



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

**Analysis of Disclosures, Agency Investigation and Reports,
and Whistleblower Comments**

Summary of OSC File Nos. DI-07- 2793 and DI-07-2868

Charalambe B. "Bobby" Boutris and Douglas E. Peters (the whistleblowers), Aviation Safety Inspectors with the Federal Aviation Administration (FAA), disclosed serious allegations concerning the inspection and maintenance program of FAA's Southwest Airlines Certificate Management Office (SWA CMO), Irving, Texas. They alleged that FAA employees engaged in conduct that constitutes a violation of law, rule or regulation, gross mismanagement, and an abuse of authority, all of which contributed to a substantial and specific danger to public safety.

The whistleblowers reported that the Principal Maintenance Inspector (PMI) for Southwest Airlines (Southwest) knowingly allowed the airline to operate aircraft in passenger revenue service in an unsafe or unairworthy condition, after the inspection dates for airframes had passed and without a required maintenance check. Southwest had overflowed a fuselage inspection required by an Airworthiness Directive (AD). The whistleblowers reported these allegations to FAA officials and some investigation was conducted. The whistleblowers alleged, however, that the investigation was deliberately incomplete, and that no action was taken to ensure future compliance with ADs and completion of required maintenance checks. Thus, the safety of the flying public continued to be jeopardized. The whistleblowers disclosed that FAA management failed to respond to these safety issues, choosing instead to allow favoritism to the airline to outweigh safety concerns.

The Office of Special Counsel referred these allegations to the Honorable Mary E. Peters, former Secretary of Transportation, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Peters tasked the Honorable Calvin Scovell, III, DOT Inspector General (OIG), with conducting the investigation. OSC received a report from Secretary Peters dated December 29, 2008, and a supplemental report from OIG dated April 30, 2009. The investigation substantiated the whistleblowers' allegations and the whistleblowers commented on the reports. OSC has reviewed the reports and the whistleblowers' comments. Based on that review, we have determined that the agency reports contain all of the information required by statute, and that the findings of the agency head appear reasonable.

The Whistleblowers' Disclosures

Background

Mr. Boutris, who consented to the release of his name, worked in the field of aviation maintenance and inspection in the private sector for approximately 20 years before joining

FAA in 1998. He began working with FAA as an Aviation Safety Inspector in the Dallas/Fort Worth Flight Standards District Office. Mr. Boutris held several positions in that office, eventually becoming the PMI for several air carriers. In March 2003, he requested and received an assignment to the SWA CMO and worked as one of the maintenance Partial Program Managers (PPM) for the Boeing 737-700 fleet. Mr. Peters, who also consented to the release of his name, has worked for FAA since 2001. At the time of the disclosures, he served as the Data Evaluation Program Manager for to the American Airlines (AMR) CMO.

The Information Disclosed

Mr. Boutris and Mr. Peters disclosed that Douglas T. Gawadzinski, former Supervisory Principal Maintenance Inspector (SPMI or PMI) assigned to the Southwest CMO, and others, violated FAA national policy and regulations governing the maintenance of aircraft. They alleged this resulted in chronic, systemic, and repetitive non-compliance maintenance issues. They asserted that SPMI Gawadzinski knowingly allowed Southwest to keep aircraft, which were not safe, in passenger revenue service. They also stated that Inspector Larry Collamore knew that the aircraft were not safe but neither challenged SPMI Gawadzinski's actions nor reported the safety issues.

The whistleblowers explained that FAA issues ADs to address unsafe conditions on aircraft, aircraft engines, propellers and appliances. AD requirements are mandatory and set forth in the Code of Federal Regulations at 14 C.F.R. Part 39. FAA notifies airlines of the existence of a known unsafe condition which is likely to exist or develop in other products of the same type design. ADs developed by FAA specify inspections that must be carried out, conditions and limitations that must be complied with, and any actions that must be taken to resolve an unsafe condition. These inspection requirements have due dates, or become due, according to the number of flight hours or cycles logged by an aircraft.

