerous examples where hospitals with in-house or retained legal counsel refused NTSB subpoenas for medical records of operators, crew or maintenance personnel because they disputed the NTSB’s assertion that it is a public health authority “authorized by law” under HIPAA to request and receive medical records. The NTSB is not named as a public health authority in the statute or in the final implementing regulations. Instead, the “public health authority” acknowledgement for NTSB is only obliquely referenced in the preamble of proposed Department of Health and Human Services (HHS) rules implementing HIPAA. Specifically, the HHS stated it proposed to interpret the term broadly and then named the NTSB specifically as an entity that would fall within its definition. Because the final regulation did not mention the NTSB, the NTSB states that it has frequently had difficulty persuading counsel for holders of medical records with this non-statutory, non-regulatory reference.<sup>13</sup>

For example, the NTSB states that its attempt to demand the medical records of the pilot of the *Cosco Busan* was resisted by the pilot’s counsel. Because the doctor in possession of the records was being threatened with suit by the pilot’s counsel if he provided the records to the NTSB, legal counsel for the doctor would not release the records unless NTSB either obtained a release from the pilot or obtained a Federal Court order for the records—both options potentially time consuming. According to NTSB, taking these additional steps would place an individual on notice that the NTSB was attempting to obtain his medical records and could provide such an individual with an opportunity to obtain and possibly tamper with such records.

As discussed above, contributing to the problem is the language addressing the NTSB’s subpoena authority in section 1113(a)(2) which, as now written, can be interpreted to tie the Board’s subpoena authority to NTSB “hearings” alone.

The language proposed by the NTSB is, therefore, an effort to clarify that the NTSB has full authority to demand production of all medical records that could shed light on the cause of a transportation accident, and to use that information in explaining the cause or probable cause of an accident where the medical condition of an operator was the cause of or contributed to the accident.

<sup>13</sup> Standards for Privacy of Individually Identifiable Health Information, 64 Fed. Reg. 59918 (proposed November 3, 1999); *See also* Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82462 (December 28, 2000).

## 5. Disclosure of Information

The Board requests enhanced protections for trade secrets and similar commercial or financial information from release under the Freedom of Information Act (FOIA) (5 U.S.C. § 552). Also, the Board proposes an exemption (i.e., release protected by statute) under FOIA for requests directed at records of an ongoing investigation. In addition, the Board proposes to clarify that voice and/or video recordings obtained from externally mounted recorders (as opposed to those mounted in the cockpit or cabin) may be disclosed. According to the Board, it has encountered externally mounted recorders and associated recordings that would have been useful in Board reports, dockets, and/or meetings, but it felt constrained from using video from them in Board hearings and meetings because of existing statutory language prohibiting the disclosure of cockpit voice or video recordings.

## 6. Access to New Data Recording Media

The Board requests express authority to download information from new data recording technology and media in modern aircraft and surface transportation vehicles that store performance and navigation parameters. The data is frequently unreadable without access to proprietary information for downloading, reading and/or interpreting the data. To fully utilize the data for accident investigation purposes, the Board would require the authority to obtain such technical information for accident investigation purposes. Such information would be protected as proprietary information.

## 7. Accident Investigations in Foreign Countries

The Board requests authority to expend appropriated funds to conduct an accident investigation in a foreign country, under certain circumstances. According to the Board, this provision is intended to address those situations in which the Board agrees to accept the delegation of an investigation from another country under an international convention such as the Chicago Convention for aviation. Such an event arose in the delegation of investigatory authority by the interim Afghanistan government to the United States for the Blackwater 61 fatal aircraft crash on Afghan soil.<sup>14</sup> The language proposed by the NTSB would permit it to expend appropriated funds to perform such an investigation, but only after the request and acceptance was properly coordinated through the State Department.

## 8. Commercial Space Accident Investigations

In anticipation of commercial space tourist flights/launches, the Board requests explicit authority to investigate “commercial space launch accidents”.

## 9. Delegation of Authority

The Board requests explicit authority to delegate to all on-scene accident investigators, acting with Board authority, the same powers of access and entry as the Board. This would provide to

<sup>14</sup> Blackwater 61 was a private civil aircraft owned by Presidential Airways being operated under a contract with the U.S. Air Force to support military operations in Afghanistan.

FAA and Coast Guard inspectors, when delegated authority by the Board to undertake on-scene fact-gathering for the Board, clear authority to access accident sites.

#### **10. Penalty for Unlawful Solicitations Following Aviation Accidents**

Under current law, no unsolicited communications concerning a potential action for personal injury or wrongful death may be made by an attorney, a representative of an attorney, or any potential party to the litigation, to an individual injured in a commercial aviation accident or to a relative of an individual involved in such an accident, before the 45th day following the date of the accident.

As a result of solicitations that occurred following the Comair 5191 accident in Lexington, Kentucky, the Board requests an enhanced penalty for unlawful solicitations following commercial aviation accidents.<sup>15</sup> Specifically, the Board proposes to grant to the presiding Federal judge the authority to order disgorgement (i.e., reimbursement) of attorneys' fees and contingency fee recoveries that an attorney or firm collects when the fees are garnered by virtue of an unlawful solicitation. According to the NTSB, the way in which judges seem disposed to interpret the existing \$1,000 per day penalty provision means they assess the \$1,000 penalty for the duration of an actual "solicitation", usually meaning the one day it is received by telephone, mail, or e-mail, and not each day of any subsequent representation. The Board's proposal is intended to provide a greater deterrent to unlawful solicitations.

#### **11. Notification Prior to Destruction of Personal Effects**

The Board proposes that air carriers be required to develop a process to notify family members of passengers, prior to the destruction of unclaimed and unassociated personal effects as part of their family assistance plans.

#### **C. Other Statutory Changes Proposed by the NTSB**

The Board requests a change in its statutory authority to investigate rail accidents. Current law requires NTSB to investigate every rail accident involving a fatality or substantial property damage. In 2008, there were 2,456 reportable train accidents nationally, according to the Federal Railroad Administration's Office of Safety Analysis, which caused 27 fatalities, and 2,402 highway-rail incidents which resulted in 289 fatalities. During the same year, the NTSB closed nine train accident investigations and launched eight additional train accident investigations. The Board has requested a statutory change to give the Board discretion to investigate rail accidents in which there are numerous fatalities or substantial property damage.

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<sup>15</sup> According to the NTSB, within the 45 days following the Comair 5191 accident, an individual began directly soliciting numerous family member groups, purportedly for a Florida law firm. The solicitations were made via letter and delivery of copies of the law firm's brochure. The individual is facing civil prosecution in Federal court in the State of Kentucky. The law firm denied that the individual had authority to solicit on their behalf.

WITNESSES

**The Honorable Deborah A. P. Hersman**  
Chairman  
National Transportation Safety Board

**Dr. Gerald Dillingham**  
Director, Physical Infrastructure Issues  
U.S. Government Accountability Office



## REAUTHORIZATION OF THE NATIONAL TRANSPORTATION SAFETY BOARD

Wednesday, January 27, 2010

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON AVIATION,  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2167, Rayburn House Office Building, Hon. Jerry F. Costello [Chairman of the Subcommittee] presiding.

Mr. COSTELLO. The Chair will call the Subcommittee to order.

We welcome Chairman Hersman here today and Dr. Dillingham.

We will be called for a vote right at 11 o'clock—at least one vote and maybe more. We have a markup here in this room at 12:30, and we have to conclude the hearing by 12 o'clock in order to set up for the markup.

So what I intend to do, instead of giving my opening statement, I will enter it into the record. Mr. Petri has offered to do the same thing so that we can go directly to the witnesses to hear their testimony, and it will give us plenty of opportunity to ask questions concerning the NTSB reauthorization.

So, with that, I will enter my statement into the record and will ask unanimous consent to enter the Ranking Member's statement into the record as well.

Hearing no objection, so ordered.

Mr. COSTELLO. Before I recognize Mr. Petri for any remarks that he may have, I ask unanimous consent to allow 2 weeks for all Members to revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses.

Without objection, so ordered.

Mr. COSTELLO. The Chair would recognize Mr. Petri for any comments he may have.

Mr. PETRI. Yes. Very briefly, I know that the reauthorization of the agency is overdue from Congress's point of view. There have been requests for changes in expansion of authority by the Board, and we intend to review all of that very carefully as we proceed with the reauthorization. So we look forward to your comments and explanations of any changes.

Mr. COSTELLO. The Chair thanks the Ranking Member for his comments.

Now the Chair would recognize our two witnesses. We welcome you here today. We appreciate your appearing before the Subcommittee: the Honorable Deborah Hersman, who is the Chairman

of the National Transportation Safety Board, and Dr. Gerald Dillingham, the Director of Physical Infrastructure Issues with the Government Accountability Office, who has testified before this Subcommittee many, many times.

We normally have a 5-minute rule under which we ask witnesses to summarize their testimony in 5 minutes. We will not adhere strictly to that today since we only have two witnesses.

So, at this time, the Chair will recognize Chairman Hersman for her opening statement and any testimony that she has to offer to the Subcommittee.

**STATEMENTS OF DEBORAH HERSMAN, CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD; AND GERALD DILLINGHAM, DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE**

Ms. HERSMAN. Thank you, Mr. Chairman, Mr. Petri, and Members of the Committee. Thank you for inviting me to be here this morning.

Before I begin, I want to introduce one of my colleagues from the Board who is here with me, Board Member Robert Sumwalt.

Thank you for making the Safety Board's reauthorization one of the top priorities on the Committee's agenda this year. While much has changed in the transportation world since 1967 when we were created, our core mission remains the same: investigate transportation accidents to determine what happened, why it happened, and make recommendations to prevent it from happening again.

In the last week, the Board has initiated activities in aviation, marine, and rail investigations. We do not often get to be the bearer of good news, so let me begin by telling you that we have recovered recorders from an incident that occurred last week in Charleston, West Virginia. A regional jet aborted takeoff and went into an engineered materials arresting system at the end of the runway. Preventing runway overruns has been on our Most Wanted List of Safety Improvements for many years. Something like EMAS has the potential to save lives. The Board has been advocating these improvements for years, so it is a good opportunity to share a success story with you.

Over the weekend, a tanker collided with a towboat and two barges near Port Arthur, Texas. Approximately 462,000 gallons of fuel were released into the water. An NTSB team was sent to assist the Coast Guard.

On Monday, we sent an accredited representative to assist the country of Lebanon in its investigation of the crash of an Ethiopian Airlines 737 into the Mediterranean. The Lebanese Government is conducting this investigation, but they have requested the assistance of the NTSB.

Yesterday, we dispatched a team to Rockville, Maryland, where two Metro track workers were killed while performing maintenance, which resulted in closures of portions of the Red Line during the Tuesday morning rush hour. As you know, we are also conducting an investigation into the June, 2009, fatal collision of two trains on the Red Line, and we will hold a multi-day public hearing, chaired by Member Sumwalt, in February.

Just last week, the Board approved the report on the September, 2008, Metrolink collision with a UP freight train that resulted in 25 fatalities in southern California, involving an engineer who was texting.

Next week, the Board will meet to consider the report on the Colgan Air crash in Buffalo, New York. As you recall, that accident occurred on February 12, 2009, so we are completing this investigation within a year of the accident. This is a testament to the hard work and determination of our staff, who also conducted an early public hearing on this accident last May. We promised the families that we would be aggressive in our investigation, and we are holding ourselves accountable to complete the investigation in a timely manner.

Like every other Federal agency, the Safety Board is called upon to do more with less. In fact, today, we have 33 fewer employees than we did in 2003. For a small agency like the Safety Board, this is significant. It is about 8 percent fewer employees. We accomplish a great deal because we have an incredibly dedicated and professional staff. I and the other members of the Board are proud to work with these men and women every day. They are smart, curious, and have an unparalleled passion for transportation safety.

Compounding our staffing challenges, we are facing impending retirements of senior career employees, but we also recognize that this is an opportunity to recruit new talent to the Safety Board. I am very aware that parts of our organization, especially at the senior executive level, are fairly homogenous. That is why I created a diversity task force to look at recruitment, retention, and training. The task force is being led by Vice Chairman Hart and the Board's Executive Officer, and I have asked them to report to me by March of this year on initial recommendations to create a more diverse workforce.

When I became Chairman of the Safety Board last year, I spoke about three things that I wanted to emphasize during my tenure: transparency, accountability, and integrity. We have taken a number of steps to improve the public availability of Board materials. We are working to open the dockets of our investigations much sooner and making that information available on the Internet. Whenever possible, we are having more public hearings on our investigations, again, providing a window for the public to see and hear the Board at work. These are the first of some important steps taken by the Board to further strengthen the integrity of our investigations and reports.

Thank you very much for your support of our mission. We look forward to working with you and your staffs for an expeditious consideration of our reauthorization.

Mr. COSTELLO. The Chair thanks you, Chairman Hersman.

Let me say that everyone recognizes, I think, that the NTSB is the premier investigative agency, and I want to commend you personally and the board members and your staff. I would agree with your comments about they are professionals and they are dedicated, and it is our responsibility in the Congress to make certain that you have adequate funding to meet your mission, and it is one of the reasons why we are holding this hearing, to ask some questions about additional funding that you are requesting, additional

staff, and some statutory changes as well. So we will get into those questions after we hear Dr. Dillingham's testimony.

Dr. Dillingham, we thank you again for being here this morning. As I said, you have testified before the Subcommittee many times, and we look forward to hearing your testimony now. Thank you.

Mr. DILLINGHAM. Thank you, Mr. Chairman, for inviting me back again, Mr. Petri, and Members of the Subcommittee.

In NTSB's last reauthorization, GAO was mandated to annually review issues related to the agency. My testimony this morning focuses on the results of recent reviews of key management issues at NTSB and our observations on the agency's 2010 reauthorization proposal.

As a result of our mandated reviews, we made 21 recommendations to improve NTSB's organizational management and operations. Our reviews focused on two areas. First, we compared NTSB's management practices with leading practices in selected areas, such as strategic planning, human capital issues, and financial management. Second, we analyzed how NTSB is using its Ashburn, Virginia, training center.

Overall, NTSB has been very proactive and responsive to our recommendations and has fully implemented or made significant progress in implementing all of them. Nonetheless, a few issues remain.

With regard to the management areas, although NTSB has shown significant progress in its human capital planning and has undertaken several initiatives to improve the diversity profile of its management and staff, these efforts have not resulted in significant changes. Currently, NTSB's workforce includes smaller percentages of women and minority group members than the overall Federal workforce. Additionally, minority group members hold about 8 percent of NTSB's supervisory or managerial positions, and women hold about 25 percent.

At the career SES level, there are no minority group representations. This circumstance is especially important because the SES core generally represents the most experienced segment of the Federal workforce, and it provides policy leadership. Research has shown that a diverse SES core can strengthen an organization by bringing a wide variety of perspectives and approaches to policy development and decision-making.

We agree with the Chairman's remarks that during this reauthorization period NTSB has an increased opportunity to improve its management diversity profile. Within the next 3 years, more than 50 percent of NTSB's current supervisors and managers will be eligible to retire and slightly over 70 percent of those filling critical leadership positions are at least 50 years of age.

With regard to the NTSB Training Center, NTSB has increased the use of the Center's classroom space from 10 percent in fiscal year 2006 to 80 percent in fiscal year 2009. During the same period, NTSB also reduced the Training Center's annual deficit by 50 percent, from \$4 million to about \$2 million annually. Given the increasing demands on Federal resources, efforts to reduce the Training Center's annual \$2 million deficit should also be a focus of this reauthorization period.

Turning to our observations on NTSB's 2010 reauthorization proposal, NTSB has proposed changes to its existing authorizing legislation that would reduce required accident investigations and would provide statutory authority to investigate incidents. A key effect of some of these requested changes would be to grant NTSB increased investigatory discretion. These changes are clearly policy decisions for the Congress.

The changes would allow the NTSB to use its professional judgment to determine which investigations would have the greatest potential to improve safety and to make the most effective use of its resources. At the same time, we believe that it is important that NTSB be transparent by providing information on the criteria it will use to select the investigations that it will undertake.

Additionally, NTSB should also consider its existing interagency agreements and legal frameworks as well as the views of all agencies that might be affected by the proposed changes. Striking the right balance between agency discretion and agreed-upon criteria could help assure the Congress and the public that the agency's limited resources are being used to address the highest safety priorities.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions from you or from Members of the Subcommittee.

Mr. COSTELLO. Dr. Dillingham, thank you very much for your thoughtful testimony.

Chairman Hersman, of course, the NTSB testified before this Subcommittee in a similar hearing in April of 2008 and requested similar changes in statutory authority and requested additional funding for personnel, and I am going to get into that in a second.

You indicate in your testimony that providing the Board with specific statutory authority to investigate incidents as well as accidents is consistent with a worldwide push by ICAO member nations. Do you want to explain that?

Ms. HERSMAN. Yes, sir.

ICAO has made some recommendations to member nations, and I think the focus really is the same focus that we have, to improve safety in aviation. That is ICAO's focus, and it is our focus as well. I think that we do have the ability to do that by selecting the right accidents.

Sometimes we can learn a lot from an incident. We do not necessarily need to have a body count in order to learn lessons, and so I think that one of the reasons why we want to look at incidents is because there is a lot to learn. If we have an aircraft landing on a taxiway but it does not result in a runway collision or in a collision on the surface of the airport, we want to understand why that happened and how to prevent that from happening in the future.

It was just really by chance that there were not other aircraft that might have been on a taxiway when that aircraft landed. I am referring to an incident that occurred involving Delta Airlines at Atlanta Hartsfield, the busiest airport in the country.

So there are concerns that we have that we think looking at incidents could address. It is something that we already do. We do not believe that we are asking for more than what we already do. We do investigate incidents, and incidents are referred to in our stat-

utes already in certain places. We just want to make sure that the intent is clear and that it is codified and that we have good direction from Congress to do it.

Mr. COSTELLO. You indicate in your testimony that the request for fiscal year 2011 through 2014 reauthorization levels are based on 477 full-time equivalent employees. Would you like to, for the record, state why you need that number of employees, 477 full-time equivalent, and how many full-time equivalent employees does the agency have today?

