



**U.S. OFFICE OF SPECIAL COUNSEL**

1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

[www.osc.gov](http://www.osc.gov)

September 30, 2002

The Special Counsel

The President  
The White House  
Washington, DC 20500

Re: OSC File No. DI-01-1889

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report provided to me pursuant to 5 U.S.C. §§ 1213(c) and (d) by the Honorable Marion C. Blakey, former Chairman of the National Transportation Safety Board (NTSB). The report sets forth the findings and conclusions of the former Chairman upon investigation of disclosures of information allegedly evidencing gross mismanagement and a substantial and specific danger to public safety arising out of actions by officials at the NTSB, Washington, D.C.

The whistleblower, Henry Hughes, Senior Accident Investigator, consented to the release of his name. He also provided comments on the agency report to this office pursuant to 5 U.S.C. § 1213(e)(1), which I am also transmitting.

These allegations were referred to the former Chairman of the NTSB for investigation on November 29, 2001; however, the NTSB did not actually receive the information until January 17, 2002. By letter dated March 18, 2002, the former Chairman delegated responsibility for the investigation and report to Ronald S. Battocchi, NTSB General Counsel. The former Chairman sent Mr. Battocchi's report to this office on March 18, 2002. After reviewing the report, OSC contacted Mr. Battocchi on July 8, 2002, to request that the agency interview Mr. Hughes and then revise or supplement the report as necessary. Accordingly, the agency submitted a supplemental report to this office on August 12, 2002.

We have carefully examined the original disclosures and reviewed the agency's response and Mr. Hughes's comments. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that the findings in the agency's report appear to be reasonable and contain all of the information required by statute.

**The Whistleblower's Disclosures**

Henry Hughes, Senior Accident Investigator, was one of ten investigators involved in a special investigation into ground services safety and oversight. The special investigation

concluded in a report entitled "Special Investigative Report, Ground Services Safety Oversight," report number LAX98SA246.

The investigative report revealed a number of safety and security problems at several airports throughout the country, and it proposed 14 recommendations for NTSB consideration. Specifically, the report examined safety and security concerns associated with airport ground services such as deicing/anti-icing, refueling, baggage and cargo handling, lavatory services, and catering.

Mr. Hughes alleged that, once NTSB management knew the details and recommendations of the report, an attempt was made to suppress it. As part of the alleged efforts to conceal the report and its recommendations, Mr. Hughes stated that at least two boxes of supporting documents disappeared. According to Mr. Hughes, after the investigation was completed, the report and the supporting documents were shipped from Los Angeles to Washington, D.C. Mr. Hughes learned from the Aviation Safety Division that Deborah Bruce, Chief, Safety Studies Division, took custody of the report and documents. Ms. Bruce informed Mr. Hughes that, after she took custody of the documents, they were lost. Moreover, Mr. Hughes alleged that the report number was assigned to another investigation so that this particular report, without a new number, would not appear in NTSB records. Consequently, Mr. Hughes was unable to locate either the report or the documents within the NTSB's files or records.

#### The National Transportation Safety Board Investigation and Report

Mr. Hughes's allegations were investigated by the NTSB Office of the General Counsel (OGC). According to the agency report, the OGC interviewed Ms. Bruce and other unnamed NTSB officials and staff members, reviewed relevant documents, and searched NTSB databases. At OSC's request, the OGC interviewed Mr. Hughes; the interview took place on July 9, 2002. The investigation failed to substantiate Mr. Hughes's allegations.

The agency report stated that, contrary to Mr. Hughes's contention that the draft investigative report was "suppressed," the investigative report was fully considered by the NTSB "in the routine course of business and in accordance with formal, established procedures." According to the agency report, the NTSB has two separate tracks for processing safety recommendations: one for major accident investigations and reports and another for all other investigations, including employee-submitted proposals. The agency report explained that, because the special investigation in question arose when several NTSB employees decided to expand upon an investigation led by Debbie Childress, Senior Accident Investigator, into a ground services accident that occurred in Tucson, Arizona, in December 1997, the NTSB considered the investigative report in question to be an employee-submitted "safety proposal." As such, the investigative report was designated "Aviation Safety Proposal

Log 2718" and consolidated with Aviation Safety Proposal Logs 2724 and 2727 (which also pertained to ground service vehicles and related matters).