The whistleblowers reported that when an airline discovers non-compliance with an AD, the airline may make a voluntary disclosure under the Voluntary Disclosure Reporting Program (VDRP), in order to avoid certain penalties. Advisory Circular 00-58A provides the guidelines for the VDRP. Under this Circular, entities which operate under Title 14, such as airlines, may voluntarily disclose violations to FAA and receive a letter of correction in lieu of a civil penalty. However, in order to avoid civil penalties, specific procedures must be followed when reporting non-compliance. When an airline self-discloses, non-compliance with the AD must cease as of the date the non-compliance is discovered. This includes grounding the affected aircraft until the requirements of the AD have been met.

Self-Disclosure and AD 2004-18-06

According to the whistleblowers, on March 15, 2007, Southwest informed SPMI Gawadzinski by telephone that on March 14, 2007, during an AD compliance records review, their AD compliance personnel had discovered that some of their aircraft had overflown the inspection requirements of AD 2004-18-06. The AD requires inspections of the fuselage on the Boeing 737-200, -200C, -300, -400, and -500 aircraft and states that the inspections are

“necessary to find and fix fatigue cracking of the skin panels, which could result in sudden fracture and failure of the skin panels of the fuselage, and consequent rapid decompression of the airplane. This action is intended to address the identified unsafe condition.” At the time of its initial report, Southwest estimated that possibly 100 Boeing 737-300 aircraft had overflowed the AD. On March 19, 2007, Southwest, via the VDRP, updated the information provided on March 15, 2007, and reported that only 47 aircraft were affected.

During an FAA records review, Mr. Peters discovered that Southwest did not cease operations of the affected aircraft when the non-compliance with AD 2004-18-06 was discovered. Despite the requirement to take immediate corrective action at the time of the self-disclosure, Southwest continued to fly the aircraft in passenger revenue service between March 15, 2007 and March 23, 2007, until they could be routed to a maintenance base to conduct the overdue AD inspections. Subsequent inspections revealed fuselage skin cracks in the area affected by the AD, in addition to several cracks outside the area of inspection. The inspection requirements of AD 2004-18-06 were instituted in response to the Aloha Airlines accident in which the top of a Boeing 737 aircraft peeled back during flight due to undetected cracks in its fuselage. The continued operation of Southwest aircraft could have resulted in the equipment failures outlined in the AD with catastrophic consequences for the flight.

On March 22, 2007, Mr. Boutris was conducting night surveillance inspections at the Southwest Chicago Midway maintenance facility when he saw personnel repairing a fuselage crack on Southwest aircraft, N300SW. He reviewed the aircraft's records and discovered that the airplane had been recently used to fly commercial passengers. He confirmed with Inspector Collamore that the crack found was in the fuselage, an area of the aircraft covered by the AD inspection requirements. Inspector Collamore verified that this aircraft was part of the VDRP report.

The whistleblowers alleged that the non-compliance did not cease upon self-disclosure, but rather, the airline continued to operate aircraft in an unsafe condition for approximately two weeks despite the fact that the overdue inspections were identifying fuselage cracks on the areas governed by the ADs. In addition, SPMI Gawadzinski and Paul Comeau, a former FAA employee under SPMI Gawadzinski employed as the Southwest Manager for Regulatory Compliance, were aware of the safety issues and permitted the non-compliance. Significantly, in the VDRP report, under the section entitled, “Did Non-Compliance Cease After Detection,” Mr. Comeau falsely stated, and SPMI Gawadzinski falsely accepted, the entry “Yes.” In doing so, they accepted the false statements made by the airline and facilitated Southwest's circumvention of the VDRP requirements by knowingly allowing the affected aircraft to remain in passenger revenue service. The whistleblowers contend that the flights of the aircraft affected should have been terminated until the inspections required by AD 2004-18-06 were completed, and SPMI Gawadzinski should have followed the mandated FAA Guidance and 14 C.F.R. Part 39.7, and 39.11, and informed Southwest that it was required to cease all operations of the affected aircraft.

SPMI Gawadzinski's actions were investigated and a report issued on April 18, 2007, by Kermit Teppen and Cecil Whitrock, Assistant Managers, AMR CMO. The report concluded that SWA CMO SPMI Gawadzinski did not ensure that the non-compliance ceased or inform upper management of this significant event, stating that "the SWA CMO has a relaxed culture in maintaining substantiating data as well as any documents that would support any decisions made by the airworthiness unit."¹ In addition, the report states that "the affected aircraft operated for roughly 30 months without being inspected . . . and due to the past events pertaining to B-737 skin fatigue, this should have been considered a serious safety issue."