Ms. HERSMAN. The agency has approximately 390 full-time equivalent employees today. This is down from 427 employees in 2003. So our agency has actually seen a real reduction in the number of FTEs.

Calculations were used to determine the needs of the agency, what we have, and how to comply with recently enacted statutory mandates. For example, this Committee approved legislation that would require us to provide disaster assistance in rail accidents. That new responsibility requires two additional FTEs to perform that function. We do not have the ability to hire those individuals at this time. We do not have the funds to do it.

Over the last 10 years, we have seen an actual reduction in the number of investigators. We currently have about 35 fewer investigators than we had in the past, and so those numbers to us represent real challenges in terms of accomplishing our mission. The 477 number is what we would really like to have if we had all of the experts on board that we would like. But we really would at least like to get back to where we were a few years ago and at least make us whole.

Mr. COSTELLO. You heard Dr. Dillingham's testimony concerning the percentage of women and minorities, especially at the managerial and senior executive levels, are lower than those in the Federal Government. Is it your opinion that the NTSB is attempting to address this issue? If so, how?

Ms. HERSMAN. In the fall, I created a diversity task force, and that is being headed up by our vice chairman and executive officer. They are charged with coming up with a charter and reporting back to me in March with recommendations about increasing our outreach, our potential recruitment, our retention, our training, and advancement for all of the employees at the Safety Board. I think this is a good step. It is an important step.

We are also being faced right now with several hiring decisions in some of the senior executive ranks. We are making every effort to reach out to diverse sources in our recruitments, and we have even held open some of those positions in order to solicit additional applicants.

Mr. COSTELLO. Very good. Thank you.

The Chair now recognizes the Ranking Member, Mr. Petri.

Mr. PETRI. Thank you.

One of the most effective and somewhat controversial bureaucrats in this town was J. Edgar Hoover, who, I understand, over his very long career as head of the FBI spent a lot of time lobbying or working with Congress to limit the scope of his agency and reduce or fight adding more and more statutes to the scope that the FBI was supposed to follow up on because he was afraid it would

end up, you know, being jack of all trades and master of none and lose the focus of the agency.

I just mention that because it can be a worry. We focus on one issue after another around here and dump it on the bureaucracy, and they are stuck losing focus and effectiveness over time. We cannot allow that to happen with this agency, because people's lives are at stake.

Now, in that connection, the ICAO language talks about serious incidents, and I guess they define that. You just talk about incidents. Maybe that is a difference without a—a distinction without a difference, but it could lead to mission creep because there are incidents on every flight of one kind or another, probably. So could you define that a little bit for us or give your thinking on is this incidents important or serious incidents? How would we—why would we want to just use incidents?

Ms. HERSMAN. I think it was clear that the Congress envisioned us looking at incidents, and we have done so for many years. In fact, on our Most Wanted List of Safety Improvements, the issue of runway safety exists.

We have looked at runaway incursions. Many times, incursions do not result in any fatalities or damages so they wouldn't trigger an accident threshold for us. But when you have two aircraft that come dangerously close to each other and somehow manage to avoid a collision and, potentially, the loss of hundreds of lives, we think that that is important. We want to look at those incidents in order to understand why they occur.

There are many incidents that occur where there might be turbulence or other things. We want to understand not just what is going on with the crews but also the equipment and the aircraft. We think that looking at incidents can give us a very good bang for our safety buck. We do not need to lose lives to learn something from an event. If we can look at an incident and learn a lesson and thus prevent an accident from occurring, that is important.

So I think we are happy to be able to select the type of accidents we investigate. In the transportation world, things are very dynamic; we do not always know what the next problem is going to be until it occurs. I would worry about creating a very specific list of events that we can investigate.

Many years ago, we might not have put on our list the collapse of an interstate bridge, because that is not something that we would have thought to put on our list, but it happened. We do not know what might happen until it occurs. If we could have some flexibility we would appreciate that, but we would certainly be happy to receive some guidance from the Congress on this subject.

Mr. PETRI. Very good.

Well, I have a couple of other questions, but that is a thought-provoking thing. There are sort of systemic risks and then there are incidents, and the industry of designing aircraft and building things tries to prevent these sorts of general risks by building safety, but that is different than, sometimes, than an incident, which—

But, in any event, you talk about expanding this subpoena power of the agency, and our understanding is that the current authority

is enforceable in Federal courts. Are there problems with that or could you expand on why that request is being made?

Ms. HERSMAN. Sure. The Safety Board has had subpoena authority. One of our concerns is that some attorneys might counter that we only have this authority with respect to our public hearings. We believe that we do have this authority. But with recent legislation, whether it is HIPAA or other types of financial protections, we believe that there might be some who would challenge our subpoena authority. We want to make sure that it is very clear that we do not want expansive authority; we want limited focus on information that would support an investigation.

We would not want to get into a situation where we need a subpoena. We do not have the support, and we are challenged in the courts.

Mr. PETRI. If I could, one quick other question.

You ask for or discuss the idea of putting cameras on commuter trains and also on aircraft. This is something that has come up at further hearings. It is something that has raised real concerns because of the way it has been handled in some other countries, and we do not want to get into the position where we are sort of Big Brother spying on every aspect of people's lives and how we can assure the personnel involved that this is not going to be unfair and intrusive and cause them to take evasive actions that neutralizes the whole thing or whatever.

It is something we really need to spend some time on so there are clear guidelines. Otherwise, we are going to get big push-back from pilots' unions or from other representatives of the organizations. They are obviously worried about their members' safety, too, but they are also worried about their just being human beings and talking to each other and, God knows, to be taped and filmed and how it could be used.

So are you giving thought to that? This is an area where we need to give some real thought so as to how to achieve the objective and use the technology without creating other problems.

Ms. HERSMAN. Last week, the Safety Board considered the report on the Chatsworth accident. That was the 25 fatal freight train collision with a passenger train in southern California.

In that accident, the Safety Board found that the engineer who was operating the Metrolink train had a long and sustained history of texting and using his cell phone while he was on the job. We looked back in the week preceding the accident. He averaged about 100 text messages per day. On the day of the accident, he sent 75 text messages, 41 of those while he was on duty, and he made a number of outgoing cell phone calls. The last text message that was incoming and that he sent out was 22 seconds before the collision while he was passing a red signal.

This is not the first time that the Safety Board has looked at this issue in an accident. Back in 2002, we investigated a freight accident was on a cell phone and was distracted. It resulted in a collision.

We made a recommendation back in 2003 for the FRA to control the use of wireless devices. They did not do anything on that until 1 month after the Chatsworth accident. The concern that we had in this case was the locomotive engineer on the Metrolink train had

been disciplined twice before by management for using his cell phone; he was even turned in by one of his colleagues--a conductor on the train at one point--for his use of the cell phone. We are concerned that this engineer was not doing the right thing when no one was watching him. He brought underage youth into the locomotive with him in violation of company procedures, and even allowed a minor to operate the train. These were very serious issues, and we really struggled with how to address it.

In that accident, we looked at the records of the other train that was struck. The conductor on the other train was using his wireless device at the same time. This is not just a one-off situation. It was not one person for the first time using his cell phone or texting and he happened to get caught. It was something that was going on frequently and across the board.

Last May, I launched to an accident in Boston, Massachusetts. There were two trolleys that collided. The driver of the striking trolley admitted to local authorities that he was texting his girlfriend when he struck the train.

This is a challenge. The Safety Board does not come to this lightly. Our job is to make recommendations to improve transportation safety. The company's enforcement policy is not working. People are still violating the rules.

We have made this recommendation; and, yes, we recognize that some may consider it an intrusion, some may consider it something that is a violation of their privacy, but this agency and the Congress has a long history of intervening when they think that the public interest is at stake.

The same happened with drug and alcohol testing some 20 or 30 years ago. For many years, the Safety Board made recommendations about drug and alcohol testing. People considered it a violation of privacy at the time. It was not until we investigated an accident on New York City Transit where the driver of the train had a blood alcohol content of .21, 13 hours after the accident, that people started paying attention. Then we had Chase, Maryland, where we had two people on that locomotive who were high on marijuana. Congress passed requirements for drug and alcohol testing, both random and post accident, following those accidents. Now we have drug and alcohol testing, and people have accepted it.

We hope that, by raising this dialogue, it will raise the bar on safety. People need to look at other ways to deal with these distractions before something else catastrophic happens.

So I am sorry for my long answer. It is an important issue to me. I wanted to make sure I explained it to you.

Mr. COSTELLO. The Chair thanks you and now recognizes the gentleman from Missouri, Mr. Carnahan.

Mr. CARNAHAN. Thank you, Mr. Chairman and Ranking Member, for really leading this hearing and for the panel for being here. I appreciate the work that you do.

The NTSB, I think, has a good and well-deserved reputation. I think they have generally been open to continuous improvements in processes and technology. So I think that is an important reason that that reputation is continued.

I guess I bring to this—and I just want to say up front—a unique perspective having lost two family members in an aviation accident

a few years back. I share your concern about some of your reduction in investigators that you mentioned. I think it is a very important part of your capabilities to have those investigators and that capability in-house.

I want to refer back to the RAND Corporation's 2000 report to the NTSB. It was entitled, *Safety in the Skies: Personnel and Parties in NTSB Aviation Accident Investigations*.

It stated that Safety Board investigators and other party participants report that a productive synergy exists among party participants during the first few days of an investigation but then rapidly dissipates once the parties' defendants and legal departments get cranked up. Do you believe this kind of behavior, either actually or in perception, can undercut the, really, core mission of the investigative process when it begins to get overlapped and potentially compromised by the legal processes that often follow investigations?

Ms. HERSMAN. Congressman Carnahan, I think the RAND report outlines some of the many challenges we have with our party system. It also noted that we need the party system to effectively accomplish our investigations in many cases. We rely on the parties to establish factual information for our investigations, and we include people as parties to our investigation. We statutorily have to include the FAA as a party, but the other parties to the investigation are chosen at our discretion; we make the decisions about how people participate in our investigations.

That being said, they do participate in our investigations but only in the factual portion. When it comes to performing the analysis and determining probable cause and making recommendations, that is solely within the purview of the Safety Board and our staff.

I think that a productive synergy does exist most of the time on our accident sites. I have been to 17 major accident launches with our teams. I have seen the party process work very well. I think there are occasions where we do have challenges, and so we want to be honest about that, but I think we do try to address those in a straightforward way, and if there are any concerns that we have we would certainly come to the Congress.

Mr. CARNAHAN. In terms of having that wall between the investigative process and the legal process, the instructions that are given to parties and then the actual following of those instructions, I guess what is your take on how that is working in the field?

Ms. HERSMAN. At our organizational meetings, we generally read a statement, and the party representatives have to sign that statement. And I know that, Congressman, you have an interest in making sure that we have strong statements regarding party participation and what information can be released internally to those organizations' home offices, so to speak; and so we share that concern.

We do not want our investigations to result in anything but a level playing field for everyone who is involved, whether it is families, party participants or the public; and so we hope that we can be an equalizer there and make sure that everything is done fairly and appropriately. But we are happy to consider modifications to that agreement, and we are working internally to make it con-

sistent across modes, and so we look forward to working with the Committee on this issue moving forward.

Mr. CARNAHAN. I appreciate that.

Also, you mentioned the NTSB and that, you know, resources are a factor in terms of how you process investigations. Do you need greater access or fewer restrictions on the use of emergency funds?

Ms. HERSMAN. We presently have an emergency fund. It is about \$2 million. We use this emergency fund in cases where we have an unexpected or high expenses, such as a water recovery, if we had an aircraft to go down in the water. The last time we had to use the emergency fund was in 2001 when we had to do some very specific research on composites following the American Airlines 587 accident in New York.

Mr. CARNAHAN. So you feel like your access to those funds is adequate?

Ms. HERSMAN. We do.

I have to say that, if we had another event, another water recovery type of operation, we might have to come back to the Congress, which we have done in the past, and ask for a supplemental appropriation. In TWA 800, we did have to come back and ask for a supplemental appropriation, which virtually doubled our budget, our annual budget, because the recovery was so expensive.

Mr. CARNAHAN. In terms of post-accident access by insurance representatives, this was also that was brought up in the RAND report: Senior NTSB investigators admit that, despite NTSB regulations, they are happy to have insurance show up because they, quote, offset costs and provide necessary support for the investigation, including heavy machinery, communications equipment, computers, and accommodations. The insurers, their investigators, and their lawyers immediately develop theories of causation upon which they base a preliminary funding agreement to allocate payment of compensation to victims.

Is there any compensation, reimbursement for cost that is incurred by those who are being investigated?

Ms. HERSMAN. Are you talking about insurers for the airlines?

Mr. CARNAHAN. Yes.

Ms. HERSMAN. Oftentimes, we do rely on the insurance companies to secure a location to store the equipment. They do get access in the early stages of the investigation, but it is simply to photograph and document and make an assessment of what the damage is, because they are the insurer of the equipment. They do not participate in our investigation. They are not involved as a party, and they do not participate in the factual or any other part of the investigation.

But I can give you a recent example. I was in New York last August following a midair collision involving a private aircraft and a helicopter. We were working on a recovery of that out of the Hudson River, and the insurance company was there. They were involved was because to be made concerning a determination needed where to put the wreckage once it came out of the water. The local city didn't want it on city property in case their pier was damaged, and they wanted us to pay if their pier was damaged. And we said, no, you need to talk to the insurance company about where to put the wreckage and who is going to pay for any damage.

So the insurance company was not involved in our organizational meetings, nor in our progress meetings. In fact, I never saw them, but I know that we told the company who was pulling the wreckage out of the water that the insurance company would identify a place to put the wreckage and to pay for any damages.

Mr. CARNAHAN. I guess, finally, I will close with a question. Is there anything that can be done or that you believe should be done to ensure greater access for family members or their representatives in the course of an investigation?

Ms. HERSMAN. One of the things that I did when I first became chairman was to meet with many of the family groups about a month after the accident to solicit their ideas on how we could better serve them and the families involved in future accidents.

One of the things that we have done to assist family members began last summer when we initiated the practice of putting all of our accident dockets on our Web site. We have got investigative material from over 1,000 accidents now where everything going forward is going to be posted on our Web site and hopefully posted earlier; and we are working on archiving the older investigations, also.

This means keeping in touch with the families not only while we are on site but as the investigation proceeds. We already do that, by notifying them of public hearings and by keeping them involved.

We expect about 50 family members to be in attendance at our board meeting next week on Colgan. We very much appreciate the family members who are involved and who do care about our work and our investigation. So we see them as an integral part of what we do, and we want to make every effort to make sure that the playing field is level for everyone and that our investigations proceed in an independent and thorough way.

Mr. CARNAHAN. Thank you for your work and thank you for being here.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the gentleman from Kentucky, Mr. Guthrie.

Mr. GUTHRIE. Thank you, Mr. Chairman.

Mr. Carnahan, if you need another minute, I would yield a minute to you if you want to finish up.

But you are fine. Okay. Thanks.

I am Brett Guthrie from Kentucky, and I hate to ask you something specific if you are not prepared for that, but you know we had the accident in Kentucky a few years back on the wrong runway. I see on your NTSB most wanted list "runway safety and runway improvements" one specifically listed is taxiing down the wrong runway.

For those on the Committee, there are two runways at the Blue Grass Airport in Lexington, Kentucky, which is actually in Congressman Chandler's district, but it concerns us all. The pilot took off on the short runway, which actually had some construction going on, and they had a fatal crash. I think all but one or two on the entire plane were killed.

So would you comment on runway safety? That is obviously important in Kentucky. I do not know if you have any specifics on that event, and I do not want to put you on the spot on that, but

just in general your plan for runway safety on your most wanted list here. Thank you.

Ms. HERSMAN. Thank you.

I will say that Member Sumwalt is from South Carolina, and so my husband and I were quite disappointed to see that the Wildcats lost to the Gamecocks last night. My husband's family is from Kentucky.

I actually was the member on scene for the Comair wrong runway takeoff in Lexington at Blue Grass. We are working very hard to address the issue of runway safety. That issue area was actually expanded from just runway incursions to runway safety after the Lexington accident. Because it is not just two aircraft that might collide with each other on the surface of the airport that is a problem. It can involve wrong runway takeoffs, taxiway landings, being in the wrong place at the wrong time. We made recommendations about the use of things like electronic flight bags to help the crew have better situational awareness when they are on the surface of the airport.

We have seen crews get lost in airports in bad weather where visibility is low. Busy airports like LaGuardia in New York, where they are on the wrong taxiway, they are not aware of where they are, they are trying to get direction from air traffic controllers, and they are on an active runway rather than a taxiway.

So we think it is important for the pilots, whether it is at Blue Grass or LaGuardia, to have good situational awareness. They need to know where they are at all times. Devices like electronic flight bags can be helpful.

We made a number of recommendations after Lexington to improve signage and markings on taxiways and runways at airports. Blue Grass did implement some of those voluntarily, but we asked the FAA to look system-wide. We made recommendations to make sure that the flight crews had up-to-date and current maps, because we found that there was an issue there. We made many recommendations coming from Lexington.

Unfortunately, in many accidents, we see old issues resurface, and sometimes we see them over and over again, things like sterile cockpit. That was where the crew was carrying on some non-pertinent conversation while they were taxiing. We were trying to determine: Why didn't they pay attention? Why didn't they know where they were? Why didn't they realize they were on the wrong runway?

So the human factors issues are a challenge for us, and we continue to work on those. But I think that that accident was very important. That is why some of those issues are on our Most Wanted List, and we will be having a board meeting to consider our 2010 Federal Most Wanted List. You will note the one that you have says 2009 on February 18.

Mr. GUTHRIE. Right.

Ms. HERSMAN. So, next month, we will have another opportunity to hold peoples' feet to the fire to say what have you done on these recommendations in the last year and have these changed? If they have, we will say, good job, and close them; but if they have not, we are going to try to put some more pressure on them to say, get it done.

Mr. GUTHRIE. Thanks for that update.

