October 9, 2009

Catherine McMullen
Karen Gorman
Disclosure Unit
U.S. Office of Special Counsel
1730 M Street NW
Washington, D.C. 20036

Re: ***Bruno Comments to OSC DI-07-2350***

Dear Ms. McMullen and Ms. Gorman:

Please find below my comments to the FAA's Quality Assurance Staff report on my disclosure file No. DI-07-2350 and to the FAA's 9/15/09 responses to OSC's supplemental questions in this case. I consent to the release of these comments, and my authorization for disclosure by OSC is attached.

I have divided my comments into two parts: Part A addresses FAA's Quality Assurance Staff report and Part B addresses OSC's Supplemental Questions to FAA dated September 15, 2009. Thank you for considering these comments.

Part A: Comments on FAA's Quality Assurance Staff Report

The FAA's Quality Assurance Staff report that I have been provided with is neither dated nor signed, which makes it impossible to comply with the requirements of 5 USC §1213(c) and therefore ineligible for approval under section 1213(d).[1] This makes me question the FAA claim that this document was "inadvertently" omitted from their original package because the "preponderance of evidence" contained in this QA document weighs heavily against the FAA! It's not clear if this is actually a report or a draft. In any event, nothing in this document has any material bearing on the factual findings in my safety disclosures.

In fact, the FAA substituted its own determination for OSC's on the scope of questions to answer as a result of my disclosures. They decided to cherry pick from among my disclosures and attempted to answer 14 areas of their own questions instead. Of the 14 areas, they made a finding of "NON-CONCUR" in only 4. They made 5 findings of "PARTIALLY-CONCUR", 4 findings of "CONCUR", and 1 finding of "COULD NOT DETERMINE". By any measure of the "preponderance of evidence" standard, the FAA has failed to support its own defense against my disclosures of

[1] My comments point out repeated instances where the report in incomplete under the standards of section 1213(c). So that my comments are not overly legalistic, I will not repeat and reference each example like a lawyer. But the report is fundamentally incomplete under the Whistleblower Protection Act's legal requirements.

malfeasance. The four findings of "NON-CONCUR" are so full of conflicting FAA statements that they are meaningless.

Because of the great amount of documented detail that I have already provided to OSC in this case, I will not repeat my disclosures' factual record. However, I will focus on the FAA's 4 findings of "NON-CONCUR" in this "inadvertently" omitted, unsigned, undated document.

It is pertinent that the five "PARTIALLY-CONCUR" findings and one "COULD NOT DETERMINE" finding are all variances of the FAA's bickering with the accuracy of the inconsistent numbers they have reported over the years. This equivocating will not end until an impartial third party such as the GAO conducts an independent, full audit of the actual retests conducted, completed, and those remaining to be done.

1. NON-CONCUR # 1

Page 9, paragraph number 4 states, "The current reexamination program is severely deficient and does not meet FAA certification requirements. FINDING: NON-CONCUR. This allegation is covered in reexamination."

This "NON-CONCUR" is directly contradicted by the FAA's finding of "CONCUR" on page 9, paragraph 1. They concur, "The current reexamination program does not meet FAA certification requirements." The agency further states, "This allegation is covered in reexamination, see page 10."

Page 10 includes the statement ". . . the Administrator may determine the scope of what is included in that reexamination." If this statement is the FAA's basis for non-concurrence, then they are admitting that legally-required certification standards were not controlling, even in situations where fraud or criminal activity was involved in the original issuance of airman certification.

The FAA also contradicts and undermines their own argument when they concur that paragraph 5's assertion that FSAW 04-10B eliminates crucial factors required for initial certification.

2. NON-CONCUR # 2

Page 9, paragraph number 6 states, "The current reexamination program does not contain correct testing procedures because the practical portion of the certification testing is not being required under FSAW 04-10B. FINDING: NON-CONCUR. This allegation is covered in reexamination."

Again, the FAA contradicts its non-concurrence by admitting that FSAW04-10B eliminates crucial factors required for initial certification in paragraph 5. Also, on page 11 the FAA admits "St. George had the intent to provide certificates without the

applicants meeting the standards. The FAA's objective under the reexamination authority was to determine competency of the airman."

The FAA could not make this required determination of competency without administering the full certification test, including the practical demonstration, which was never administered by Mr. St. George. The FAA's own guidance identifies the practical portion of the certification exam as a major determinant of competency.