Failure to Enforce Inspection Requirements

Mr. Boutris was tasked with conducting a review of the records of Southwest's compliance with ADs, including an AD Management Safety Attribute Inspection (SAI). The SAI inspection evaluates the content of the airline's manual system and procedures and determines if they meet regulatory and FAA policy requirements. Based on his reviews, Mr. Boutris concluded that the overflying occurred because Southwest lacked the procedures, controls, and process measurements to manage and comply with the AD requirements. He emphasized that this was a chronic, well-documented problem with Southwest.

The whistleblowers alleged to OSC that on the date the non-compliance was discovered, Southwest was obligated to follow the requirements of 14 C.F.R., Part 39.7 and 39.11. Under those regulations, Southwest was required to take the affected aircraft out of service and conduct the AD inspections. Mr. Boutris reported that in the past, Southwest had operated in accordance with regulations. After Southwest hired Mr. Comeau to interface with FAA and oversee compliance issues, the airline's compliance and safety practices deteriorated.

Standby Rudder Power Control Unit Hydraulic System Internal Leakage Check

In April 2007, Mr. Peters became aware of a VDRP self-disclosure that Southwest had overflowed a required maintenance check of the Standby Rudder Power Control Unit Hydraulic System Internal Leakage Check on 70 aircraft. Southwest was given 14 days to complete the required inspection, with the knowledge and consent of SPMI Gawadzinski. Both Southwest and SPMI Gawadzinski falsely reported in the VDRP report that the non-compliance ceased after detection. In fact, Southwest was granted permission by SPMI Gawadzinski to continue operation of the aircraft in passenger revenue service for 14 days until they could be routed to a location where the maintenance inspection could be completed.

Mr. Boutris reported that the non-compliance went undetected for over one year. Although the VDRP, dated March 20, 2007, indicated that Southwest discovered the over-fly

¹Federal Aviation Administration, Memorandum from Kermit Teppen/Cecil Whitrock, Assistant Managers, AMR CMO, to Mike Mills, Manager, SWA CMO, dated April 18, 2007.

on March 19, 2007, the affected aircraft continued in passenger revenue service for an additional 9 days after the date of detection, due to a lack of available manpower and equipment. The whistleblowers maintained that Southwest was allowed to continue revenue flights until it could schedule the maintenance and inspections at its convenience. They asserted that there is no provision for or justification in the self-disclosure program for continuing passenger operations at the convenience of the carrier while maintenance checks are pending. The matter was closed by FAA on April 10, 2007, and no follow-up was done to ensure tracking and completion of all of the outstanding corrective actions, as required by SWA CMO's Quality Procedures Manual.

Inappropriate Communications Between SWA CMO and Southwest Regulatory Personnel

Mr. Peters alleged that in June 2007, he reported his concerns regarding inappropriate communications between SWA CMO Inspectors, and Southwest Regulatory Compliance Department personnel, over which the CMO has oversight responsibility. During his assignment to an internal investigation (the AD 2004-18-06 overflight), Mr. Peters became aware that Inspectors were sharing information with Southwest Regulatory Compliance Department personnel regarding his access to Southwest's maintenance records. Mr. Peters learned that Mr. Comeau shared a computer report detailing FAA employees' access to Southwest maintenance records using the internet-based program Imagio. Mr. Peters believed that the level of information available to the Southwest Regulatory Compliance Department personnel, including access to maintenance records and the conduct of an internal investigation, was indicative of the inappropriate relationships between FAA Airworthiness Unit Inspectors and SPMI Gawadzinski, and Southwest over which FAA has oversight authority. Mr. Peters alleged that Inspectors Sanford Stennis and Mr. Bassler, in the presence of Acting Manager Robert Naccache, admitted that they were sharing information with Southwest and that Mr. Comeau had showed them the report.