You talked earlier about incursions versus incidents, and you did talk about sterile conversations in the cockpit leading to an incident that actually cost lives.

Would you investigate like the issue just recently where the crew overshot, I guess it was, Minneapolis airport? Is that something that NTSB would get into? Or since nothing happened, they just went 30 minutes out of the way and came back, which they said was a sterile conversation that caused that. I have only got a few seconds left. Is that something that NTSB gets involved in, or is that a different group?

Ms. HERSMAN. I think that is exactly the kind of thing that we are thinking about; and I think that Congress would probably agree that that was a serious incident--a crew not realizing where they were. They were out of contact with air traffic control for a significant period of time. They overshot their destination. Those are things that are of concern to us. We investigated that incident. The investigation is ongoing.

Our public docket was opened in December. We have hundreds of pages of information, including interviews with the crew. We hope to publish our probable cause determination soon. If there are any recommendations that we think need to be made to prevent something like this from happening again, we will make those.

Mr. GUTHRIE. Thank you.

I yield back.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the distinguished Chairman of the Full Committee, Chairman Oberstar.

Mr. OBERSTAR. Thank you very much, Mr. Chairman. I appreciate very much your diligent pursuit of all the responsibilities of the Subcommittee on Aviation and your mastery of the issue. Mr. Petri is a splendid partner in this process.

I particularly want to welcome Chairman Hersman to the Committee. She started out here 100 years ago, it seems. We have aged, and she has not.

It is also good to have Dr. Dillingham with us. Thank you for your splendid commentary on the work of the NTSB and the recommendations that GAO has made over many years.

I have a particular affection for the National Transportation Safety Board going back to when the Committee on Public Works was asked by—well, the Committee on Government Operations was asked by President Johnson to create a Department of Transportation. My predecessor, for whom I was administrative assistant, John Blatnik, was also Chair of the Subcommittee on Legislative and Executive Reorganization.

So I played a hand of some considerable time in the shaping of the Department, bringing 34 government agencies into one Department of government. We started in January and had a bill on the President's desk in October, working closely with Senator Magnuson and the other body.

One of the ideas that occurred to us during the course of this crafting of the Department was to have an independent investigative agency within the Department that would oversee all the modes of transportation that we were bringing together under one

roof, which had actually started in 1926 by then a little-known and under-appreciated Assistant Secretary of Commerce named Herbert Hoover. He was interested in aviation safety not so much, as the record shows, because he wanted airplanes to be safer but because engines had a bad habit of falling out of aircraft in the sky and wings falling off airplanes, and it was very bad for commercial aviation.

He recommended and pursued an investigative unit to help industry in the dawn years of civil aviation and commercial aviation with the airmail pilots to assure that mail would be delivered and that aviation would continue to attract investment.

Well, it sort of took a back seat over many years, and we thought that this would be important. We thought it would be a good addition to the Department of Transportation. That was 1966. Nine years later, we realized that an agency cannot be independent within a department. In my first term in Congress, I supported the separation of the independent Safety Board from the Department to the National Transportation Safety Board. That single initiative has created the gold standard for aviation safety investigation.

Other countries that did not have such an investigative unit patterned theirs after the NTSB. I remember Bob Francis, as Vice Chair of the Board, traveling to several countries to guide them in establishing a Safety Board. The Bureau d'Enquetes of France is patterned after our National Transportation Safety Board.

I was very impressed with your testimony this morning, with your grasp of the facts, with your ready recall of incidents and accidents, and with your ability to distinguish among the categories and to do it so readily and so deftly. It is a great compliment to the time and effort you have invested in your chairmanship and previously in your service on the Board as a member.

You rightly made a distinction between accidents and incidents, but incidents are no less important than accidents, except that an incident does not have fatalities or injuries. But incidents progress into accidents, and I think it is vitally important. If the Board had not taken action and done serious reporting in 1984 and 1985 about near midairs, our Subcommittee on Investigations and Oversight, which I chaired at the time, would not have had vital information on which to proceed to hold hearings and to call to FAA's attention that these near midairs were coming so close that people could almost read a newspaper in the other aircraft. That is unacceptable, and that caused the NTSB to get hard on FAA and the FAA on the airlines and eventually establish standards for the separation of aircraft.

So, time and again, there has been work on incidents and investigating them. Landing on a taxiway, as you pointed out a little bit ago, only by sheer chance, by sheer good fortune, did not result in a fatality. That is not good enough. We have to have procedures in place to ensure safety.

Mr. Petri's question elicited stunning, gripping, shocking statistics on texting while managing equipment. Your recall of those numbers was just compelling.

We do have voice recorders in the flight deck of aircraft. We do not necessarily have them in light rail and in streetcars and in commuter rail and in subway systems. We do not have onboard

voice recorders in the cabs of railroad locomotives or in the wheelhouse of emergent vessels.

We had some hearings years ago in this Committee about cameras at intersections to track drivers running red lights; and I remember several Members of Congress testifying in opposition to red light running cameras, saying that it is an invasion of privacy. How can it be an invasion of privacy if it saves lives?

France installed cameras at intersections throughout the country. They imposed a 100 Euro fine, which was about \$150 at the time, for running red lights. Within a year, the incident of red light running dropped 80 percent, and fatalities dropped 50 percent at intersections. The French are pretty good about their privacy and about their individual rights, but they are also very strong about saving lives.

It seems to me that some means of tracking inappropriate action, whether it is the flight deck of aircraft or in the cabs of locomotives or in the steering compartments of light rail or commuter railcars, is also an advancement in safety.

I think Mr. Petri rightly pointed out the pilot unions would not like this. Well, the passengers, sure as the dickens, did not like going 100 miles out of their way when they did not know it on that Northwest Airlines aircraft. You have all the data, but it appears that they were deeply engaged in discussing the transfer from Northwest policies to Delta policies and which rules governed which actions and on crew makeup and context. That should be done on the ground. They have no right to be doing that in the flight deck of the aircraft, and that needs to be recorded.

Lufthansa, probably 20 years ago, conducted an experiment of putting cameras in the flight deck with the cooperation of their pilots, saying that the information would be used for training and not for enforcement, not for punishment. They had great cooperation of the crews; and the crews found that, when they reviewed the tapes, when they did a call-out about throwing a switch that all too frequently they actually did not reach up and throw that switch. It was very helpful in improving crew effectiveness and performance.

So I think we—this Committee, the Board, the pilot community, the airline community—all need to get together and have some serious discussions about it.

I think, Mr. Costello, it would be a very good initiative among the many that you have undertaken in these seminars, for want of a better term, to have a roundtable discussion. We will bring people together, and let's have a preliminary discussion prior to the hearing about onboard recorders and video cameras in the flight deck.

This is the next frontier of safety that we must not put off. I am stunned by your recitation of the amount of texting going on in locomotives, in light rail, commuter rail.

The European community has taken a strong stand against texting; and it has banned it in private automobiles, passenger cars, and in government-owned operations and on their high-speed rail. If you are traveling 200 miles an hour and if you look away for 5 seconds, you have covered a football field. That is reckless. That is reckless not to be attentive.

The Government of Portugal has made it a crime, a primary action. You do not have to stop a vehicle for some other purpose to bring an action against the driver for texting or for cell phone use. That is a primary action, cause of action and criminal action. Cell phone use while driving in Portugal has dropped 90 percent, and they are saving lives.

We have given the Board new authorities over many years. One of those is certificate action on mariner credentials, an appeal from decisions by the Coast Guard to the NTSB. Have you had an increase in workload because of that new authority?

Ms. HERSMAN. The Safety Board has historically looked at appeals from mariners and airmen, FAA enforcement appeals and Coast Guard enforcement appeals. There was a discussion last year about transferring some additional workload to us through the Coast Guard bill, but that did not come to pass.

Mr. OBERSTAR. It has not been enacted yet.

Ms. HERSMAN. No, thankfully.

We still look at appeals that come from the Coast Guard. We do not have responsibility for their ALJs, and I can get you the numbers to see if our appeal numbers from the Coast Guard have risen in the last couple of years.

Mr. OBERSTAR. Well, the increase in workload on all these new responsibilities we have given to the NTSB and the concurrent drop in investigators, I am just reading from my notes and your testimony. Thirty-five fewer investigators than 6 years ago. That is shocking, that is terrible. We need an increase in funding.

One question you may not want to comment and I certainly don't fault you for that, but do you think that there ought to be a fixed term for the Chair of the National Transportation Safety Board? We did that for aviation after years of vacancies and short-term tenure of the administrator of FAA. I first introduced a bill for a 7-year term for the administrator of FAA in 1987, Senator Lautenberg did the same in the other body and we eventually came to a 5-year term. Our idea was that it should lap over administration so there is continuity at the helm of the board. You can withhold if you wish.

Ms. HERSMAN. Chairman Oberstar, the term of Chairmanship is the same as your term as a Congressman. I have a 2-year term as chairman, and I suspect we would all rather have a longer period to get the things that we want to get done accomplished; 2 years is a short time. But I do have a 5-year term as a Board member and I have to be reconfirmed by the Senate if the President chooses to appoint me for another term. We have seen in the last 10 years--since 2000--a number of chairmen and acting chairmen. Continuity would probably be good, but I think I am probably not the best person to make that recommendation. At this point you might want to talk to people who were former chairmen of the NTSB and see what they have to say.

Mr. OBERSTAR. So Dr. Dillingham, what do you think.

Mr. DILLINGHAM. Chairman since the law was passed to make the FAA administrator 5 years, it has, in fact, given the administrator ample time to complete some actions that when we are getting them every 18 months over the last 15 years. It wasn't happening that way, so there is value to continuity. And as you know,

the GAO, the head of GAO has a 15-year term for those very same reasons.

Mr. OBERSTAR. That is the job I would like. That is a very good deal, 15 years. But it was Roger Sherman in the Constitutional Convention in 1787 who proposed 1-year term for House Members, saying frequent elections are necessary for the good behavior of rulers. Someone else in that convention proposed a life term for Senators and some of them think they have it. Unfortunately they didn't get theirs and we didn't get a 1-year term, but 2 years is good. But I think for management entities a longer term of sustainable continuity is important. I am not going to propose that in this authorization, but I think it is something we need, the whole community needs to think about. Thank you, Mr. Chairman.

Mr. COSTELLO. The Chair thanks you and now recognizes the gentlelady from Hawaii, Mrs. Hirono.

Ms. HIRONO. Thank you, Mr. Chairman. NTSB does very critical work and has a fine reputation. We have had of course numerous incidents and accidents in Hawaii and I thank you for your work.

I am curious to know why NTSB does not have substantive—the authority to issue regulations because one of the functions of promulgating regulations I would think would be to be proactive in setting out behaviors and activities so that you can—people will know what they are supposed to be doing. So is there some reason that you don't have this authority to promulgate regulations?

Ms. HERSMAN. Well, hearing—

Ms. HIRONO. And would you like to have that authority?

Ms. HERSMAN. Hearing Chairman Oberstar's recitation of our history, I will say that probably some other people can tell you why we don't have regulatory authority, but I think ultimately when they created NTSB, it was a wise decision not to give us regulatory authority because we are supposed to make recommendations about what we think is in the best interest of public safety. And if we were to have regulatory authority, we would be like one of the other modal administrations. We already have an FAA and an FRA, and an FHWA. It is their job to promulgate those regulations.

We have the ability to say what we think is in the best interest of public safety. We are not constrained by doing a cost-benefit analysis, we don't have to have a negotiated rule making. We can come to a determination and say this is what we think is the best from a safety standpoint. And sometimes we make recommendations that are really hard; they may be technically difficult, challenging, expensive, they may take a long time or require some political will to implement. Positive train control is one example.

The Safety Board for about 30 years has made recommendations about positive train control. PTC would automatically stop trains before they collide, run a red signal, or something like that. And it wasn't until multiple accidents and an act of Congress that PTC was mandated. For many years, people told us they couldn't do it: the interoperability is a challenge, it is to technologically difficult, and too expensive, it is going to bankrupt us, we can't do this. Ultimately, the Congress said, no, you can do it, and you will do it. For many years, the Safety Board had recommended PTC, and made people talk about it, and made them think about it. I think if we had to do cost-benefit analyses or negotiate with industry stake-

holders, we wouldn't have come up with that recommendation. Our charge is, what is in the best interest of safety. I think it is great that we are not constrained to make those tough analyses and negotiations.

I am thinking of another incident in which I believe the Committee would be interested. It occurred several years ago near Hilo, Hawaii, and it was also an overflight that we investigated in which both of the pilots fell asleep. We determined there were some fatigue issues and sleep apnea, but that was an incident.

They woke up and they contacted ATC who had been trying to hail them for 17 minutes unsuccessfully. They flew back, and they made a landing that was safe. That was a great result, but there was a lot of learning that went on in that investigation, and from it, we made recommendations about diagnosing and addressing sleep apnea in pilots. I share that with you because I know there are a lot of flights to and from Hawaii, a state very dependent on aviation.

Ms. HIRONO. Thank you for that explanation. So lets say NTSB does an investigation and it comes up with various recommendations, is there anything that would prevent FAA or some other agency that has the power to regulate or to promulgate regulations to do a rulemaking on a particular recommendation that seems to really make a lot of sense and has that happened?

Ms. HERSMAN. If you look at the FAA, I would say right now we have about 500 open recommendations to the FAA. And so one of their challenges is clearly going to be one of prioritization, how do they determine which issues that they want to take on. And so sometimes we help them with that prioritization with our most wanted list. We say these are things we really think you should be looking at. Sometimes the Congress helps them with that prioritization. I think FAA has challenges about how they do it, and you could probably ask them about what they need to do. But we would like to see all our recommendations implemented, and the Most Wanted List serves as the top ten.

Ms. HIRONO. Thank you. Thank you, Mr. Chairman.

Mr. COSTELLO. The Chair thanks the gentlelady. And now recognizes the gentleman from Ohio, Mr. Boccieri.

Mr. BOCCIERI. Thank you Mr. Chairman. And thank you, Chairwoman Hersman, for coming today. Two questions that I want to ask you. The first is after this Committee did its hearing on the crash in Buffalo, we learned that there were recommendations that were proposed and promulgated by the NTSB board that had not been followed through by the FAA. Namely since 1973 the NTSB has been requesting that the FAA promote some sort of program or training program that allows for upset recovery, stall recovery recognition that is not only tabletop in curriculum but also in simulation. The FAA to date has not undertaken this.

We moved and passed a bill out of the House that added that language that they will be forced to require aviation related industries to have this sort of appropriate training, because we learned that the Buffalo crash the folks were not even taught recovery procedures, it wasn't part of their curriculum with the safety equipment that was on the aircraft. My question to you is what do you think Congress should do or what actions do you think Congress

should take to help you implement the recommendations that you make for the FAA and other related safety?

Ms. HERSMAN. I think I should first say thank you. The Congress does help us implement our recommendations. Some of the toughest recommendations that we have made over the years that do not get implemented a lot of times fall back to the Congress. I think that goes back to my comment about you all setting the priorities for some of the modal administrations. And so we very much appreciate your consideration of our reports and the recommendations that we make. It is disappointing to us many years later to see an accident or a situation repeated that, had our recommendation been addressed might have been prevented.

I think that the tombstone mentality is something that concerns us. We don't want to have to reiterate recommendations over and over again. We would like to see them get done right the first time.

Mr. BOCCIERI. Do you think that Congress should give the NTSB fast track authority to implement these throughout interagencies.

Ms. HERSMAN. I think that that might disrupt the balance that we have. I think we have the ability to really reach and make good recommendations, tough recommendations. But sometimes we don't always have the perfect solution. Sometimes it requires additional research. And so we want to be able to ask people to do that. Also, we want to be able to accept when someone comes back to us with an alternative solution that might work, too. We don't have the resources to conduct the engineering, the crash testing, the simulations and all the models that might need to be done; other people might have to do that.

And so I think the balance we have now is probably the right balance. But I think that the Congress helped by looking over our shoulder. You have made the modal agencies accountable. They have had to reply to us on our Most Wanted List recommendations every year and give us a status on them. I think that pressure from you helps; I can tell you they feel the pressure.

Mr. BOCCIERI. Well it was absolutely disappointing and maybe even shameful to this degree to understand that when learning that this particular airline, when pressed and asked why they did not have part of their curriculum, the safety features that were on the airplane, they said that the FAA didn't require us to do it. And that is extremely disappointing and maybe even bordering on shameful.

To your point about not having the resources to adequately determine whether they should be fully implemented your recommendations: Point 8, you talk about commercial space accident investigations requiring authorization. Do you think that you need to team up with NASA personnel, do you have the resources to fully implement something to that level?

Ms. HERSMAN. We have actually coordinated with NASA on other investigations. In the past, they have supported our investigations and we have supported theirs as in the case of their investigation of the Columbia: we supported them on that. I think that our request is to make sure, as we head in to a new frontier of more paid flights in space, that the NTSB has the authority to investigate accidents involving passenger flights in space. We want to make sure

that our authorization to do that is clear, the statutory language is there.

Mr. BOCCIERI. One last question, I am running close to my time here, so please be quick. You ask in your—you have to convince me of this one because I am not sold on this request, you are requesting explicit authority to subpoena financial records as law enforcement agencies do. NTSB is not a law enforcement agency, is that correct?

Ms. HERSMAN. That is correct.

Mr. BOCCIERI. So why are you requesting financial records to go back and see if pilots used their charge cards to check into a hotel? How is that going to aid or help any investigation with respect to whether they rested or not?

Ms. HERSMAN. It is very important to look back 72 hours before any accident. We do this in every investigation, sometimes we look back even further. We are trying to determine what their work and rest schedules were like when they were on duty, how much sleep they got, where they might have gotten that sleep and so on.

Mr. BOCCIERI. Why can't you ask the hotel workers?

Ms. HERSMAN. We can certainly do that but I think peoples' memories and their recall are fallible, but the financial transactions are not. These transactions will tell us if they were in a restaurant or a bar the night before, what they were doing. I think this is very helpful and it is important for our investigations, for us to get the facts right. We can't be challenged because there was hearsay from some hotel worker. We want to make sure we know the crew checked in at this point, they entered their room, they went to the hotel restaurant and had dinner. We need to note that information and be able to provide it so that our investigations are thorough and complete.