3. NON-CONCUR # 3

Page 9, paragraph number 7 states, "FSAW04-10B allows the FAA to do exactly what St. George did, incomplete testing, by decriminalizing St. George's actions. FINDING: NON-CONCUR. This allegation is covered in reexamination."

By radically diminishing the reexamination components for the FAA's certification of A & P mechanics, the FAA is administering no more of an assessment of skills than Anthony St. George did, thus decriminalizing St. George's actions that earned him a sentence of 2 ½ years in federal prison. All of the mechanics that the FAA reexamined under Phase 2 never had to demonstrate the competence levels that are required to hold that certificate. As I stated before, by using their "discretion" to create these grossly deficient testing standards, the FAA has violated its own testing policy contained in FAA Order 8610.4, which states, "This order stresses the Federal Aviation Administration's (FAA's) policy of placing greater emphasis on the aviation mechanic oral and practical tests." In section I-6, titled, FAA MECHANIC CERTIFICATION POLICY, the Order goes on to state, "Greater emphasis shall be placed on the aviation mechanic oral and practical tests to determine if an applicant's performance is acceptable or unacceptable. The primary discriminator in the aviation mechanic certification process is the oral and practical test." By limiting or entirely eliminating either or both the oral and practical tests for the St. George re-examinees, the FAA has knowingly allowed over 1,000 certificate-holders of unknown competence to take a pass on proving his/her competence.

They offer no evidence that their incomplete testing under "Phase 2" is any different than what St. George was doing. The FAA merely asserts that they are allowed to conduct incomplete testing and CONCUR in page 9, paragraph number 5 that, "FSAW 04-10B eliminates crucial factors required for initial certification."

4. NON-CONCUR # 4

Page 10, paragraph number 13 states, "The FAA does not know if there is a connection between the St. George certificate holders and the January 8th, 2003, US Airways Express crash in Charlotte, NC with 21 fatalities (NTSB ID number DCA 03MA022) and the December 19th, 2005, Chalk Ocean Airways crash in Miami, Florida with 20 fatalities (NTSB ID number DCA 06MA010). In both of these accidents, the NTSB cited "faulty maintenance and lack of FAA oversight" as causal factors. The FAA has full knowledge of the St. George safety issues in question; however, it did not share

this information with the NTSB during the accident investigation. FINDING: NON-CONCUR. This allegation is covered in the process issues section."

It is hard to determine exactly what the FAA "non-concur" refers to in these statements of fact. On page 14, the FAA states, "The US Air Express accident was determined to be caused by faulty maintenance. An examination of the airman records with that accident indicates that no mechanic who worked on the aircraft received their mechanic certificates through St. George Aviation." This statement does not fully answer the question about whether the maintenance facility that conducted faulty maintenance on the accident aircraft employed individuals that held St. George certificates. This is not a full disclosure. More significant for air safety, there is no statement that the relevant mechanics were properly certified, and under what standards.

The FAA also states on page 14, "A formal coordination process was not established with air carriers, the NTSB, or the Department of Transportation to determine whether or not the mechanics initially obtaining their certificates from St. George Aviation were involved in an accident or incident, however, normal accident investigation procedures are followed which includes a review of relevant airmen files associated with the accident or incident. AFS-310 follows an informal procedure to verify that St. George airmen are not involved in maintenance related accidents or incidents."

There is no such thing as an "informal procedure." FAA guidance contains no "informal procedures" and this statement is just a smokescreen for the fact that the FAA's indeterminate procedures were inadequate to prevent this tragedy. Moreover, the FAA has previously admitted that they had no such process in place. This is another example of FAA's disregard for its responsibility to public safety. In light of the consequences, FAA has an affirmative duty to spell out what procedures were relied on, and failed.

The OSC Report (S10-071023-013) contained in Appendix A Exhibit 23, page 5, in which OSC found, "FAA admits, in response to a FOIA request sent on Mr. Bruno's behalf, that it has established no formal coordination or cross-referencing program with regard to NTSB accident investigations, when the investigative findings determine that faulty maintenance contributed to a crash." OSC went on to say, "Without this critical piece of safety information, FAA has not credibly substantiated their claim that there was 'no conclusive measurable impact on aviation safety and the flying public that can be attributed to individuals tested at [St. George].'" The critical information is still missing.

Part B: FAA Response to OSC's Supplemental Questions

OSC's additional questions to the FAA brought out more critical information. Much of the FAA's response to OSC confirms its lack of due diligence in addressing the public safety issues that were caused by the St. George criminal activities.