Report of the Department of Transportation

Secretary Peters delegated authority to investigate the allegations and write a report to the DOT OIG. The agency's report includes a letter from Secretary Peters and an Action Memorandum from Inspector General Scovell, to the DOT Secretary (the Report), and a letter from Rick Beitel, Assistant Inspector General for Washington Investigative Operations (the Supplemental Report), with 10 exhibits. Copies of the Report, Supplemental Report and exhibits are enclosed with this Analysis. A brief summary of the findings and actions taken in response to the findings, follows.

The investigation substantiated the whistleblowers' allegations. OIG found that "an overly collaborative relationship between the air carrier and the PMI enabled the airline to violate FAA national policy and regulations regarding the maintenance of aircraft." Specifically, the investigation found that the PMI², Mr. Gawadzinski, knowingly allowed

²Mr. Gawadzinski was the Supervisory Principal Maintenance Inspector (SPMI), but is identified in the report as Principal Maintenance Inspector (PMI).

Southwest to continue to operate aircraft in an unsafe or unairworthy condition after the inspection date for an AD-mandated fuselage inspection had passed. According to the OIG report, between March 15, 2007 and March 23, 2007, Southwest flew 1,451 flights, carrying an estimated 145,000 passengers, on 46 non-compliant Boeing 737's.

The investigation further found that Mr. Gawadzinski permitted and encouraged Southwest to self-disclose the violation through the VDRP, which allowed the airline to avoid penalties. Southwest falsely reported that it had inspected or grounded all affected aircraft (or that non-compliance with the AD ceased as of the date of discovery). Southwest continued to operate the aircraft for eight days after the carrier notified FAA. The investigation further revealed that the Partial Program Manager, Vincent Collamore, although subordinate to Mr. Gawadzinski, was aware of the improper self-disclosure but neither questioned Mr. Gawadzinski's actions nor reported the matter to his supervisors.

Notably, the OIG investigation found that regional officials failed to correct what were determined to be long-standing, documented problems at the SWA CMO, and that this created a serious lapse in regulatory oversight and needlessly put the flying public at risk. As early as 2005, regional officials were put on notice of a pattern of lax oversight by Mr. Gawadzinski, yet failed to take action.

The inaction on the part of the FAA regional managers, together with the deliberate actions by the PMI and Southwest, resulted in Southwest continuing to operate the affected aircraft. The OIG determined that during the eight days, several of the affected aircraft landed at airports with inspection and repair facilities, but Southwest continued to delay inspections. Fuselage cracks were discovered on four of the affected 737s. The Report credits Mr. Boutris with ending Southwest's flights of non-compliant aircraft noting that had he not observed, in the course of his inspection duties, the repair of the fuselage cracks on the first 737, Southwest "might have continued to operate the other four Boeing 737's in an unairworthy condition, for an indefinite period of time, possibly with catastrophic consequences."

FAA's Failure to Conduct Adequate Follow-up

OIG found that after the AD overflight was discovered, FAA failed to conduct sufficient follow-up to ensure that Southwest implemented appropriate remedial action. Only after Congressional staff began reviewing the whistleblowers' allegations did FAA request a list of tail numbers of affected aircraft, eight months after the self-disclosure was accepted. As a pre-condition to accepting a self-disclosure, an FAA employee is required to verify that the airline has taken appropriate corrective actions. Obtaining the tail numbers of the affected aircraft would have been critical to making this verification. PMI Gawadzinski, accepted the self-disclosure and closed the matter weeks later, without ever obtaining this information.

The report addressed the proposed and final comprehensive fix reported by Southwest in response to the AD violation. Mr. Gawadzinski accepted this proposed fix but did not

indicate he had reviewed it. The OIG opined that Mr. Gawadzinski should not have accepted the proposed fix, because it was “inadequate to effectively resolve the root cause of the AD overflight.

Although Southwest, in an internal audit, claimed that the fix had proved to be effective in forestalling future AD violations, and although FAA accepted this assertion, OIG found to the contrary.