Mr. BOCCIERI. I might take more convincing on this one so I look forward to us being engaged in this if we have further hearings. Thank you, Mr. Chairman.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the gentlelady from California, Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman. My first question is for Mr. Dillingham, it is good to see you again. You mentioned in your report that some of the changes the NTSB is proposing with regard to the Coast Guard could affect existing agreements, the government framework and the agencies involved. Could you be more specific as to the effects these changes would have?

Mr. DILLINGHAM. Thank you, Ms. Richardson. We were in reference to some of the existing memorandums of understanding that exist between NTSB and the Coast Guard and whose responsible for different kinds of accident investigations. Our caution was that if the Congress decides to accept NTSB's request for change of authorization that these existing MOUs and other legal frameworks be taken into account if there are no gaps and there is clarity in terms of who is responsible for what kind of investigations.

Ms. RICHARDSON. And have you provided that information to the appropriate folks, the specific details that you were concerned about or do you just mean in general the agreement?

Mr. DILLINGHAM. In general, the agreements.

Ms. RICHARDSON. Thank you. Ms. Hersman, what do you believe are the reasons that several of your safety recommendations have not been implemented by the regulatory and transportation communities? And what are the most important recommendations that you believe deserve immediate attention?

Ms. HERSMAN. We have over 800 open recommendations now. There are many, and they are to diverse recipients. Our Most Wanted List actually serves as an aid in prioritizing our recommendations. In the other Most Wanted List on the inside of the pamphlet, we have recommendations to the Federal agencies and we have sorted them by mode. On the back of the brochure, we have recommendations to the States. This is our way of trying to help others understand, of those 800 recommendations, which ones we would like to see action on immediately. These are our top 10 lists.

Ms. RICHARDSON. But Ms. Hersman, my question was several of them have not been implemented and you have obviously run into a roadblock. Are there any on here that you would need our particular assistance with that some agency or whoever is just blocking you or doesn't want it for whatever reason, is there anything we could particularly assist you on to get something implemented?

Ms. HERSMAN. We would very much appreciate your assistance. When you all reauthorize the modal agencies, you have an opportunity to give them direction as you did last year. You will note on the Most Wanted List on the inside of the brochure there aren't any recommendations on the rail most wanted list. And I will tell you that is because the Congress, through statute, addressed revision of hours of service for rail employees and the requirements to implement positive train control in passenger and certain HAZMAT routes by 2015. You all did that. Those were on our Most Wanted List for years. FRA told us that they did not have the authority to revise hours of service rules for railroad employees. You gave them that requirement and the authority to do that.

Ms. RICHARDSON. Thank you. And then finally, Ms. Hersman, in the report one of the recommendations of the GAO was to expand the diversity of the senior management team. The report noted that is one of the areas where the improvement is very needed. Can you tell the Committee your efforts specifically in terms of diversifying the NTSB specifically with regard to leadership. And if you already provided that information I apologize, I was in another Committee prior to this one.

Ms. HERSMAN. Sure. Last fall, I convened a group diversity task force. The task force is headed up by our vice Chairman and our executive officer. They are to report back to me by March on some initiatives to enhance our recruitment, retention and training and to create a more diverse workforce. We have several more openings in our senior executive ranks right now, and some of those are being advertised. We have made efforts to do some outreach to historically black colleges, universities and other organizations to attract a diverse applicant pool. Some of those application periods have actually been held open to attract more applicants to try to get a broader applicant pool. We are working very hard to address this issue. We recognize that it is an area where we need to improvement is needed.

Ms. RICHARDSON. Okay. If you could please submit to the Committee in March when you receive the report, we would like to see it. Also if you have the list of those groups that you are outreaching to, it would be helpful to see that now since you obviously already started. Although I am a big supporter of HBCUs, I will tell you also you mentioned other universities, many universities will have their other groups and there are many associations as well and I hope that those will be on your list.

Ms. HERSMAN. Thank you, and we certainly appreciate any guidance if there are other areas where we ought to be doing outreach.

Ms. RICHARDSON. I look forward to the list and will provide the feedback.

[Information follows:]

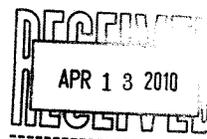


Office of the Chairman

**National Transportation Safety Board**

Washington, D.C. 20594

APR 13 2010



The Honorable Jerry F. Costello  
Chairman  
Subcommittee on Aviation  
Committee on Transportation and Infrastructure  
2251 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Costello:

During my testimony at the Aviation Subcommittee hearing on the National Transportation Safety Board's (NTSB) reauthorization, Congresswoman Laura Richardson inquired about the NTSB's efforts to expand the diversity of its senior management team. As Congresswoman Richardson noted at the hearing, the Government Accountability Office's (GAO) report on the NTSB stated that a more diverse management team was one important area in need of improvement. I stated that after the GAO report was issued last year, I convened a diversity task force, headed by Vice Chairman Christopher Hart and the NTSB's Executive Officer, to explore ways in which the NTSB could enhance and improve its recruitment, retention, and training efforts.

At the beginning of 2010, the task force anticipated that its report would be completed in March. The task force is finalizing its work, and I expect to be briefed on its recommendations before the end of this month. I do know that the task force took a comprehensive look at the NTSB's overall recruitment, retention and career development, and training and cultural awareness. The task force had working groups that examined each of these topics. Each working group was also tasked with identifying the agency's short-term and long-term goals.

You may be assured that you and Congresswoman Richardson will receive copies of the task force's report once it is complete. I apologize for the delay in the issuance of the report but trust that this information is responsive and will suffice until the report is finalized.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah A.P. Hersman", with a long horizontal line extending to the right.

Deborah A.P. Hersman  
Chairman

cc: The Honorable Laura Richardson

Mr. COSTELLO. The Chair thanks the gentlelady and I recognize the gentleman from Maryland, Chairman Cummings.

Mr. CUMMINGS. Thank you very much. Ms. Hersman, I just want to ask you some questions in my capacity as the Chairman of the Subcommittee on the Coast Guard and maritime transportation. On September 12, 2002, the Chairman of the NTSB and the commandant of the Coast Guard signed a memorandum of understanding regarding the coordination of Marine accident investigations. To enable an assessment to be made of whether issues related to Coast Guard safety regulatory functions were potential factors and a casualty and might warrant an independent investigation by NTSB, the MOU included a bright line test that assigned points for specific criteria and incidents. If the score for a casualty totaled more than 100, NTSB had the option to conduct a third-party review and lead the investigation, with the Coast Guard acting as a party.

On May 20th, 2008, the Subcommittee on the Coast Guard maritime transportation conducted a hearing to examine how the existing MOU between the Coast Guard and NTSB was working. Following that hearing on December 19th, 2008, the commandant of the Coast Guard and the chairman of the NTSB signed their updated MOU which replaced the September 2002 MOU. The 2008 MOU removed the bright line test from the MOU. Why was that done, do you know?

Ms. HERSMAN. I don't know the specifics because I wasn't involved in that negotiation, but I can tell you that since I have become chairman the MOU has worked well. I have met with the Commandant on several occasions, and we continue to work together. As I mentioned in my oral statement, we launched to the collision in the Houston ship channel this past week end with the Coast Guard, and we have also investigated a number of accidents including 1 that occurred right before Christmas involving a Coast Guard vessel in San Diego. So the MOU is working well, I think it is important to have the opportunity to review periodically the MOU and update as necessary and make changes. But I believe it is working well right now.

Mr. CUMMINGS. And how is it decided who takes the lead in those instances?

Ms. HERSMAN. There are provisions in the MOU that specify the number of fatalities involved and who would lead the investigation, but in general we are working together. In some investigations the Coast Guard leads and in some investigations it is clear that it would probably be better for the Safety Board to lead, especially in accidents involving Coast Guard vessels. We have investigated two in the last 6 months, one in South Carolina and one out in San Diego.

Mr. CUMMINGS. And does the NTSB currently have the resources it needs to investigate the number of major Marine casualties that occur each year; if not, what additional resources do you need?

Ms. HERSMAN. We have lost investigators in each of the modal offices, that is true for Marine also. Probably not to the extent as in some of our other modes, but we could use more resources. With more resources we could do more. We have worked very hard on a number of investigations. Taking the lessons that we learned

from those investigations, such as the Ethan Allen capsizing in Lake George, New York, to make sure that state responsibilities were clear, not just Coast Guard responsibilities for waterways, but in areas where the Coast Guard didn't have responsibilities that States understood. In the accident where there were 22 fatalities because the vessel was overloaded and capsized, we wanted to make sure that States understood that they need to be paying attention in their waterways.

We held a course and a summit to educate people working with the Coast Guard to do that. There is a lot we could do if we had the resources to do it.

Mr. CUMMINGS. Finally, I want to follow up on something that Ms. Richardson was asking about, diversity. I think in this day and age, diversity should not be an issue, but it is. We find it in the Coast Guard and we find it in a number of places. And I hope that you will continue your efforts to bring about that diversity. There are so many young people, minorities who, first of all, don't even know about the opportunities and don't know about these options. And sometimes we have to reach out to them and I would love to see the institutions that you will be reaching out to, the HBCUs and his Spanish serving colleges and universities and others, because again, if sometimes you don't reach out to them, they'll never know about it. With that, Mr. Chairman, I see my time is up.

[Information follows:]

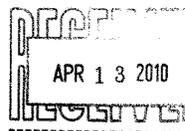


Office of the Chairman

**National Transportation Safety Board**

Washington, D.C. 20594

APR 13 2010



The Honorable Jerry F. Costello  
Chairman  
Subcommittee on Aviation  
Committee on Transportation and Infrastructure  
2251 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Costello:

At the National Transportation Safety Board (NTSB) reauthorization hearing on January 27, 2010, Congressman Elijah Cummings asked a question regarding the Historically Black Colleges and Universities and Hispanic-serving colleges and universities that the NTSB has reached out to in its efforts to create a more diverse workforce.

Enclosed please find listings for those institutions of higher learning and other organizations the NTSB has contacted in connection with recruitment.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah A.P. Hersman".

Deborah A.P. Hersman  
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings

**Consolidated List of NTSB Vacancy Distribution Outreach Sources, 10/22/09-Present**

**Women:**

Society of Women Engineers [www.SHPE.org](http://www.SHPE.org)

Federally Employed Women [www.few.org](http://www.few.org)

Women in Aviation Conference-February 2010

Outreach to Joe Strang (former NTSB employee), Associate Administrator for Railroad Safety, Chief Safety Officer, FRA

**Hispanic:**

National Association for Hispanic Professionals  
<http://nahfe.org/vacancies.php>

National Council of La Raza  
[www.nclr.org](http://www.nclr.org)

National Society of Hispanic MBAs  
[www.nshmba.org](http://www.nshmba.org)

National Society for Hispanic Professionals  
[www.nshp.org](http://www.nshp.org)

Society of Professional Engineers (SHPE)  
[shpenational@shpe.com](mailto:shpenational@shpe.com)

Hispanic Association of Colleges and Universities  
[mevivas-house@hacu.net](mailto:mevivas-house@hacu.net)

**African American:**

African American Federal Executives Association  
[www.aafea.org](http://www.aafea.org)

Organization of Black Aerospace Professionals  
[nationaloffice@obap.org](mailto:nationaloffice@obap.org)

National Society of Black Engineers (NSBE)  
[www.nsbe.org](http://www.nsbe.org)

Minority Federal Administrative Law Judges (ALJ mail list distribution) in Baltimore/Washington D.C. area

**Asian Americans:**

National Association of Asian American professionals [www.naaap.org/careers](http://www.naaap.org/careers)

Asian American Government Executives Network (AAGEN) [www.aagen.org](http://www.aagen.org)

**All Groups:**

Senior Executives Association [www.seniorexecs.org](http://www.seniorexecs.org)

All Federal Chief Administrative Judges (including SSA)

The Federal Administrative Law Judge Conference

**African American Law Schools:**

1. Howard University
2. Texas Southern
3. North Carolina Central
4. Southern University
5. Thomas M. Cooley Law School (Michigan)
6. University of Baltimore (Maryland)
7. Rutgers State University
8. Washington and Lee University (Virginia)

**Asian American Law Schools:**

1. University of Hawaii
2. Santa Clara University
3. Western State University
4. Whittier Law School
5. Southwestern University School of Law

**Hispanic Law Schools:**

1. Inter-American University School of Law
2. University of Puerto Rico
3. St. Thomas University
4. St. Mary's University
5. University of New Mexico
6. Nova Southeastern University

Mr. COSTELLO. The Chair thanks the gentleman, and now recognizes the Ranking Member, Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman. I have one area I want to explore with Dr. Dillingham briefly, that is, to get his comments on the safety board's request. When they are asking the language to be changed to incidents, is that an expansion of authority for the agency first? And secondly, what about overlapping jurisdiction between this particular agency and agencies with similar responsibility and maritime and other areas?

Mr. DILLINGHAM. Mr. Petri, we agree with the Chairman that incidents are very important. It is argued that incidents are precursors to accidents. And if you can begin to recognize potential issues early on, then you can save lives. Our question or our concern is that there be some kind of criteria by which the incidents are, in fact, selected, that whether it is risk based as it is in some of the other selections situations that NTSB has or some other criteria, just so that it is clear for the Congress as well the public on what basis one incident is being investigated, and another incident is not being investigated.

With regard to the overlap, one of the points that we try to make in our testimony is that in the course of a Congress granting this new authority or expanded authority that some of the unintended consequences that need to be looked into is to what extent there is overlapping or even gaps with extending this authority, because each of the modal administrations have some capabilities to do some investigations as well.

Mr. COSTELLO. The Chair thanks the Ranking Member and would ask Members if they have additional questions? If there are no additional questions, let me thank both of our witnesses for being here, and in particular, Chairman Hersman, thank you for not only you and your board and professional staff and everyone at the NTSB for doing the job that you do. As I think Chairman Oberstar and others have said, you are recognized for being a professional agency that does an excellent job. And I think the reputation is well deserved and earned.

Dr. Dillingham, thank you for your testimony. You offer invaluable service to this Subcommittee and have again today. We look forward to putting together the reauthorization so that we can move it from this Committee to the floor of the House so we can get the reauthorization for the NTSB not only on the schedule but to pass it out of the House and move it over to the other body.

Again which thank you and the Subcommittee stands adjourned.  
[Whereupon, at 11:30 a.m., the Subcommittee was adjourned.]



OPENING STATEMENT OF  
THE HONORABLE RUSS CARNAHAN (MO-03)  
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE  
AVIATION SUBCOMMITTEE

Hearing on  
Reauthorization of the National Transportation Safety Board  
Wednesday, January 27, 2010

Chairman Costello and Ranking Member Petri, I want to thank you for holding this important hearing on the Reauthorization of the National Transportation Safety Board (NTSB).

The NTSB is charged with the vitally important task of investigating civil aviation and significant transportation accidents. These investigations provide critical information about the cause of the accident and actions that can be taken to prevent future accidents. The work of this agency is crucial in the ongoing efforts to make all modes of transportation safer in the United States.

As the Committee works on the reauthorization of the NTSB, one place where I believe there are critical reforms that can be made is to the party process. While I fully understand how important the Party Process is to successful NTSB investigations I am deeply concerned that the family members of loved ones killed or injured in an aviation accident may be routinely put at a disadvantage because of the privileged early accident information available to those granted "party" status. I know that the party system is essential to the NTSB investigative process, as it leverages the knowledge of others but it is also clear to me that more could and should be done to protect the rights of family members and strengthen the integrity of an investigation.

Specifically, the Rand Corporation in their 2000 report on the NTSB identified that during the course of an investigation it is commonplace for party representatives to be debriefed by their attorneys during the initial working phases of an investigation and insurance representatives arrive on the scene quickly after the start of an investigation offering assistance and cooperation, and more importantly obtain almost immediate access to the crash site, which is not available to any other party or claimant. I believe this type of access must be eliminated as it is having a corrosive effect on the NTSB investigative process. Procedures must be in place that gives confidence to the family members that the integrity of the investigation is not being compromised at its earliest stages. It must be reinforced to Party Participants that they are being granted the privilege of assisting the NTSB solely for purpose of safety and not to get a head start on liability issues.

In closing, I want to thank the Honorable Deborah Hersman and Dr. Gerald Dillingham for joining us today and look forward to hearing their testimony and I want to particularly thank Chairman Hersman for the understanding and the leadership on this issue as I know you are committed to keeping the NTSB the world leader in transportation accident investigation. As the Committee continues its work on reauthorization of the NTSB, I look forward to working with all my colleagues to ensure the NTSB has the resources as well as the reforms needed to continue to advance the safety of transportation in the United States.



STATEMENT OF  
THE HONORABLE JERRY F. COSTELLO  
SUBCOMMITTEE ON AVIATION  
REAUTHORIZATION OF THE NATIONAL TRANSPORTATION SAFETY BOARD  
JANUARY 27, 2010

- I welcome everyone to our hearing today on the reauthorization of the National Transportation Safety Board (NTSB).
  
- The NTSB was created during the 1967 consolidation of various transportation agencies into the Department of Transportation (DOT). Its main mission is to independently investigate accidents in all transportation modes, including aviation, pipelines, maritime, rail, truck, and automotive transportation.

- In 1975, to further ensure that the NTSB would retain its independence, Congress re-established the Board as a totally separate entity distinct from DOT.
  
- Since 1967, the NTSB has investigated more than 132,000 aviation accidents and over 10,000 surface transportation accidents, making it one of the world's premier accident investigation agencies. As a result of these investigations, the Board has issued more than 13,000 safety recommendations 82 percent have been adopted.
  
- As a result of NTSB's recommendations, important changes and procedures have been made to improve the safety of the traveling public. For example, NTSB produces a "Most Wanted" list of transportation safety improvements. This list highlights the most serious safety issues facing transportation.