The Board's procedures for reviewing recommendations under its two separate tracks are outlined in NTSB Order 70, "NTSB Safety Recommendation Program" (October 15, 1996). For "safety proposals"<sup>1</sup> such as Aviation Safety Proposal Log 2718, the Order provides that they first be subjected to critical review by the Safety Proposal Review Board (SPRB)<sup>2</sup> to determine whether they warrant creation of draft safety recommendations for consideration by the NTSB. The agency report stated that Aviation Safety Proposal Logs 2718, 2724 and 2727 were evaluated by the SPRB in accordance with these procedures, and included a copy of a December 11, 1998, memorandum drafted by Ms. Bruce during the SPRB review process, discussing the three safety proposals and the draft recommendations contained therein. Ultimately, the SPRB decided not to submit the 14 recommendations proposed in Aviation Safety Proposal Log 2718 to the NTSB for approval as official NTSB safety recommendations. According to the memorandum, several of these recommendations had already been addressed by existing regulations or did not fall within the purview of the NTSB. However, due to the serious nature of the investigation's findings, the NTSB decided to take the unusual step of sending a letter to the Honorable Jane Garvey, Administrator of the Federal Aviation Administration (FAA), on January 11, 2000, that summarized the proposal's findings and urged the FAA to pursue measures to prevent similar ground services-related accidents from occurring in the future.

The agency also denied Mr. Hughes's allegations that the draft investigative report and associated documents were intentionally lost or misplaced by NTSB officials. According to the agency report, Ms. Bruce denied ever "taking custody" of such documents, stated that she was unaware the documents were missing, and could not recall ever informing Mr. Hughes that "after she had taken custody of the documents, they were lost." In addition, the agency report stated that, on or about September 1, 1998, Ms. Childress, the investigator-in-charge of the Tucson investigation, shipped all documents pertaining to the Tucson investigation to the NTSB's Freedom of Information Act (FOIA) personnel for the processing of a FOIA request. The agency explained that the reason why Mr. Hughes was unable to locate the report in the NTSB database is that reports with an "SA" (special occurrence) classification, such as the report at issue, are not publicly available on the NTSB website and the resulting incident data

---

<sup>1</sup> NTSB Order 70 defines a "safety proposal" as "a proposed safety recommendation that is not processed in conjunction with a major accident investigation, special investigation, or safety study."

<sup>2</sup> According to the agency report, the role of the SPRB, which is comprised of directors or deputy directors of the operating/technical offices, is to evaluate safety proposals to decide whether they should be submitted to the NTSB for approval as official NTSB safety recommendations.

is not included in official NTSB statistical compilations.<sup>3</sup> However, the agency stated that a public docket does exist for the Tucson incident investigation, and included a copy of this docket as an attachment to the report. Lastly, the agency denied that the identification number for the draft investigative report was assigned to another investigation.

### The Whistleblower's Comments

Mr. Hughes provided comments on the agency's report. He contended that the agency's report failed to address his allegations and "misconstrued the facts." Mr. Hughes maintained that the agency should possess a public docket for the special investigation, separate from the Tucson incident public docket that was included in the agency's report, and he expressed dissatisfaction that the agency failed to locate this public docket. He stated that the SPRB failed to provide the investigative team with "any form of correspondence or official follow-up analysis" regarding their evaluation of the proposal, as required by NTSB Order 70.<sup>4</sup> Mr. Hughes remarked on the serious nature of the safety problems uncovered by the investigation, and questioned the agency's decision not to issue official recommendations based on the investigation's findings.

After reviewing the agency's supplemental report, Mr. Hughes complained that the agency conducted a superficial investigation. He expressed disappointment that the agency did not interview other employees involved in the special investigation. Mr. Hughes disagreed with the General Counsel's contention that many of the 14 safety recommendations proposed by the investigative team fall outside of the purview of the NTSB, and he reiterated his belief that the safety recommendations should be implemented "in order to effectively safeguard aviation travelers."

### Conclusion

Based on the representations made in the report and as stated above, I have determined, pursuant to section 1213(e)(2), that the findings in the agency's report appear to be reasonable and contain all of the information required by statute.

---

<sup>3</sup> In addition, I note that NTSB Order 70 requires that the Board maintain a computerized permanent record of all safety *recommendations*, but the Order does not appear to extend this requirement to all safety *proposals* -- which have not yet achieved "safety recommendation" status.

<sup>4</sup> Mr. Hughes appears mistaken in his contention that NTSB Order 70 requires the agency to conduct "official follow-up analysis" with NTSB investigative teams. Rather, the "Safety Recommendation Follow-up" section of the Order refers to the NTSB's duty to follow-up with a recipient agency after issuing official recommendations in order to ensure a satisfactory response.

The Special Counsel

The President

Page 5

As required by section 1213(e)(3), I have sent a copy of the report and Mr. Hughes's comments to the Chairmen of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure. We have also filed copies of the report and Mr. Hughes's comments in our public file and closed the matter.

Respectfully,

*Trinity B. Hancock/for*

Elaine Kaplan

Enclosures