“[T]he March 2007 overflight of AD 2004-18-06 was by no means an isolated incident, and additional AD violations did in fact occur after SWA implemented the comprehensive fix. For example, we found that three more SWA aircraft overflew AD 2004-18-06 on February 22, 2008, and a fourth did so on March 12, 2008, when SWA maintenance staff neglected to perform timely fuselage inspections. In addition, on March 12, 2008, 38 SWA aircraft overflew a different AD when SWA failed to perform required inspections.”

OIG did not identify these additional violations until after SWA was asked to validate data previously provided to OIG. The report concluded, therefore, that had FAA undertaken adequate follow-up measures and validated the data, it would have discovered these violations more than 18 months earlier. Further, although FAA initiated a series of internal reviews and, as early as April 2007, concluded that Mr. Gawadzinski had been “complicit in allowing SWA to continue flying aircraft in violation of the AD,” FAA did not attempt to determine the root cause of the safety issue, take action against Mr. Gawadzinski, or pursue enforcement action against SWA until after Congressional staff began their inquiry more than six months later. Regional FAA officials received the initial investigative report from FAA Security in July 2007, and a supplemental in October 2007. FAA did not take action to address the AD violations until November 2007.

Systemic Problems at the SWA CMO

The OIG concluded that the AD overflight and FAA actions were the result of longstanding, systemic management and operational problems at the SWA CMO, which had been identified to regional FAA officials as early as September 2005. The report identified three key areas in which FAA actions contributed to the longstanding problems. First, the misuse of the VDRP; a standard practice by Mr. Gawadzinski of permitting self-disclosures where they should not have been accepted and allowing false information to be entered into, and to remain in, the database. Second, an overly collaborative relationship between FAA and SWA caused significant compromises in enforcement and follow-up. This became severe enough that it adversely affected inspectors’ abilities to perform their jobs. Finally, the investigation determined that the FAA repeatedly failed to adequately address the systemic problems their own internal investigations had revealed.

Significantly, the OIG investigation determined that the “chronic maintenance issues plaguing the SWA CMO went undetected for so long in part due to FAA oversight lapses at

the regional and national levels.” FAA officials did not ensure that SWA CMO inspectors carried out critical safety inspections required by the Air Transportation Oversight System (ATOS). OIG found that although inspectors must evaluate air carriers’ systems for monitoring AD compliance every five years, such inspections had not occurred since 1999. At the time of the whistleblowers’ disclosures, 21 key maintenance-related ATOS inspections were at least five years overdue.

OIG found that FAA management at SWA CMO fostered a culture which viewed the air carrier as FAA’s primary customer. This approach was institutionally mandated at FAA through its Customer Service Initiative adopted in 2003. The OIG investigation found that FAA’s customer service orientation had a pervasively negative impact on its oversight program in the Southwest Region.

Secretary Peters pledged to take corrective action in response to the whistleblowers’ allegations. In addition to adopting six of eight recommendations made by OIG as a part of its testimony before Congress in the April 2008, hearing, Secretary Peters reported that FAA also initiated a series of disciplinary actions for culpable employees. According to the OIG Action Memorandum, FAA planned to issue a Notice of Proposed Removal to Mr. Gawadzinski. Mr. Gawadzinski retired days before issuance of the letter. Mr. Collamore was issued a Notice of Proposed Removal and subsequently retired. Mr. Stuckey and Mr. McGarry received Notices of Proposed Administrative Action. FAA has not taken final action in respect to these individuals.

Secretary Peters also noted that FAA sought a \$10.2 million civil penalty against Southwest.³ The Secretary noted that because FAA did not satisfactorily carry out its previous oversight responsibilities, she would continue to follow-up with FAA on commitments to corrective action.

Supplemental Report of the Department of Transportation

At OSC’s request, DOT’s OIG transmitted a Supplemental Report, which provided clarification and additional information on a number of issues. The OIG explains that the Audit report entitled, *Review of FAA’s Oversight of Airlines and Use of Regulatory Partnership Programs*, is part of the agency’s report in this matter. The Audit report is included as part of the agency’s response to the whistleblowers’ allegation that Mr. Gawadzinski and others violated FAA policy which led to chronic, systemic maintenance issues.

The Supplemental Report also states that, based on the information obtained during the investigation, the Secretary concluded that Mr. Gawadzinski and Mr. Collamore violated FAA Order 8300.10 and 14 C.F.R. § 39 by knowingly allowing Southwest to operate aircraft in revenue service in an unsafe or unairworthy condition.