- Since the Most Wanted list started in 1990, 290 recommendations have been added to the list. Of those, 203 have been closed, 164 in an acceptable status, which represents an 81 percent adoption rate. At the Subcommittee's reauthorization hearing in April 2008, the NTSB reported a 73 percent adoption rate. I am pleased to see that agencies and organizations are increasingly adopting the NTSB's recommendations.
  
- To ensure the NTSB can continue to meet its mission to improve transportation safety, it must have the necessary resources and adequately trained staff to handle these complex investigations. Accordingly, the NTSB has submitted a reauthorization proposal that includes additional funding and specific statutory changes the NTSB believes will

improve its ability to carry out its mission. The request is similar to what the Board requested in 2008.

- Moreover, the NTSB' reauthorization proposal requests increased funding over the next four years for additional staffing needs.
  
- The NTSB states that it needs a minimum of 477 employees to meet its core mission of accident investigation – which is reflected in the Board's reauthorization request for FY 2011-2014. We must make sure that the NTSB has adequate funding to carry out its missions.

- According to the NTSB, there are gaps in its statutory authority to investigate certain incidents, obtain evidence outside of a public hearing proceeding, access medical and financial records, download information from new data recording technology and media, and expend appropriated funds to investigate accidents in foreign countries.
  
- Our colleagues on the other Subcommittees will also review the NTSB's reauthorization proposal as it relates to the different transportation modes.
  
- I look forward to hearing Chairman Hersman's testimony to discuss the NTSB's mission, resource needs, and changes to its authorization that will ensure the highest level of safety for our transportation system.

- I am also interested in hearing from Dr. Gerald Dillingham on GAO's assessment of the NTSB's management practices; the use of the NTSB Training Center, which opened in 2003; and the changes the Board is requesting in its reauthorization proposal.
  
- Before I recognize Mr. Petri for his opening statement, I ask unanimous consent to allow 2 weeks for all Members to revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses. Without objection, so ordered.

SENIOR DEMOCRATIC WHIP

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COMMITTEE ON TRANSPORTATION  
AND INFRASTRUCTURE  
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RESOURCES & ENVIRONMENT  
SUBCOMMITTEE ON AVIATION  
SUBCOMMITTEE ON RAILROADS

COMMITTEE ON SCIENCE AND TECHNOLOGY  
SUBCOMMITTEE ON RESEARCH AND  
SCIENCE EDUCATION  
SUBCOMMITTEE ON ENERGY AND ENVIRONMENT

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DEMOCRATIC STEERING AND POLICY COMMITTEE

CONGRESSIONAL BLACK CAUCUS  
CHAIR, 107<sup>TH</sup> CONGRESS



*Eddie Bernice Johnson*  
Congress of the United States  
30th District, Texas

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**STATEMENT OF CONGRESSWOMAN EDDIE  
BERNICE JOHNSON**

**Subcommittee on Aviation**

**Hearing on the**

**Reauthorization of the National Transportation Safety Board**

**January 27, 2010**

**Chairman Costello, thank you for holding this hearing today.**

**The National Transportation Safety Board (NTSB) plays a**

**critical role in our nation's transportation infrastructure, and**

**as the NTSB's authorization expired in September 2008, I**

**commend you for moving forward on its reauthorization.**

**Not only is the NTSB charged with investigating all civil aviation accidents, but also certain railroad, highway, marine, and pipeline accidents.**

**They also conduct safety studies and make safety recommendations based on their findings. The work of the NTSB is critical in understanding the cause of accidents and is essential in the effort to reduce the number of future transportation accidents and to save lives.**

**Unfortunately, we have had the opportunity to watch the NTSB in action too many times – following the fatal crashes of 9/11, the August 2006 fatal ComAir crash in Lexington, Kentucky, the June 2009 fatal collision of two Metrorail trains in Washington, D.C., and more recently the fatal Colgan Air crash in New York, to name a very few.**

**With the NTSB investigating on average, approximately 1,800 aviation accidents and incidents annually, as well as dozens of highway, maritime, railroad and pipeline accidents, I hope that our Committee and Congress as a whole are able to move forward on its reauthorization expeditiously and I support the Chairman's efforts toward that end.**

**Thank you, Mr. Chairman.**



**The Honorable Michael E. McMahon  
Statement and Questions  
Aviation Subcommittee  
Committee on Transportation and Infrastructure  
Reauthorization of the National Transportation Safety  
Board  
January 27, 2010**

Thank you Chairman Costello and Ranking Member Petri, and thank you to Chairwoman Hersman and to all of our witnesses for coming to testify today.

The NTSB plays a critical role in keeping our nation safe in the skies and on the ground. Since its creation in 1967, the NTSB is always one of the first at the site of crashes and accidents. The findings from these investigations provide exceptional insight into what went wrong, and often provide a guidepost to how to improve safety in the years ahead.

I know that the Board has requested expanded express authority as we begin this reauthorization process. I look forward to your testimony Chairwoman Hersman – particularly as it relates to how the expanded investigatory powers you seek will aid the important work of the Board.

From at least a first review, the subpoena power and access to medical and financial records would provide your agency with key information about the cause of accidents – but we need to be careful to limit the scope of these protections keep safe personal private records within the agency.

My district has some experience in working with the NTSB. I have the honor and privilege of representing Staten Island and Brooklyn, NY. Before I took office last year, I served as a Member of the New York City Council.

We are an Island of commuters and every day approximately 70,000 of my constituents use the Staten Island Ferry to commute to and from Manhattan.

You may recall that in the afternoon of October 15, 2003, the Andrew J. Barberi Ferry Boat crashed into a pier while docking at the St. George Terminal on Staten Island with over 1,500 people on Board. Sadly and tragically ten passengers were killed and over 70 passengers were injured.

It was later determined that the pilot had lost consciousness while at the ship's controls. He had taken the painkillers Tramadol and Tylenol PM, both of which can cause drowsiness as a side effect.

On August 4, 2004, Smith pleaded guilty to manslaughter. He was sentenced to 18 months in prison on January 10, 2006. New York's former city ferry director was sentenced to a year and a day on similar charges. So I understand how important accessing medical records and other personal records can be to aiding an investigation.

So with that, I have a few questions:

1. Could you describe any lessons you and the NTSB have learned from the 2003 Ferry Crash, both in the operation of large Ferry and other transit systems, and from the perspective of the NTSB's role?
2. Could you describe how the NTSB engages airports, port authorities and local transit agencies after an accident? How long does it take to clear a site? I know some recent incidents on Washington's Metro took quite a while to complete and disrupted service on the Red line for weeks. Is there any way to speed up this process or do you have any recommendations for how service can be restored quickly after an investigation?

A handwritten signature in black ink that reads "Harry E. Mitchell". The signature is written in a cursive style with a large, prominent "H" and "M".

Statement of Rep. Harry Mitchell  
House Transportation and Infrastructure Committee  
Subcommittee on Aviation  
1/27/10

--Thank you Mr. Chairman.

--When we think of safety, we think of the National Transportation Safety Board.

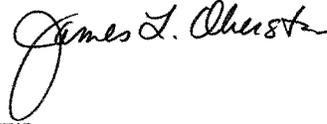
--Their tireless work, often in the wake of horrible tragedies, has saved lives by studying accidents and recommending critical safety improvements to equipment and procedures.

--If we want the Board to continue its vitally important work, however, we need to ensure that it has the authority it needs to get the job done.

--The Board has requested a number of additional authorities, and I look forward to our subcommittee's examination of them.

--In the mean time, I look forward to hearing from today's witnesses.

--At this time I yield back.



OPENING STATEMENT OF  
THE HONORABLE JAMES L. OBERSTAR  
SUBCOMMITTEE ON AVIATION  
REAUTHORIZATION OF THE NATIONAL TRANSPORTATION SAFETY BOARD  
JANUARY 27, 2010

I want to thank Chairman Costello and Ranking Member Petri for holding this hearing on the reauthorization of the National Transportation Safety Board (NTSB). I believe there are several important issues to be discussed here today.

This Agency's roots go back to 1926 when the Air Commerce Act vested the Department of Commerce with the authority to investigate aircraft accidents.

During the 1966 consolidation of various transportation agencies into the Department of Transportation (DOT), the NTSB was created as an independent agency within DOT to investigate accidents in all transportation modes.

Since 1974, the NTSB has investigated over 132,000 aviation accidents, and more than 10,000 surface transportation accidents. In its 43-year history, the NTSB has issued more than 13,000 recommendations, with an 82 percent acceptance rate.

In the last three years alone, the Board has investigated more than 64 major accidents, and issued 63 major reports covering all transportation modes (aviation,

highway, transit, maritime, railroad, and pipeline/hazardous materials). The Board has also issued more than 521 safety recommendations — many of which have been adopted by Congress, Federal, state and local governments, and the affected industries.

The NTSB's recommendations and its vigilance on safety issues result in improvements in the way we conduct the business of transportation in all modes. While aviation is perhaps the area in which the NTSB's work is most visible, that should not overshadow the very significant and important work the agency performs in pipelines, maritime, rail, hazardous materials, truck, and automotive transportation.

As a direct result of the NTSB's important safety work and the work of this Committee, the DOT recently released two rulemakings to make major improvements in transportation safety. The first rulemaking would strengthen the safety of transporting lithium cells and batteries on board aircraft. It is intended to respond to many of the 15 safety recommendations that the NTSB has issued since 1999 to the Pipeline and Hazardous Materials Safety Administration and the FAA regarding the safety of transporting and handling lithium batteries.

The second rulemaking requires installation of positive train control technology (PTC) on major rail lines in the United States. PTC has been on the Board's "Most Wanted" list of safety improvements since the list's inception in 1990. Unfortunately, it took a tragic accident in California to move forward with a mandate. Had the railroads heeded the Board's recommendations sooner, many accidents and many lives could have been saved. But thanks to the work of the NTSB, lives will be saved in the future.

I continue to be a strong supporter of the NTSB's mission, and I continue to believe the NTSB does an excellent job in investigating accidents. A recent example is the Board's investigation into the crash of Colgan Air Flight 3407, which occurred on February 12, 2009, near Buffalo, New York. The Board reacted swiftly, holding a public hearing within three months of the accident. The hearing was instrumental in identifying issues related to pilot training and fatigue as possible factors in the crash. The NTSB testified before this Subcommittee that it previously made numerous recommendations to the FAA for rule changes in these areas.

The NTSB's close work with this Subcommittee over the past year on this issue led to the development and passage of the "Airline Safety and Pilot Training Improvement Act of 2009" last session. As the Board is about to finish its investigation and issue recommendations, I look forward to reviewing the Board's

conclusions, and I hope to continue to work with the Board to improve aviation safety.

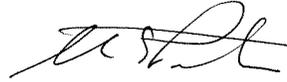
To maintain its position as the world's preeminent investigative agency, it is imperative that the NTSB has sufficient resources to perform its mission. The NTSB is requesting \$117.4 million for fiscal year (FY) 2011, which would increase the agency's budget by \$19.3 million over the FY 2010 enacted level. The NTSB is requesting this level of funding to increase its staff to 477 full-time equivalent positions, which NTSB states is the minimum needed to fully, effectively, and efficiently meet the its core mission of accident investigation. In addition, this funding level will allow the Board to fulfill the Rail Safety Improvement Act of 2008, to provide disaster assistance to families of passengers involved in rail passenger accidents.

Beyond FY 2011, the NTSB has requested \$120.3 million for FY 2012, \$122.1 million for FY 2013, and \$124.1 million for FY 2014. These funding levels will maintain a staffing level of 477.

We must fully fund the NTSB to ensure that it has the necessary resources to conduct independent investigations, without undue reliance on other agencies and parties to the investigation.

Having a well funded, well-trained NTSB workforce is of the utmost importance for the American traveling public. I look forward to hearing the testimony of Chairman Hersman today, which will help us perform the most important duty of this Committee – ensuring the highest level of safety for our transportation system.

STATEMENT OF



REP. THOMAS E. PETRI, Ranking Member

SUBCOMMITTEE ON AVIATION

HEARING ON

**Reauthorization of the**

**National Transportation Safety Board (NTSB)**

January 27, 2010, 10:00 am, 2167 RHOB

Today we will receive testimony on the agency proposal for the National Transportation Safety Board reauthorization. The Board's authorization expired on September 30, 2008.

The NTSB is a small, but important, part of the Federal Government.

With an annual budget of \$98 million and a staff of over 400 people, the NTSB makes critical contributions to safety in all modes of our Nation's transportation system.

Since its creation in 1967, the NTSB has investigated more than 132,000 aviation accidents and more than 10,000 accidents in other transportation modes.

As a result of these investigations, the Board has issued almost 12,900 safety recommendations, over 82 percent of which have been adopted.

The NTSB also serves as the "court of appeals" for any airman, mechanic or mariner whenever certificate or credential action is taken by the FAA Administrator or the U.S. Coast Guard Commandant.

Each year since 1990, the NTSB has its "Most Wanted" list of transportation safety improvements. I believe this tool has served the public well.

In fact, over the past 20 years, 81% of the 290 recommendations placed on the "Most Wanted" list have been adopted.

The Board's three-year reauthorization proposal requests additional funding and staff, and proposes

legislative changes that appear to expand the Board's statutory authority.

The budget request of \$117.3 million for fiscal year 2011 is \$19.25 million above the fiscal year 2010 enacted level. This request is related to the Board's proposal for new staff and pay raises, as well as employee benefit cost increases and inflation.

Fiscal year 2011 authorization levels requested by the NTSB is based on 477 full-time employee equivalents. For 2011, NTSB is seeking authorization to hire 78 new employees.

Finally, the NTSB has proposed a number of significant statutory changes, including:

- Additional authority to investigate "Events" and "Incidents" in all modes of transportation;
- Expansion of the Board's subpoena authority;
- Statutorily mandated access to financial and medical records;
- Enhanced Freedom of Information Act (FOIA) protection for disclosure of information;
- Commercial space accident investigation authority;
- Change the authority to investigate only rail accidents when there are numerous fatalities or substantial property damage, or a significant passenger train accident;
- Access to new data recording media; and
- Additional penalties for unlawful solicitations following aviation accidents.

I look forward to hearing from the Board's Chairman, Ms. Deborah Hersman, and Dr. Dillingham of the GAO, on these issues, as well as an update on the NTSB's Training Center and other relevant matters important to the Subcommittee.

With that, I thank the Chairman and yield back the balance of my time.



**CONGRESSWOMAN LAURA RICHARDSON (CA-37)**

**COMMITTEE ON TRANSPORTATION  
SUBCOMMITTEE ON AVIATION**

**HEARING:  
"Reauthorization of the National Transportation Safety  
Board"**

**WEDNESDAY, JANUARY 27, 2010  
10:00 A.M.  
2167 RAYBURN**

Mr. Chairman, thank you for convening the hearing today on the reauthorization of the National Transportation Safety Board. I would also like to thank the witnesses for taking the time to appear before the Committee.

I am proud representative of the 37<sup>th</sup> Congressional District of California and a member of the General Aviation Caucus. There are 11 airports in my region, with three in my district. The Los Angeles International Airport, just outside my district, handles the sixth most passengers of any airport in the world annually with 1,000 cargo flights each day.

In addition, because of the Port of Long Beach activity, nearly 45% of all U.S. imports travel through my district. For example, the Gerald Desmond Bridge is a crucial transportation facility serving the Port of Long Beach, Port of Los Angeles and the region. It is in fact officially designated as the westerly extension of Interstate 710. The I-710/Gerald Desmond Bridge combination carries approximately 15% of all U.S. waterborne container volume.

Because I represent an area with extremely high air, land, and sea traffic, transportation safety is of particular importance to me. The National Transportation Safety Board (NTSB) is critical to providing us with a better understanding how and why accidents happened, ~~and~~ what we can do to prevent them. *AND WHAT LESSONS SHOULD BE LEARNED*

However, while I believe the role of the NTSB is critical, I think it is important for Congress to carefully evaluate their reauthorization request. We need to be sure both that the function of the NTSB does not overlap with other agencies, adversely impacting accident investigations, and that the NTSB is fully utilizing the resources available to them, such as the NTSB Training Center.

The implementation of NTSB safety recommendations is another important aspect to consider. While more than 82% of the recommendations by the NTSB have been adopted by the regulatory and transportation communities, a significant percentage, I am interested in hearing from the Director the reasons, as she understands them, behind the lack of implementation of the remaining 18%.

I look forward to hearing from our distinguished panel of witnesses regarding the reauthorization requests of the

NTSB. While improving the efficiency, effectiveness, and safety of our transportation system is critical, we need to make sure the NTSB does the best and most efficient job possible.

Thank you again, Mr. Chairman, for convening this hearing. I yield back the balance of my time.

United States Government Accountability Office

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**GAO**

Testimony  
Before the Subcommittee on Aviation,  
Committee on Transportation and  
Infrastructure, House of Representatives

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For Release on Delivery  
Expected at 10:00 a.m. EST  
Wednesday, January 27, 2010

**NATIONAL  
TRANSPORTATION  
SAFETY BOARD**

**Issues Related to the 2010  
Reauthorization**

Statement of Gerald L. Dillingham, Ph.D.  
Director, Physical Infrastructure Issues



January 27, 2010

## NATIONAL TRANSPORTATION SAFETY BOARD

### Issues Related to the 2010 Reauthorization

## GAO Accountability Integrity Reliability Highlights

Highlights of GAO-10-366T, a testimony before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives

#### Why GAO Did This Study

The National Transportation Safety Board (NTSB), whose reauthorization is the subject of today's hearing, plays a vital role in advancing transportation safety by investigating accidents, determining their causes, issuing safety recommendations, and conducting safety studies. To support the agency's mission, NTSB's Training Center provides training to NTSB investigators and others. NTSB's 2006 reauthorization legislation mandates an annual review by GAO, and from 2006 through 2008, GAO made 21 recommendations to NTSB that address its management, information technology (IT), accident investigation criteria, safety studies, and Training Center use. This testimony addresses NTSB's progress in implementing GAO's recommendations that it (1) follow leading management practices, (2) conduct aspects of its accident investigations and safety studies more efficiently, and (3) increase the use of its Training Center. The testimony also discusses (4) changes NTSB seeks in its 2010 reauthorization proposal.