In the FAA's response to OSC's question number 3, "Was the FAA's document review definitive?" OSC has discovered new information. The FAA now reveals that in addition to working on the accident aircraft, the St. George mechanic was also an inspector for the Chalk's company. This means that this individual had broad-ranging responsibilities for the maintenance of Chalk's entire fleet of aircraft. He was promoted to a position by Chalk that gave him a higher level of responsibility than just a company mechanic. This makes the cover up by the FAA all the more egregious because holders of these fraudulently obtained FAA certificates have found their way into the aviation system to positions where they actually have oversight responsibility of other mechanics' work. The FAA does not know how many of these fraudulent certificate holders have found their way into positions of higher responsibility. The public trust is once again egregiously violated.

In the FAA's response to OSC's question number 4, "Please clarify the basis for the FAA's position that, when conducting reexaminations, the FAA has the discretion to deviate from the testing format and standards used in the initial mechanics' certification program (set forth in 14 CFR Part 65). Please provide the relevant legal citations that support the FAA's position."

In its response, the FAA cites 49 USC §44709 that allows it discretion on how to reexamine airmen. The FAA goes on to state "There is no requirement that a reexamination must, in effect, repeat the original certification testing process provided for under Part 65."

It is this very authority contained in 49 USC § 44709 that allows the FAA to administer a full certification test to individuals that have NEVER demonstrated competency to the original certification standard. This is the situation with the St. George certificate holders. In an abuse of this discretionary power, the FAA is allowing these individuals to retain their St. George issued certificates despite the fact that they never demonstrated the required competency. The FAA is deliberately avoiding the root of the problem.

Once again FAA fails to accept and acknowledge that its discretionary powers are to provide for public safety, not to evade accountability for its safety mandate. The FAA's actions have consistently abused their discretionary authority. Please see my January 15, 2009 comments to OSC, on pages 5 and 6, where I describe how the exercise of "FAA 'DISCRETION' AMOUNTS TO FRAUD" in this case.

Additionally, in the FAA's assembled response binder, Appendix A Exhibit 22, contains internal FAA correspondence about a case of improperly tested mechanic applicants in the FAA's Southwest Region in the mid 90's. This internal correspondence admits that the FAA, ". . . established the oral and practical exam for the 609 applicants. . . . We issued, the then 609 re-examination to all applicants. We, the FAA set up for free, re-exam opportunities in San Antonio, Dallas and Houston." This is an FAA documented case of administering the practical portion of re-examinations conducted under FAA re-examination authority, as should be done. Apparently, the FAA has no problem with

disparate treatment when it comes to public safety and then hiding their malfeasance behind "discretion."

CONCLUSION

My repeated statements of the facts, over seven years, in response to the FAA's continual attempts at evasion of its responsibilities to the public has become an over-documented case of FAA gross mismanagement, abuses of authority and creating a specific danger to the public.

Then DOT Secretary, Mary E. Peters' 9/15/08 letter to OSC states, "As FAA's report additionally explains, the agency recently has made significant enhancements to its oversight of designated examiners with the expectation that it can prevent in the future a situation like that which occurred with the designated mechanic examiners at St. George Aviation."

As Sec. Peters was signing her name to this statement with FAA assurances, a carbon copy case of St. George was taking place in San Antonio, TX. This criminal activity is under "Tobias Aviation" and the DOT/FAA has issued Notice N 8900.86, effective 8/9/09, titled "Reexamination of Airmen Tested by Designated Mechanic Examiner Bryan Tobias"(copy attached). This notice is a warmed over version of the St. George Bulletin FSAW 04-10B, and once again eliminates the practical test requirement from the reexamination of holders of fraudulently issued FAA A&P mechanic certificates.

The FAA's widely publicized mishandling of the St. George Aviation criminal case has given rise to a carbon copy operation. How many others are there like St. George and Tobias? As it stands, with full FAA knowledge and "discretion", between St. George and Tobias, there are now at least 3,000 FAA certificate holders operating in the aviation industry that have NEVER met the certification standards for the certificates that they hold.

The recommendations in my January 15, 2009 comments to the OSC continue to stand. Violation of the public trust that leads to loss of life is as bad as it gets. The OSC must hold the FAA accountable to deter the FAA from mishandling future retesting and monitoring of mechanic certificate holders from known fraudulent issuers.

Sincerely,

Gabriel Bruno