³The penalty has since been mitigated to \$7 million.

A fuller explanation of the OIG's investigation and findings on the allegations that the standby rudder power control unit hydraulic system internal leakage check is also presented. The OIG investigation concluded that the overfly occurred because of a lack of attention by Southwest employees when information was transferred from one task card to another. Southwest was attempting to lengthen the time between maintenance checks and did not note that this inspection task was required every 12,500 hours. The Supplemental Report states that Mr. Gawadzinski did not verify the population of aircraft affected by this overfly and, instead, accepted Southwest's representation at face value. He also approved the comprehensive fix proposed by the airline and closed the matter with a Letter of Correction on April 10, 2007. The Supplemental Report chronicles the reviews of Southwest's non-compliance and the inaccuracies of the VDRP database self-disclosure. FAA Southwest Region ordered a review of this matter in November 2007. The review, conducted by Peter Mars, the PMI for the Dallas/Fort Worth FSDO, found that Southwest had identified and inspected all aircraft potentially affected and brought those aircraft into compliance. This matter was consolidated with other FAA pending enforcement actions against Southwest; the airline was fined \$7.5 million in March 2009 as part of a settlement agreement with FAA on a number of violations.

The OIG also provided additional information on the inappropriate communications between SWA CMO and the Southwest regulatory compliance personnel. The OIG's initial report concluded that there was an overly collaborative relationship between the SWA CMO and the carrier. Mr. Peters believed that Inspectors John Bassler and Sanford Stennis had shared information regarding his access to Southwest maintenance records with the airline and that this was further indication of an inappropriate relationship between the FAA inspectors and the airline. Mr. Peters wrote to Acting CMO Manager Bobby Hedlund in June 2007, regarding his concerns about Mr. Basslers' communication with Southwest. The supplemental report states that Mr. Bassler did not violate any FAA Orders because he did not access the Southwest records himself, but rather, became aware that the whistleblowers had accessed Southwest's records through the Imagio computer system, when he reviewed a report at a meeting at Southwest.

Mr. Hedlund explained to OIG investigators that Mr. Peters was conducting a review at the request of former CMO Manager Mike Mills and that the work was to continue even though Mr. Mills was no longer the CMO Manager. There appears to have been some misunderstanding with regard to Mr. Peters' task among the SWA CMO staff, despite the attempts of Robert Naccache, SWA CMO Assistant Manager, to explain Mr. Peters' activities. Mr. Comeau, a former SWA CMO inspector employed by Southwest, told several SWA CMO employees that Mr. Peters might be improperly accessing the airline's maintenance records thereby adding to the misinformation. Because he believed that the issue of Mr. Peters' data review had been addressed by Mr. Naccache, Mr. Hedlund did not take any follow-up action in response to Mr. Peters' e-mail, other than to have a follow-up conversation with him. In addition, at the time Mr. Peters voiced his concern, Mr. Hedlund was aware that FAA Security was already investigating allegations of an overly collaborative relationship between Mr. Comeau and Mr. Gawadzinski so he took no further action.

Mr. Bassler has since transferred to the Dallas/Fort Worth FSDO and Mr. Stennis has transferred to the Dallas FSDO.

The Supplemental Report provides additional information on those interviewed in connection with the investigation on these allegations. Five individuals at FAA Southwest Region Counsel's office were interviewed on a number of issues including pending enforcement actions against Southwest, post-employment advice provided to Mr. Comeau, and questions regarding enforcement actions and penalty decisions generally. The OIG audit staff interviewed Mr. Comeau, Mr. Gawadzinski, and Mr. Ballough. The OIG investigative staff was not present for those interviews. No formal records were prepared or maintained on the interviews with Mr. Sabatini or Mr. Ballough.

In his interview, Mr. Stuckey stated that he informed Mr. Ballough of the issues regarding Southwest in late April 2007, before the FAA Security investigation of May 2007. Investigators were unable to interview Mr. Ballough regarding Mr. Gawadzinski because of Mr. Ballough's serious medical condition. He has since retired.