This testimony is based on GAO's assessment from July 2009 to January 2010 of plans and procedures NTSB developed to address these recommendations. NTSB provided technical comments that GAO incorporated as appropriate.

View GAO-10-366T or key components. For more information, contact Gerald L. Dillingham, Ph.D., at (202) 512-2834 or [dillingham@gao.gov](mailto:dillingham@gao.gov).

#### What GAO Found

NTSB has fully implemented or made significant progress in adopting leading management practices in all areas where GAO made prior recommendations. Since 2008, NTSB has revised several of its planning documents, including its agencywide strategic plan; improved information security; and obligated money to implement a full cost accounting system. NTSB has also taken steps to improve the diversity of its workforce and management. However, women and minorities were less well represented in NTSB's fiscal year 2008 workforce than in the federal government, and no minorities are among NTSB's 15 senior executives. A lack of diversity among top managers can limit the variety of perspectives and approaches to policy development and decision making at an agency.

With the adoption of criteria for selecting highway and marine accidents to investigate, NTSB has established criteria for all transportation modes. NTSB is also streamlining and increasing its use of technology in closing out recommendations. NTSB has three safety studies in progress and would like to broaden the term "safety studies" to include not only its current studies of multiple accidents, but also the research it does for other, smaller safety-related reports and data inquiries.

NTSB has continued to increase the use of its Training Center—from 10 percent in fiscal year 2006 to 80 percent in fiscal year 2009. As a result, revenues have increased and the center's overall deficit has declined from about \$3.9 million in fiscal year 2005 to about \$1.9 million in fiscal year 2009.

In its 2010 reauthorization proposal, NTSB seeks substantive changes to its existing authorizing legislation, including explicit statutory authority to investigate incidents in all modes and reduced statutory requirements for investigating rail and maritime accidents. Both changes would increase NTSB's investigatory discretion. Such discretion would allow NTSB to select incidents with the greatest potential to improve safety, yet decisions based on discretion may be less transparent than those based on criteria. Striking the right balance between discretionary and criteria-based investigations will be important to ensure that NTSB's resources can be used for the work with the greatest potential to enhance transportation safety.

NTSB Investigative Modes: Marine, Highway, Aviation, Railroad, Pipeline



Source: GAO.

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Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to testify before you today as you consider the reauthorization of the National Transportation Safety Board (NTSB). NTSB is a relatively small agency that has gained a worldwide reputation as a preeminent investigator of transportation accidents. With a staff of about 400 and a budget of \$98 million for fiscal year 2010,<sup>1</sup> NTSB is charged with investigating every civil aviation accident in the United States and selected accidents in other transportation modes, determining the probable causes of these accidents, making recommendations to address safety issues identified during accident investigations, and performing transportation safety studies. To support its mission, NTSB built a Training Center that opened in 2003 and provides training to NTSB investigators and other transportation safety professionals.

As the share of federal resources used to address the nation's long-term fiscal imbalance and other national priorities grows, funding for increases in the budgets of individual agencies becomes more uncertain. It is therefore critical for NTSB to use its resources as efficiently as possible to carry out its mission. In 2006, we conducted a broad review of the agency's management practices, examined how it carried out its activities related to accident investigations and safety studies, and analyzed whether its Training Center was cost-effective.<sup>2</sup> Since then, we have reviewed NTSB as mandated in the agency's 2006 reauthorization legislation,<sup>3</sup> and, in total, we have made 21 recommendations in these areas. In addition, in recent years, other entities have conducted reviews and made recommendations to NTSB related to information security practices and financial management. Our testimony addresses NTSB's progress in (1) following leading practices in management areas such as strategic planning, human capital management, information technology (IT), and financial management; (2) increasing the efficiency of activities related to investigating accidents, issuing recommendations, and conducting safety studies; and (3) increasing the use of its Training Center. In addition, the

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<sup>1</sup>Pub. L. No. 111-117, div. A, Title III, 123 Stat. 3034, 3107 (2009).

<sup>2</sup>GAO, *National Transportation Safety Board: Progress Made, yet Management Practices, Investigation Priorities, and Training Center Use Should Be Improved*. GAO-07-118 (Washington, D.C.: Nov. 22, 2006).

<sup>3</sup>The National Transportation Safety Board Reauthorization Act of 2006, Pub. L. No. 109-443, § 5, 120 Stat. 3297, 3299, codified at 49 U.S.C. § 1138.

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testimony provides our observations on changes NTSB seeks in its 2010 reauthorization proposal.

Our testimony is based on our analysis of policies and procedures that NTSB developed in response to our recommendations and to the recommendations of the independent auditors of NTSB's information systems. To perform our analysis, we reviewed NTSB's agencywide, IT, and human capital strategic plans; office operating plans, and other relevant documents. We also visited the NTSB Training Center; interviewed NTSB's Chief Information Officer, Chief Financial Officer, and other agency officials; and updated information we have reported since 2006 (see app. I for a list of our prior work).<sup>4</sup> In addition, we performed limited testing of NTSB's laptop computers. In our analysis, we classified NTSB's progress in implementing a recommendation as limited when the agency was in the early planning stages and documents or milestones for actions did not exist or the agency did not follow leading practices. Recognizing that many recommendations may take considerable time and effort to fully implement, we classified NTSB's progress in implementing a recommendation as significant if the agency had taken steps beyond the early planning stages toward addressing the concerns. For example, NTSB might have developed documents or policies that, for the most part, followed leading practices. We classified a recommendation as fully implemented when NTSB had fully implemented plans or processes that followed leading practices. NTSB provided technical comments on a draft of this statement that we incorporated as appropriate. Finally, we reviewed NTSB's reauthorization proposal and made observations where appropriate. We conducted this performance audit from July 2009 to January 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>4</sup>GAO, *National Transportation Safety Board: Preliminary Observations on the Value of Comprehensive Planning and Greater Use of Leading Practices and the Training Academy*, GAO-06-801T (Washington, D.C.: May 24, 2006); GAO-07-118; and GAO, *National Transportation Safety Board: Progress Made in Management Practices, Investigation Priorities, Training Center Use, and Information Security, but These Areas Continue to Need Improvement*, GAO-08-652T (Washington, D.C.: Apr. 23, 2008).

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**NTSB Has Made Progress in All Management Areas, but Further Actions Are Needed to Fully Implement Some Recommendations**

Overall, NTSB has fully implemented or made significant progress in following leading management practices in all eight areas that our recommendations addressed in 2006 and 2008—communication, strategic planning, IT, knowledge management, organizational structure, human capital management, training, and financial management. We made 15 management recommendations in these areas based on leading agency management practices that we identified through our governmentwide work. Although NTSB is a relatively small agency, such practices remain relevant. Figure 1 summarizes NTSB's progress in implementing our management recommendations.

**Figure 1: Implementation Status of GAO's Recommendations Related to NTSB's Management**

Area	GAO recommendation	Status in 2006	Status in 2008	Current status
Communication	Develop mechanisms to facilitate communication from staff to management.	○	●	●
	Report to Congress on the status of GAO recommendations.	○	●	●
Strategic planning	Develop a revised strategic plan that follows performance-based practices.	○	●	●
Information technology (IT)	Develop an IT plan that includes policies and a strategy to guide IT acquisitions.		○	●
	Encrypt information/data on all laptops and mobile devices.		○	●
	Limit local administrator privileges to those accounts that require that level of access. <sup>a</sup>		○	●
Knowledge management	Develop a knowledge management plan to create, capture, and reuse knowledge to achieve NTSB's objectives.	○	●	●
Organizational structure	Align organizational structure to implement strategic plan.	○	●	●
	Eliminate unnecessary management layers.	○	●	●
Human capital management	Develop a strategic human capital plan that is linked to NTSB's overall strategic plan. The human capital plan should include strategies on staffing, recruitment and retention, training, and diversity management.	○	●	●
Training	Develop a strategic training plan that is aligned with NTSB's revised strategic plan, identifies skill gaps that pose obstacles to meeting the agency's strategic goals, and establishes curriculum that would eliminate those gaps.	○	○	●
	Develop a core curriculum for investigators that addresses the specialized needs for each mode.	○	○	●
Financial management	Correct violation of the Antideficiency Act related to purchasing accidental death and dismemberment insurance for employees on official travel. <sup>b</sup>	○	●	●
	Correct violation of the Antideficiency Act related to NTSB's lease of the Training Center.	○	●	●
	Develop a full cost accounting system to track time employees spend on each investigation and in training.	○	○	●

○ New recommendation or limited progress

● Significant progress

● Fully implemented

Source: GAO analysis of NTSB data.

<sup>a</sup>Users with local administrator privileges on their workstations have complete control over all local resources, including accounts and files, and have the ability to load software with known vulnerabilities, either unintentionally or intentionally, and to modify or reconfigure their computers in a manner that could negate network security policies as well as provide an attack vector into the internal network. Accordingly, industry best practices provide that membership in local administrator groups should be limited to only those accounts that require this level of access.

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<sup>5</sup>In 2007, we issued a legal decision finding that NTSB improperly used its appropriated funds to purchase accidental death and dismemberment insurance for its employees on official travel. NTSB does not have an appropriation specifically available for such a purpose, and the expenditures cannot be justified as a necessary expense. Because NTSB has no appropriation available to purchase accident insurance, the payments NTSB made constitute violations of the Antideficiency Act. 31 U.S.C. § 1341(a). We did not make a recommendation regarding this violation of the act because we reported the violation in a Comptroller General's decision, and such decisions do not include recommendations. GAO, Decision of the Comptroller General of the United States, B-309715, September 25, 2007, National Transportation Safety Board—Insurance for Employees Traveling on Official Business. NTSB remedied this violation through a fiscal year appropriation. Pub. L. No. 110-161, Title III, 121 Stat. 1844, 2441 (2007). A bill to reauthorize the Federal Aviation Administration, H.R. 915, 111th Cong., 2009, would provide NTSB with specific authority to purchase this insurance.

NTSB had fully implemented three of our management recommendations as of our report in April 2008—our recommendations to (1) facilitate communication from staff to management, (2) align organizational structure to implement a strategic plan, and (3) correct an Antideficiency Act violation related to purchasing accidental death and dismemberment insurance for employees on official travel. In addition, NTSB has made further progress on eight of our management recommendations since 2008. First, it fully implemented our recommendations on communication by reporting to Congress on the status of our recommendations by including the actions it has taken to address them in its *Annual Report to Congress*.<sup>6</sup> In addition, it has fully implemented our recommendation on strategic planning by linking all five mission areas in its goals and objectives and seeking external stakeholder comments. NTSB has also taken steps to implement all three of our IT-related recommendations:

- NTSB has fully implemented an IT strategic plan that addresses our comments. Moreover, in compliance with the Federal Information Security Management Act of 2002 (FISMA), NTSB has undergone annual

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<sup>6</sup>NTSB, *Annual Report to Congress 2008* (Washington D.C.: July 1, 2009).

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independent audits, hiring outside contractors to perform security testing and evaluation of its computer systems.<sup>6</sup>

- We performed limited testing to verify that NTSB has implemented our recommendation to install encryption software. Agency officials confirmed, however, that while encryption software is operational on 410 of the agency's approximately 420 laptop computers, the remaining laptops do not have encryption software installed because they do not include sensitive information and are not removed from the headquarters building.
- NTSB has made significant progress in limiting local administrator privileges while allowing for employees to add software and print from offsite locations as necessary.

NTSB has also drafted a strategic training plan that, when finalized, would address GAO guidance on federal strategic training and development efforts and establish the core competencies needed for investigators and other staff. In addition, two modal offices have developed core curricula that relate specifically to their investigators.

In addition, NTSB obligated \$1.3 million in September 2009 to the National Business Center—an arm of the Department of the Interior that provides for-fee payroll services to federal agencies—to develop a full cost

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<sup>6</sup>The Federal Information Security Management Act of 2002 (FISMA), Pub. L. No. 107-347, 116 Stat. 2899, 2946, codified as amended at 44 U.S.C. § 3541 *et seq.*, requires that each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine their effectiveness. 44 U.S.C. § 3545(a)(1). Agencies that do not have an Inspector General, such as the National Transportation Safety Board (NTSB), shall engage an independent external auditor to perform the evaluation. 44 U.S.C. § 3545(b)(2). In fiscal years 2007 and 2008, NTSB contracted with Leon Snead & Company to perform the independent external audits. See Leon Snead & Company, P.C., *National Transportation Safety Board: Compliance with the Requirements of the Federal Information Security Management Act, Fiscal Year 2007* (Sept. 24, 2007), and *National Transportation Safety Board: Compliance with the Requirements of the Federal Information Security Management Act, Fiscal Year 2008* (Sept. 29, 2008). These audits, which were submitted to the Office of Management and Budget as required by FISMA, identified weaknesses in NTSB's compliance with FISMA requirements and included an assessment of the agency's actions to address recommendations in prior-year FISMA reports. Those prior reports include U.S. Department of Transportation, Office of Inspector General, *Information Security Program: National Transportation Safety Board*, Report No. FI-2006-001 (Washington, D.C.: Oct. 7, 2005); and *Information Security Program: National Transportation Safety Board*, Report No. FI-2007-001 (Washington, D.C.: Oct. 13, 2006).

accounting system for NTSB based on a statement of work. NTSB officials said that the first phase of the cost accounting system will be implemented late in fiscal year 2010. When the system is completed to permit recording of the time and costs of investigations and other activities, including training, this action will fully implement our recommendation.

The remaining four management recommendations have not yet been fully implemented. However, NTSB has initiated actions that could lead to their full implementation. For example, NTSB has continued to improve its knowledge management by developing a plan to capture, create, share, and revise knowledge, and the agency is deploying Microsoft SharePoint® to facilitate the sharing of useful information within NTSB.

In April 2008, we reported that NTSB had made significant progress in implementing our human capital planning recommendation by issuing a human capital plan that incorporated several strategies on enhancing the recruitment process. However, we also said the plan was limited in some areas of diversity management. As we have previously reported, diversity management is a key aspect of strategic human capital management. Developing a workforce that includes and takes advantage of the nation's diversity is a significant part of an agency's transformation of its organization to meet the challenges of the 21st century. The most recent version of NTSB's human capital plan establishes goals for recruiting, developing, and retaining a diverse workforce, and NTSB provided diversity training to 32 of its senior managers and office directors in May 2009. Table 1 compares the diversity of NTSB's fiscal year 2008 workforce with that of the federal government and the civilian labor force.

**Table 1: NTSB, Federal Government, and Civilian Labor Force Diversity by Percentage, Fiscal Year 2008**

	Fiscal year 2008*						
	African American	American Indian/Alaska Native	Asian/Pacific Islander	Hispanic	White	Women	Men
<b>NTSB</b>	17.0%	1.0%	4.0%	2.0%	76.0%	38.0%	62.0%
<b>Federal government</b>	17.9%	1.9%	5.4%	7.9%	66.6%	44.2%	55.8%
<b>Civilian labor force<sup>†</sup></b>	10.0%	0.7%	4.3%	13.2%	70.7%	45.6%	54.4%

Sources: Federal government and civilian labor force data are from the Office of Personnel Management's Fiscal Year 2008 Equal Opportunity Recruitment Program report. Data for NTSB are from the supplement to its strategic human capital plan.

\*These are the most recent data NTSB issued on diversity.

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<sup>6</sup>The civilian labor force is defined as persons 16 years and older (including federal workers), regardless of citizenship, who are employed or looking for work and are not in the military or institutionalized. A minimum age of 18 years is required for most federal employment.

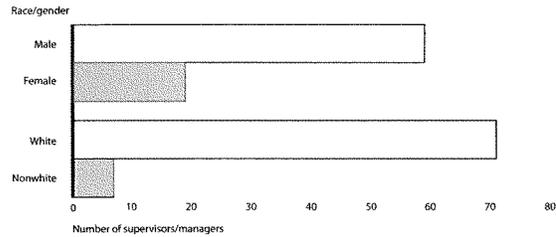
As the table shows, the percentages of NTSB's fiscal year 2008 workforce that were women and minorities were lower than those of the federal government. Under the Office of Personnel Management's regulations implementing the Federal Equal Opportunity Recruitment Program, agencies are required to determine where representation levels for covered groups are lower than for the civilian labor force and take steps to address those differences.<sup>7</sup>

Additionally, as of fiscal year 2008, 9 percent of NTSB's managers and supervisors were minorities and 24 percent were women (see fig. 2). Furthermore, according to NTSB, none of its current 15-member career Senior Executive Service (SES) personnel were members of a minority group, and only 2 of them were women. As we have previously reported, diversity in the SES corps, which generally represents the most experienced segment of the federal workforce, can strengthen an organization by bringing a wider variety of perspectives and approaches to policy development and decision making.

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<sup>7</sup>The Equal Employment Opportunity Commission's Management Directive 715 provides guidance and standards to federal agencies for establishing and maintaining effective equal employment opportunity programs, including a framework for executive branch agencies to help ensure effective management, accountability, and self-analysis to determine whether barriers to equal employment opportunity exist and to identify and develop strategies to mitigate or eliminate the barriers to participation.

**Figure 2: Distribution of NTSB Supervisory or Managerial Positions, by Race and Gender, Fiscal Year 2008**



Source: GAO analysis of NTSB data.

NTSB has undertaken several initiatives to create a stronger, more diverse pool of candidates for external positions. These initiatives include the establishment of a Management Candidate Program that has attracted a diverse pool of minority and female candidates at the GS 13/14 level. NTSB's Executive Development Program focuses on identifying candidates for current and future SES positions at the agency. Despite these efforts, NTSB has not been able to appreciably change the diversity profile of its senior management.

NTSB's current workforce demographics may present the agency with an opportunity to increase the diversity of its workforce and management. According to NTSB, in 3 years, more than 50 percent of its current supervisors and managers will be eligible to retire, as will over 25 percent of its general workforce. Furthermore, 53 percent of its investigators and 71 percent of those filling critical leadership positions are at least 50 years old. Although actual retirement rates may be lower than retirement eligibility rates, especially in the present economic environment, consideration of retirement eligibility is important to workforce planning.

**NTSB Has Made Its Selection of Accident Investigations More Efficient, but Reporting Can Be Improved**

We previously made four recommendations to NTSB to improve the efficiency of its activities related to investigating accidents, such as identifying criteria for selecting which accidents to investigate and tracking the status of its recommendations, and increasing its use of safety studies (see fig. 3).

**Figure 3: Implementation Status of GAO Recommendations Related to NTSB's Accident Investigation Mission and Safety Studies**

Area	GAO recommendation	Status in 2006	Status in 2008	Current status
Accident selection	Develop agency orders for all modes articulating risk-based criteria for selecting which accidents to investigate.			
Recommendation close-out	Complete related documentation and use concurrent reviews.			
Report development	Identify better practices in the agency and apply them to all modes.			
Safety studies	Increase use of safety studies.			

New recommendation or limited progress

Significant progress

Fully implemented

Source: GAO analysis of NTSB data.

NTSB is required by statute to investigate all civil aviation accidents and selected accidents in other modes—highway, marine, railroad, pipeline, and hazardous materials.<sup>8</sup> Since our April 2008 report, NTSB has fully implemented our recommendation to develop transparent policies containing risk-based criteria for selecting which accidents to investigate. The recently completed highway policy assigns priority to accidents based on the number of fatalities, whether the accident conditions are on NTSB's

<sup>8</sup>NTSB also has the authority to investigate any other accident related to the transportation of individuals or property when its board decides the accident is catastrophic or involves problems of a recurring character, or the investigation would help carry out NTSB authorities for accident investigation. 49 U.S.C. § 1131(a)(1)(F).

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“Watch List,”<sup>9</sup> or whether the accidents might have significant safety issues, among other factors (see fig. 4). For marine accidents, NTSB has a memorandum of understanding (MOU) with the U.S. Coast Guard that includes criteria for selecting which accidents to investigate. In addition, NTSB has now developed an internal policy on selecting marine accidents for investigation. This policy enhances the MOU by providing criteria to assess whether to launch an investigation when the Coast Guard, not NTSB, would have the lead. In April 2008, we reported that NTSB had also developed a transparent, risk-based policy explaining which aviation, rail, pipeline, and hazardous materials accidents to investigate.<sup>10</sup>

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<sup>9</sup>The Watch List contains accident conditions that could either support previous NTSB recommendations or sustain issues being developed in accidents currently under investigation.

<sup>10</sup>NTSB conducts all of its marine, rail, pipeline, hazardous materials, and highway accident investigations at the scene of the accident. In contrast, for aviation accidents, NTSB conducts on-scene investigations of major accidents and more limited investigations of accidents not designated as major. NTSB defines a major accident as one that involves an issue that is related to a current safety study or special investigation, affects public confidence or transportation safety in a significant way, or is catastrophic.

**Figure 4: Two NTSB Investigators Assess Motorcoach Wreckage**



Source: NTSB.

The remaining three recommendations have not yet been fully implemented. However, NTSB has initiated actions that could lead to closure of two of the recommendations. NTSB's deployment of an agencywide electronic information system based on Microsoft SharePoint will allow NTSB to streamline and increase its use of technology in closing out recommendations and in developing reports. When fully implemented, this system should serve to close these two recommendations.

NTSB has also made significant progress in implementing our recommendation to increase its use of safety studies, which are multiyear efforts that result in recommendations. They are intended to improve transportation safety by effecting changes to policies, programs, and activities of agencies that regulate transportation safety. While we, the Department of Transportation, and nongovernmental groups, like universities, also conduct research designed to improve transportation safety, NTSB is mandated to carry out special studies and investigations

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about transportation safety, including studies about how to avoid personal injury.<sup>11</sup> Although NTSB has not completed any safety studies since we made our recommendation in 2006, it has three studies in progress, one of which is in final draft, and it has established a goal of developing two safety study proposals and submitting them to its board for approval each year. NTSB officials told us that because the agency has a small number of staff, it has difficulty producing large studies in addition to processing many other reports and data inquiries. NTSB officials told us they would like to broaden the term “safety studies” to include not only the current studies of multiple accidents, but also the research done for the other, smaller safety-related reports and data inquiries. Such a term, they said, would better characterize the scope of their efforts to report safety information to the public. NTSB also developed new guidelines to address its completion of safety studies.

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### NTSB Has Increased Use of the Training Center

We made two recommendations for NTSB to increase its own and other agencies' use of the Training Center and to decrease the center's overall operating deficit (see fig. 5). The agency increased use of the center's classroom space from 10 percent in fiscal year 2006 to 80 percent in fiscal year 2009. According to NTSB, it has sublease agreements with agencies of the Department of Homeland Security (DHS) to rent approximately three-quarters of the classroom space located on the first and second floors. The warehouse portion of the Training Center houses reconstructed wreckage from TWA Flight 800, damaged aircraft, and other wreckage. The Training Center provides core training for NTSB investigators and trains others from the transportation community to improve their practice of accident investigation. Furthermore, NTSB has hired a Management Support Specialist whose job duties include maximizing the Training Center's use and marketing its use to other agencies or organizations. The agency's actions to increase the center's use also helped increase Training Center revenues from about \$635,000 in fiscal year 2005 to about \$1,771,000 in fiscal year 2009. By reducing the center's leasing expenses—for example, by subleasing classrooms and office space at the center to other agencies—NTSB reduced the Training Center's annual deficit from about \$3.9 million to about \$1.9 million over the same time period.

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<sup>11</sup>49 U.S.C. § 1116(b)(1).

**Figure 5: Implementation Status of GAO Recommendations Related to Training Center Use**

Area	GAO recommendation	Status in 2005	Status in 2008	Current status
Training Center	Maximize delivery of the core investigator curriculum at the Training Center.			
	Develop plans to increase use of the Training Center.			

New recommendation or limited progress  
 Significant progress  
 Fully implemented

Source: GAO analysis of NTSB data.

NTSB has made significant progress in achieving the intent of our recommendation to maximize the delivery of its core investigator curriculum at the Training Center by increasing the number of NTSB-related courses taught at the Training Center (fig. 6). For example in 2008, 49 of the 68 courses offered at the Training Center were solely for NTSB employees.

**Figure 6: NTSB Training Center**

Source: NTSB.

NTSB has fully implemented our recommendation to increase use of the Training Center. NTSB subleased all available office space at its Training Center to the Federal Air Marshal Service (a DHS agency) at an annual fee of \$479,000. NTSB also increased use of the Training Center's classroom space and thereby increased the revenues it receives from course fees and rents for classroom and conference space. From fiscal year 2006 through fiscal year 2009, NTSB increased other agencies' and its own use of classroom space from 10 to 80 percent, and increased revenues by over \$1.1 million. For example, according to NTSB, it has a sublease agreement with DHS to rent approximately one-third of the classroom space. NTSB considered moving certain staff from headquarters to the Training Center, but halted these considerations after subleasing all of the Training Center's available office space. NTSB decreased personnel expenses related to the Training Center from about \$980,000 in fiscal year 2005 to \$507,000 in fiscal year 2009 by reducing the center's full-time-equivalent positions from 8.5 to 3.0 over the same period. As a result of these efforts, from fiscal year 2005 through fiscal year 2009, Training Center revenues increased by 179 percent while the center's overall deficit decreased by 51

percent. (Table 2 shows direct expenses and revenues for the Training Center in fiscal years 2004 through 2009.) However, the salaries and other personnel-related expenses associated with NTSB investigators and managers teaching at the Training Center, which would be appropriate to include in the Training Center's costs, are not included. NTSB officials told us that they believe the investigators and managers teaching at the Training Center would be teaching at another location even if the Training Center did not exist. Once NTSB has fully implemented its cost accounting system, it should be able to track and report these expenses.

**Table 2: Direct Expenses and Revenues for NTSB's Training Center, Fiscal Years 2004 through 2009 (Unaudited)**

	Fiscal year					
	2004	2005	2006	2007	2008	2009
<b>Expenses</b>						
Personnel related	\$1,011,717	\$978,591	\$688,716	\$466,582	\$512,525	\$506,503
Travel	\$24,428	\$56,912	\$31,009	\$22,284	\$35,572	\$32,678
Space rental <sup>a</sup>	\$2,521,440	\$2,500,896	\$2,221,430	\$2,286,660	\$2,516,496	\$2,342,653
Maintenance/repair of buildings <sup>b</sup>	\$706,279	\$238,203	\$23,151	(\$4,215)		
Contract services	\$2,204,880	\$558,540	\$287,873	\$330,491	\$635,300	\$722,187
Miscellaneous expenses <sup>c</sup>	\$42,258	\$182,136	\$57,099	\$19,720	\$77,399	\$82,482
<b>Total expenses</b>	<b>\$6,511,003</b>	<b>\$4,515,279</b>	<b>\$3,309,277</b>	<b>\$3,121,521</b>	<b>\$3,777,294</b>	<b>\$3,686,503</b>
<b>Total earned revenue<sup>d</sup></b>	<b>\$258,760</b>	<b>\$634,800</b>	<b>\$651,191</b>	<b>\$817,555</b>	<b>\$1,630,910</b>	<b>\$1,770,996</b>
Overall deficit	-\$6,252,243	-\$3,880,479	-\$2,658,086	-\$2,303,966	-\$2,146,374	-\$1,915,507
Deficit when space rental expense is excluded	-\$3,730,803	-\$1,379,583	-\$436,656	-\$17,306	-\$453,737	-\$354,584

Source: GAO analysis of information from NTSB.

<sup>a</sup>NTSB leases the Training Center from George Washington University under a 20-year capital lease that will expire in 2021.

<sup>b</sup>The amount reported in the maintenance and repair category during fiscal year 2007 includes a refund of \$28,377 to NTSB because of a reconciliation of utility costs, as required by the lease. According to NTSB officials, in recent years, maintenance and repair expenses have been reported in the contract services category.

<sup>c</sup>Includes expenses for items such as telephone, mail, photography services, printing, office supplies, and equipment.

<sup>d</sup>Earned revenue includes imputed fees for NTSB students and sublease fees.

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### Requested Changes in NTSB's Authority Would Provide Statutory Authority to Investigate Incidents and Reduce Required Accident Investigations

As part of the reauthorization process, NTSB has proposed both substantive and technical changes to its existing authorizing legislation.<sup>12</sup> Among the substantive changes sought by NTSB are the statutory authority to investigate incidents<sup>13</sup> in addition to its current authority to investigate accidents<sup>14</sup> in all transportation modes<sup>15</sup> and to reduce its current requirements for investigating rail and maritime accidents. Figure 7 illustrates the five transportation modes for which NTSB has investigative authority.<sup>16</sup> The proposed technical changes would serve various purposes, including clarifying particular provisions contained in NTSB's current authorizing legislation.

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<sup>12</sup>Currently, The National Transportation Safety Board Reauthorization Act of 2009, S. 2768, 111th Cong., 2009 is pending in the Senate. A number of the provisions proposed by NTSB are contained within the bill.

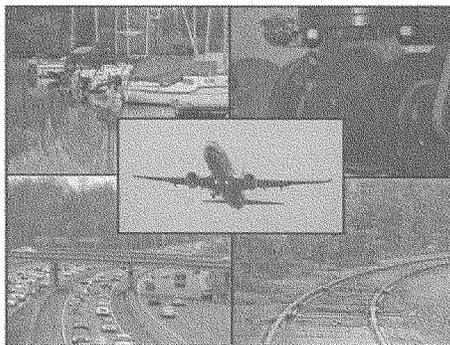
<sup>13</sup>"Incident" is currently defined in regulation as "an occurrence, other than an accident, associated with the operation of an aircraft, which affects or could affect the safety of operations." 49 C.F.R. § 830.2. This change does not address the International Civil Aviation Organization's 2007 recommendation that the United States define "serious incident," as other member countries have done.

<sup>14</sup>An "accident" includes damage to or destruction of vehicles in surface or air transportation or pipelines, regardless of whether the initiating event is accidental or otherwise." 49 U.S.C. § 1101.

<sup>15</sup>NTSB proposes this statutory authority to investigate "incidents" by requesting a definitional change that would include the term "incident" within the statutory definition of the term "accident."

<sup>16</sup>NTSB has concurrent investigative authority with all modal agencies, including the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), and the Coast Guard. The respective roles and responsibilities of NTSB and the modal agencies are set forth in laws, regulations, and/or interagency agreements.

**Figure 7. NTSB Investigative Modes: Aviation, Marine, Pipeline, Railroad, and Highway**



Source: GAO.

The proposed substantive change that would allow NTSB to investigate incidents would affect all modes by providing explicit authority to investigate not only accidents, as currently prescribed, but also "incidents not involving destruction or damage, but affecting transportation safety, as the Board may prescribe or Congress may direct."<sup>17</sup> This addition does not set forth specific criteria for selecting incidents to investigate, thereby increasing the agency's discretion. According to NTSB, this change would codify the agency's current practice in all modes. For example, NTSB investigated and reported the facts of the Northwest Airlines overflight of Minneapolis, Minnesota, on October 21, 2009, even though it did not meet the statutory definition of an accident.<sup>18</sup>

<sup>17</sup>NTSB believes this would clarify Congress' intent for the agency to investigate incidents. Although NTSB does not currently have explicit statutory authority to investigate incidents, the term incidents is used in other contexts within NTSB's current statutory authority. See, for example, 49 U.S.C. § 1116(b)(3).

<sup>18</sup>National Transportation Safety Board: Operational Factors/Human Performance, Group Chairman's Factual Report DCA101A001. Office of Aviation Safety (Washington, D.C.: Dec. 4, 2009).

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Other proposed substantive changes would reduce NTSB's current requirements for investigating maritime and rail accidents. Specifically, one change would eliminate the current requirement for NTSB or the Coast Guard to investigate all accidents involving public vessels or any other vessel and would provide discretion to determine whether and which of these accidents to investigate. Similarly, another proposed change would limit NTSB's responsibility for investigating rail accidents by establishing more stringent criteria for triggering the requirement to investigate. However, the proposed criteria do not include definitions of certain terminology and would thus effectively give NTSB the discretion to decide which rail accidents to investigate.

Giving NTSB expanded investigatory discretion with the explicit authority to investigate incidents without specific criteria, while simultaneously limiting requirements for rail and maritime investigations, would allow the agency to use its professional judgment to determine which investigations would have the greatest potential to improve safety and make the most effective use of its resources. At the same time, however, it is important that NTSB be transparent in providing information about investigation criteria in order to assure Congress and the public that the agency's resources are being used to address priorities in accordance with its mission. Striking the right balance between discretionary and criteria based investigations will be important to ensure that NTSB's resources can be used for the work with the greatest potential to enhance transportation safety.

Other proposed substantive changes are intended to more clearly define NTSB's and the U.S. Coast Guard's respective roles and responsibilities for maritime accident investigations, which are currently governed by a December 2008 MOU with the Coast Guard and jointly issued regulations.<sup>49</sup> These changes could affect a number of existing agreements and the current governing framework, as well as the agencies involved.

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Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

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<sup>49</sup>49 C.F.R. part 850.

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**Contacts and  
Acknowledgments**

For further information on this testimony, please contact Gerald L. Dillingham, Ph.D. at (202) 512-2834 or by e-mail at [dillingham@gao.gov](mailto:dillingham@gao.gov) or Gregory C. Wilshusen at (202) 512-6244 or [wilshuseng@gao.gov](mailto:wilshuseng@gao.gov). Individuals making key contributions to this testimony include Keith Cunningham, Assistant Director; Lauren Calhoun; Peter Del Toro; George Depaoli; Elizabeth Eisenstadt; Fred Evans; Steven Lozano; Mary Marshall; Charles Vrable; Jack Warner; and Sarah Wood.

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## Appendix I: Related GAO Products

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*National Transportation Safety Board: Reauthorization Provides an Opportunity to Focus on Implementing Leading Management Practices and Addressing Human Capital and Training Center Issues.* GAO-10-183T. Washington, D.C.: October 29, 2009.

*National Transportation Safety Board—Application of Section 1072 of the Federal Acquisition Streamlining Act (41 U.S.C. 254) to Real Property Leases.* B-316860. Washington, D.C.: April 29, 2009.

*National Transportation Safety Board: Progress Made in Management Practices, Investigation Priorities, Training Center Use, and Information Security, but These Areas Continue to Need Improvement.* GAO-08-652T. Washington, D.C.: April 23, 2008.

*National Transportation Safety Board—Insurance for Employees Traveling on Official Business.* B-309715. Washington, D.C.: September 25, 2007.

*National Transportation Safety Board: Observations on the Draft Business Plan for NTSB's Training Center.* GAO-07-866R. Washington, D.C.: June 14, 2007.

*National Transportation Safety Board: Progress Made, Yet Management Practices, Investigation Priorities, and Training Center Use Should Be Improved.* GAO-07-118. Washington, D.C.: November 22, 2006.

*National Transportation Safety Board: Preliminary Observations on the Value of Comprehensive Planning, and Greater Use of Leading Practices and the Training Academy.* GAO-06-801T. Washington, D.C.: May 24, 2006.

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**National Transportation Safety Board**  
490 L'Enfant Plaza, SW  
Washington, D.C. 20594  
(202) 314-6000



**Deborah A.P. Hersman**  
**Chairman**

**Testimony of  
Deborah A.P. Hersman, Chairman  
National Transportation Safety Board  
before the  
Committee on Transportation and Infrastructure  
Subcommittee on Aviation  
U. S. House of Representatives  
Reauthorization of the National Transportation Safety Board  
Washington, DC  
January 27, 2010**

Good morning, Chairman Costello, Ranking Member Petri, and members of the Subcommittee. As Chairman of the National Transportation Safety Board (NTSB), I am pleased to appear before you today to discuss our request for reauthorization. The members and staff of this Committee, and especially of this Subcommittee, historically have been champions of the NTSB and its important mission. On behalf of our 391 employees, I want to thank you for your unfailing support throughout our history.