In addition, the report states that no FAA officials outside the Southwest Region were formally interviewed. OIG investigators did not pursue interviews outside the region because all those interviewed at the SWA CMO and FAA's Southwest Region denied elevating Mr. Boutris' safety concerns of 2005 and 2006, or Mr. Eatmon's report suggesting Mr. Gawadzinski was overly collaborative with Southwest, to FAA headquarters. The Supplemental Report also provides a list of the documents describing the safety issues and of the distribution of those documents in support of its conclusion that no FAA officials above the regional level were made aware of these continuing safety concerns.

OIG audit has concluded its review of Southwest and continues focusing its review of nationwide AD compliance. Toward that end, OIG audit is examining FAA's nationwide AD review, which was conducted in Spring 2008. The Supplemental Report notes that the audit was suspended pending use of the data collected for a future hearing by the House Transportation and Infrastructure Committee. In addition, OIG audit views the ongoing ATOS audit as a follow-up to the issues presented by the Southwest case. The ATOS inquiry includes trying to determine if the missed inspections of Southwest represent an anomaly or a widespread problem among major air carriers. The audit report is expected to be released mid to late summer 2009.

The Supplemental Report notes that FAA did not concur with the recommendation of OIG audit that inspectors be rotated and that an independent office be established to investigate allegations brought forth by inspectors. Former Secretary Peters' Independent Review Team (IRT) reviewed FAA's approach to safety and managing risks in civil aviation. A copy of the IRT's report was included with the OIG's supplemental response to OSC. The IRT proposed a different strategy for managing civil aviation. Under this alternative proposal, FAA would routinely schedule Internal Assessment Capability (IAC) reviews of offices where the same management officials have been in place for a period of years, e.g., 3-

5 years. On September 10, 2008, former Secretary Peters announced that FAA would implement this recommendation and the 12 others proposed by the IRT.

Finally, in response to OSC's request for information on four outstanding corrective actions, OSC received additional information on November 13 and 20, 2009. The agency notified OSC that a Notice of Proposed Rulemaking regarding post-employment restrictions for inspectors was published in the Federal Register for November 20, 2009. The rule proposes to put limits on airlines and other operators hiring FAA safety inspectors and their managers for two years after those employees leave the agency. In addition, in reference to planned audits of the Air Carrier Evaluation Program (ACEP), the agency reported that FAA had advised that the Director of the Flight Standards Service "has been briefed" and that a final decision on the ACEP audits would be made after the Associate Administrator for Aviation Safety "has been briefed." The agency did not provide a response to the two remaining inquiries.

The Whistleblowers' Comments

Mr. Boutris' Comments

Mr. Boutris began by stating that the OIG investigation addressed the aviation safety issues raised in his disclosure, but noting portions of the report were too general and did not provide specific information on the who, what, where, and when of the issues. Thus, Mr. Boutris did not believe that all responsible parties had been held accountable. Moreover, Mr. Boutris maintained that the OIG investigation failed to address several key important elements, which are briefly summarized here.

Mr. Boutris raised the safety concerns, which later became part of his disclosure to OSC, to FAA Special Agent David Friant on March 29, 2007. He provided Mr. Friant with detailed information supporting his concerns. In his comments, he asks if OIG followed-up with Mr. Friant to see what he did with the information provided by Mr. Boutris.

Another important point unanswered by the report is the date that Mr. Sabatini and Mr. Ballough became aware of Mr. Boutris' concerns and the safety lapses. Mr. Boutris tried for six months to elevate the safety issues and followed FAA's chain of command. There was no response until Mr. Boutris took his concerns outside the FAA. Mr. Boutris asks the following question: Did OIG question Mr. Sabatini and Mr. Ballough to determine their knowledge of these issues and when they became aware of them?

Mr. Boutris also wrote that there is an ethics and accountability issue presented by the actions of Inspector John Bassler. As described in his comments, shortly after he filed his safety disclosures, Mr. Boutris became the subject of an FAA security investigation and was removed from his duties as an inspector. After several months, the allegations were unsubstantiated and Mr. Boutris returned to his duties. Mr. Boutris maintained however, that during the FAA Security investigation, Mr. Bassler falsely stated that Mr. Boutris had smuggled contraband liquor into the United States. In addition, Mr. Boutris noted that

Mr. Bassler apparently spoke with Southwest personnel about Mr. Boutris' whistleblowing in an attempt to interfere with the investigation. The OIG report did not appear to adequately investigate this matter and whether Mr. Bassler's statements about him constitute a violation of FAA Order 8900.1, which proscribes irresponsible, false or defamatory statements that attack the integrity of other individuals or organizations. Instead of addressing Mr. Bassler's conduct, FAA gave him more authority by promoting him to Principal Inspector.

Mr. Boutris also reports that he was subjected to reprisal for whistleblowing and harassment by co-workers. He believes that this hostile work environment was created by management and supported by some inspectors who were trying to divert attention from the safety concerns reported. Mr. Boutris noted that during the Congressional hearing held on April 3, 2008, the DOT Inspector General stated that more time was spent on the messenger than the safety concerns at issue. Yet, the report does not indicate that there was any follow-up or that those responsible were held accountable.

Another issue raised in the comments is the initial investigation into Mr. Boutris' safety allegations conducted by Terry Lambert, an FAA manager at the Regional Office. Mr. Lambert found in his investigation that FAA Inspector Matthew Crabtree, Mr. Gawadzinski's assistant, was also aware of the VDRP regarding the 47 Southwest aircraft. In addition, Mr. Lambert's investigation raised a number of additional issues regarding training attended by Inspector Crabtree and the payments associated with that training. Without investigation into Inspector Crabtree's knowledge of the VDRP matter, and these other issues, Mr. Boutris does not believe that the allegations of abuse of authority and gross waste of funds have been thoroughly answered.

Mr. Boutris also comments that during the April 3, 2008, hearing, Mr. Lambert testified that he was directed by an FAA regional management official, Steve Douglas, to destroy documents relevant to the safety allegations. Significantly, Mr. Boutris notes, Mr. Douglas directed Mr. Lambert to destroy the documents after FAA management was aware that Congress was looking into the safety issues. The OIG report does not contain any information regarding investigation into this matter. Since the hearing, Mr. Douglas has been promoted, as have other FAA personnel involved in this matter, instead of being held accountable for his actions.

According to Mr. Boutris, OIG also should have addressed Mr. Gawadzinski's retirement prior to FAA issuing its Proposed Notice of Removal, and made it a part of his official personnel file. It appears that, despite his conduct, Mr. Gawadzinski can return to government employment at any time. Similarly, Mr. Boutris states that Thomas Stuckey, Division Manager, and Ron McGarry, his assistant, were well aware of his safety concerns approximately one year before the April 3, 2008 hearing. They took no action on the safety issues. Mr. Stuckey was allowed to retire after a significant time on administrative leave, and Mr. McGarry remains on Administrative Leave. The taxpayers, Mr. Boutris wrote, should not have to keep paying his salary.

Finally, Mr. Boutris commented that FAA Safety Inspectors take an oath to ensure airlines provide safe transportation for the public. Failing to hold FAA management and inspectors accountable for their actions or inactions sends the wrong message and erodes the foundation of the Inspector force making it difficult for those who follow the rules. By promoting employees who do not follow the rules, instead of holding them accountable, FAA condones and rewards their behavior. The “business as usual” attitude will not change until employees are held accountable.

Mr. Peters’ Comments

On May 19, 2009, Mr. Peters submitted comments on DOT’s initial report.⁴ Mr. Peters also provided comments on the Supplemental Report. He notes with concern that DOT OIG failed to probe ethics violations by FAA inspectors within the SWA CMO, and to refer these violations to the proper government agency with authority to enforce these regulations. The ethics standards are set forth in FAA Order 8900.1, Volume 1, Chapter 3, “Inspector Responsibilities, Administration, Ethics and Conduct.”

Conclusion

The Office of Special Counsel has reviewed the Report, Supplemental Report, and the whistleblowers’ comments. Based on that review, OSC has determined that the agency’s reports contain all of the information required by statute, and that the findings of the agency head appear reasonable.

⁴ Mr. Peters requested that his comments on the initial report not be made public.