Our core mission is to investigate transportation accidents to determine what happened, how it happened, why it happened, and what can be done to keep it from happening again. Today, we continue working hard to improve safety in a transportation world that looks very little like it did when we began in 1967. In the 43 years since our beginning, the mission of the agency has not changed, but the world has. Transportation accidents are increasingly complex as machines and technology become more and more sophisticated. Our challenge today is to remain highly skilled and up-to-date with an expert technical staff and state-of-the-art investigative tools to competently and efficiently conduct the thorough investigations you and the American people expect and deserve.

To give you a glimpse of the work we do, let me tell you what we accomplished in fiscal year (FY) 2009. We issued 18 major accident investigation reports and 2 summary reports. In addition, we produced 15 brief reports, hundreds of regional aviation safety accident briefs, and a special investigation report on pedal misapplications in heavy vehicles. We conducted 13 public or "sunshine" meetings on 14 separate accident reports. We also conducted 6 public hearings on accidents and safety issues, including:

- A 2008 fatal motorcoach accident in Victoria, Texas;
- The safety of helicopter emergency medical services;
- The 2008 collision of a Metrolink commuter train with a Union Pacific freight train in Chatsworth, California;
- The 2009 crash of Colgan Air flight 3407 near Buffalo, New York;
- The 2009 landing of U.S. Airways flight 1549 in the Hudson River in New York; and
- The 2009 crash of Empire Airlines flight 8284 at Lubbock, Texas.

<b>NTSB – FY 2009 At A Glance</b>	
Established:	April 1967
Number of Employees: (by HQ and Regions)	HQ: 299 Regional: 92
Major Reports and Products Adopted by the Board:	18 Major Reports 2 Summary Reports 1 Special Investigation Report 15 Brief Reports
Major Accident Launches:	18
Other Accident Launches:	198
International Accident Launches:	10
Public Hearings:	6
Recommendations Issued:	174
Recommendations Closed:	87 Closed Acceptable Status 22 Closed Unacceptable Status
Vehicle Recorder Readouts:	374
Materials Laboratory Examination Reports:	110

During my tenure on the Board, I have accompanied our investigators on 17 major accident launches. I have watched them drop whatever they were doing, grab their go-bags, and head to an accident scene to get there often before the smoke has cleared. Once on scene, our investigators hardly stop to rest or eat. Some begin the meticulous work of documenting the scene in minute detail, while others seek out witnesses and survivors. While investigators begin piecing together the accident sequence, our Transportation Disaster Assistance team reaches out to victims and their families to help them begin navigating through shock, grief, and – if it is possible – eventually, healing. No one wants a serious accident to ever occur, but when one does

and we send a launch team, I am always amazed and proud of the work our investigation team performs, both on-scene and then later when they return to our offices and labs to continue solving the puzzle.

In FY 2009, we launched to 18 major accidents, including:

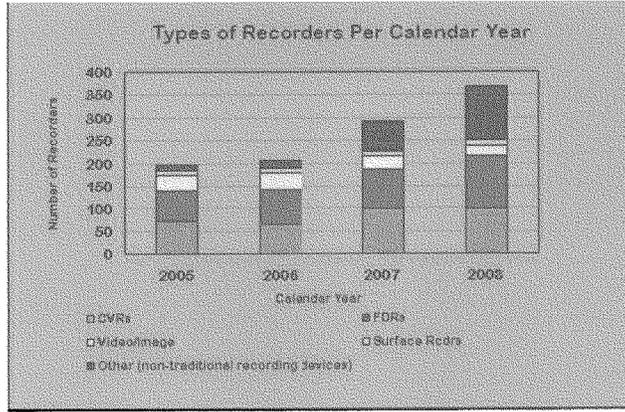
- November 28, 2008: A self-propelled, unmanned shuttle train at Miami International Airport failed to stop at the passenger platform and struck a wall at the end of the guideway. 7 injuries.
- December 20, 2008: A Boeing 737 (Continental flight 1404) veered off the side of the runway and crashed during takeoff from Denver International Airport. No fatalities, 37 injuries.
- January 7, 2009: A 29-passenger bus crossed into the opposite travel lanes and overturned near Dolan Springs, Arizona, ejecting 13 occupants and partially ejecting 2 occupants. 7 fatalities, 10 injuries.
- January 15, 2009: An A320 (U.S. Airways flight 1549) made an emergency landing in the Hudson River following a multiple bird strike just after takeoff from New York's La Guardia Airport. No fatalities.
- January 27, 2009: An ATR-42 cargo aircraft (Empire Airlines flight 8284) crashed short of the runway while landing in Lubbock, Texas. No fatalities.
- February 12, 2009: A Bombardier Dash 8-Q400 operated by Colgan Air (Continental Connection flight 3407) crashed on approach to Buffalo-Niagara International Airport, impacting a house. 50 fatalities.
- March 22, 2009: A Pilatus PC-12 operated by Eagle Capital Leasing crashed on approach to Butte, Montana. 14 fatalities.
- April 12, 2009: An unnamed recreational vessel allided with a towing vessel *Little Man II* near Palm Valley, Florida. 5 fatalities.
- May 4, 2009: An 18-inch diameter high pressure natural gas pipeline ruptured near Palm City, Florida. 3 injuries.
- May 8, 2009: An MBTA light rail passenger train struck the rear of a stopped MBTA train in Boston. The train operator admitted that he was texting on his cell phone when the accident occurred. 51 injuries.
- June 19, 2009: A CN freight train derailed at a highway-rail grade crossing in Cherry Valley, Illinois, causing a breach of 13 tank cars and the release of ethanol, followed by a fire that spread to vehicles stopped at the grade crossing. 1 fatality, 7 injuries;
- June 22, 2009: A WMATA train operating under automatic train control struck the rear of a standing train near Ft. Totten Station in Washington, DC. 9 fatalities, 52 injuries.
- June 26, 2009: A minor accident between a passenger car and a truck tractor/trailer on I-44 near Miami, Oklahoma, blocked the two eastbound lanes of the 4-lane divided highway, causing traffic to stop and a queue to form. Six minutes later, a truck tractor/trailer crashed into the rear of the stopped and slow-moving traffic, causing the collision of 6 vehicles. 10 fatalities, 6 injuries.
- July 1, 2009: An automobile struck a gasoline tank truck near Upper Pittsgrove, New Jersey, rupturing piping beneath the cargo tank (wet lines), resulting in the release of gasoline onto the automobile, which then caught fire. 1 fatality.

- July 15, 2009: A tanker truck rollover occurred as the driver of the truck swerved to avoid colliding with a passenger car which lost control on I-75 near Hazel Park, Michigan. 3 injuries.
- July 15, 2009: A cargo transfer hose ruptured while transferring anhydrous ammonia from a highway cargo tank trailer to a storage tank at an industrial facility in Swansea, South Carolina. The resulting toxic ammonia cloud expanded across a highway where a car drove into the gas cloud causing the death of the driver. 1 fatality; 7 injuries.
- July 18, 2009: A San Francisco MUNI light rail train ran into the rear of a second train at the West Portal Station. 48 injuries.
- August 8, 2009: A Piper PA-32, operated by a private pilot, and a Eurocopter AS350, operated by Liberty Helicopters, collided in midair over the Hudson River near Hoboken, New Jersey. 9 fatalities.

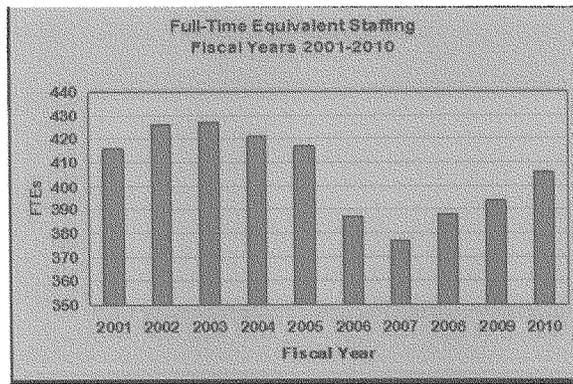
In addition to these major accidents, we launched investigators to 198 accidents, primarily in general aviation, to conduct smaller-scale investigations. We also sent accredited representatives to support 10 foreign accidents including the Air France A330 crash in the Atlantic Ocean on July 1, 2009; the crash of a Sikorsky S-92 helicopter in the sea near St. Johns, Newfoundland, on March 12, 2009; and the crash of a Learjet Model 45 near Mexico City on November 4, 2008.

As you know, the end products of our investigations are our safety recommendations to government agencies, transportation operators, and other stakeholders to improve transportation safety. In our 43-year history, we have issued more than 13,000 recommendations, with an 82 percent acceptance rate. Last year alone, we issued 174 new recommendations. We also closed 109 previously issued recommendations, 87 of those in an acceptable status. Of course, the success of our recommendations is often directly due to the work of our advocates in Congress, many of whom are on this Committee. For example, in 2007, Congress made huge strides in advancing railroad safety with the passage of the Federal Rail Safety Improvement Act of 2008 (Public Law 110-432). This historic bill addressed significant safety issues and long-standing recommendations directed to the rail industry, namely, hours of service and positive train control. The NTSB appreciates your listening to us regarding these recommendations.

One of the busiest parts of our agency—and it is getting busier all the time—is our laboratory. In our vehicle recorder lab, on-board vehicle recorders are downloaded and studied to support accident investigations. In FY 2009, our lab processed 374 cockpit voice and flight data recorders, along with digital cameras, video recordings, GPS navigation devices, cockpit displays and engine monitoring devices. About 30 percent of our flight data and voice recorder readouts support foreign accident investigations. The workload in the vehicle recorder lab continues to grow as the number and complexity of recording devices continually expand. In addition, our materials lab examined evidence collected at accident scenes—anything from aircraft engines to pieces of highways—in search of clues to the causes of accidents. Last year, the materials lab produced 110 separate reports.



Like many government agencies, the NTSB is being called upon to accomplish its goals with fewer resources. We are rising to the challenge, but it is difficult, and we will need the continued support of Congress. In 2003, the NTSB completed 18 major products and 4 public hearings with 427 employees. In 2009, we completed the same number of major products and two additional hearings but with 33 fewer people. In addition, our hiring mix has had to change in recent years to meet regulatory standards in such areas as computer security and contracting requirements. We thus have not been able to focus all of our recent hiring on adding or replacing investigators or transportation specialists.



So how do we accomplish what we do? We have an extraordinary staff. They are smart, they are curious, they love to solve mysteries, and they have an unparalleled passion for transportation safety. This unique mixture of talent and enthusiasm is why they have been able to tell us the causes of hundreds of accidents, explaining why these tragedies happened and what should be done so that they never happen again. These dedicated professionals do this invaluable work at an annual cost of about 30 cents per American.

As with many government agencies now, the NTSB is facing potential staffing shortages due to retirements. Nearly 20 percent of the NTSB workforce is currently eligible to retire. In fact, 21 percent of our investigators and 27 percent of our executives are age 60 or older. Many of our investigative positions require unique expertise, and a failure to anticipate and prepare for retirements in those positions could leave the agency severely hampered in our ability to accomplish our investigative mission. But in the face of this potential critical problem, we also see an unprecedented opportunity to adjust a lack of balance in the diversity of our work force, particularly among our investigators and our executives. Toward that end, we have formed an internal Diversity Task Force to develop aggressive marketing, outreach, and recruitment initiatives to attract highly skilled and diverse candidates to staff the next generation of investigators and managers.

As we begin this dialogue to reauthorize the NTSB, we are asking for technical changes that clarify our statute and a few substantive changes that we believe will improve our ability to thoroughly investigate significant accidents:

- Provide explicit authority for the NTSB to investigate incidents. While the NTSB already investigates transportation incidents that may not result in loss of life or damage to property, for example, runway incursions and near-misses, this change would allow the NTSB to begin a timely investigation of an event that might otherwise be examined first under a process internal to the owning agency or organization. One example of this is a “lost link” situation that occurred between the ground station and an unmanned aircraft system that resulted in an uncontrolled intrusion into the National Airspace System. Another recent example is the 150-mile overflight of an Airbus A320 near Minneapolis. This requested change is consistent with a worldwide push by the International Civil Aviation Organization (ICAO) to its member nations to adopt a more proactive stance in preventing accidents by investigating incidents.
- Clearly articulate the NTSB’s right to access critical information related to an accident during a Board investigation. Currently, the NTSB has subpoena power that is enforceable in federal court, but in occasional instances, the Board meets with resistance to this authority with regard to medical and financial records. These records sometimes become critical to an investigation, for example, prescription records to determine the medical fitness of a ship’s captain, or credit card records to ascertain the activities of an airline pilot hours before an accident.

In terms of resources, we are asking that the Congress authorize staffing of 477 employees and funding as follows:

- 2011: \$117,368,000;
- 2012: \$120,258,000;
- 2013: \$122,187,000;
- 2014: \$124,158,000.<sup>1</sup>

The NTSB is the safety conscience and compass of the transportation industry. Because the NTSB was created with a single focus – safety – we provide industry leaders, other government agencies, and policymakers, such as the members of this Committee, with recommendations regarding what actions should be taken if safety were the first and only objective. As an independent, non-regulatory agency, we can articulate needed safety improvements and innovations without having to demonstrate that they are cost beneficial, profit generating, or politically feasible.

As I mentioned earlier, the transportation world is not the same as it was in 1967. With the help of Congress, we are currently up to the challenge, and with your continued support, we will keep pace with changes that are occurring in transportation, sometimes at breathtaking speed. Thank you for giving me the opportunity to talk to you about this remarkable agency and its dedicated people. I will be happy to answer your questions.

---

<sup>1</sup> Assumes salaries increase by 2% each year beginning with calendar year 2010 and an inflation factor of 0.5%.



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**  
**Washington, DC 20515**

**James L. Oberstar**  
Chairman

David Heymitch, Chief of Staff  
Ward W. McCarragher, Chief Counsel

February 26, 2010

**John L. Mica**  
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

The Honorable Deborah A.P. Hersman  
Chairman  
National Transportation Safety Board  
490 L'Enfant Plaza East  
Washington, D.C. 20594

Dear Chairman Hersman:

On January 27, 2010, the Subcommittee on Aviation held a hearing on the "Reauthorization of the National Transportation Safety Board."

Attached are questions to answer for the record. I would appreciate receiving your written response to these questions within 14 days so that they may be made a part of the hearing record.

Sincerely,

  
James L. Oberstar  
Chairman

Question for the Honorable Deborah A.P. Hersman  
Chairman  
National Transportation Safety Board

Aviation Subcommittee Hearing  
January 27, 2010

Question from Chairman Oberstar

1. I am very concerned that NTSB investigators were barred from accessing both the scene of and witnesses to a traffic accident in which an elderly driver drove into a crowd of pedestrians at a Santa Monica, California market. It is of significant concern to me that the Board's lack of primacy in highway accident investigations could lead to a State agency, whose actions or lack thereof may have contributed to an accident, prohibiting NTSB investigators from accessing a highway accident scene. Based on what occurred in Santa Monica, it appears that this lack of primacy could raise questions of possible conflicts of interest, and ultimately undermine the NTSB's mission.
  - a) Does the NTSB's lack of primacy over highway accidents influence the Board's decisions over which incidents it chooses to investigate, or how to proceed with an accident investigation?
  - b) Do you believe that it would further the Board's mission if the NTSB had clear authority to assert primacy in a highway accident investigation?



Office of the Chairman

**National Transportation Safety Board**

Washington, D.C. 20594

February 25, 2010

The Honorable James L. Oberstar  
Chairman  
Committee on Transportation and Infrastructure  
2165 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Oberstar:

This is in reply to your letter of February 16, 2010, requesting my written response to your question for the record regarding my testimony at an Aviation Subcommittee hearing held on January 27, 2010, on the "Reauthorization of the National Transportation Safety Board."

My response to your question is enclosed. Please do not hesitate to contact me at 202-314-6662 if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah A.P. Hersman".

Deborah A.P. Hersman  
Chairman

Enclosure

RESPONSES OF DEBORAH A.P. HERSMAN, CHAIRMAN  
NATIONAL TRANSPORTATION SAFETY BOARD  
TO A QUESTION FOR THE RECORD  
SUBMITTED BY CHAIRMAN JAMES L. OBERSTAR  
AVIATION SUBCOMMITTEE HEARING  
ON THE REAUTHORIZATION OF  
THE NATIONAL TRANSPORTATION SAFETY BOARD  
JANUARY 27, 2010

Question from Chairman Oberstar

1. I am very concerned that NTSB investigators were barred from the accessing both the scene of and witnesses to a traffic accident in which an elderly driver drove into a crowd of pedestrians at a Santa Monica, California market. It is of significant concern to me that the Board's lack of primacy in highway accident investigations could lead to a State agency, whose action or lack thereof may have contributed to an accident, prohibiting NTSB investigators from accessing a highway accident scene. Based on what occurred in Santa Monica, it appears that this lack of primacy could raise questions of possible conflicts of interest, and ultimately undermine the NTSB's mission.
  - (a) Does the NTSB's lack of primacy over highway accidents influence the Board's decisions over which incidents it chooses to investigate, or how to proceed with an accident investigation?

Answer:

NTSB highway investigators rarely encounter significant resistance from state and local authorities when NTSB seeks to investigate an accident. Part of the reason is that NTSB is generally interested in significant highway accidents, and local authorities are often receptive to our assistance under such circumstances. With that said, the agency has encountered lack of cooperation, and has in fact been shut out of state investigations it sought to investigate. The most prominent one in recent memory was the Santa Monica farmers' market tragedy, which you reference. The risk that a state might not cooperate, or cease to cooperate, occasionally influences some of the investigative decisions in NTSB investigations, although this is a rare occurrence.

- (b) Do you believe that it would further the Board's mission if the NTSB had clear authority to assert primacy in a highway accident investigation?

Answer:

Yes, we believe the Board's mission would be better served by a clear statement of statutory authority for the NTSB to investigate, meaning authority to assert primacy in highway accidents where there is the potential to identify safety issues of an industry or nationwide significance. Accordingly, we would support language that

would permit the NTSB to investigate when the Board determines an accident may have significance to highway safety.