

AFFIDAVIT OF HENRY F. HUGHES

My name is Henry F. Hughes and I reside at 4000 Mount Atlas Lane, Haymarket, Virginia, 20169. In 1996, I was assigned to respond to and participate in the investigation of the crash of TWA Flight 800 as Senior Accident Investigator for the National Transportation Safety Board [NTSB]. I was initially assigned as the Survival Factors Specialist on the NTSB's "Go-Team" responding to the crash of TWA Flight 800. A Go-Team is made up of an Investigator-in-Charge and a group of specialists assigned to respond to the accident scene. As the survival factors specialist, my responsibilities included looking at how and why people were injured, injury causing mechanisms, restraint systems and emergency response. Once it was determined that the Flight 800 crash was a non-survivable event, my tenure on the Go-Team ended.

Immediately thereafter, Mr. James Kallstrom, who was in charge of the FBI's investigation to determine whether or not the crash was caused by a criminal act, contacted NTSB senior management and requested that the interior of the aircraft be reconstructed. Dr. Bernard Loeb, who was the NTSB's Director of the Office of Aviation Safety, then assigned me to the task. My first responsibility was to establish a reconstruction area for the exterior, main fuselage and major components of the airplane inside a hangar at Calverton, New York. Shortly thereafter, I became Chairman of the Airplane Interior Documentation Group and supervised a team of ten investigators from various agencies and companies including TWA, the New York State Police, Suffolk County Police, the Federal Aviation Administration, Boeing and the International Association of Machinists and Aerospace Workers.

My Group and I were responsible for documenting and reconstructing the cockpit and passenger areas of the airplane, including the cargo bays. We were also responsible for determining whether or not any proposed scenario for the cause of the crash was consistent with the damage to the airplane interior components.

On a daily basis, we examined incoming aircraft parts from a forensic evidence perspective using protocols that I established. We examined them for holes and penetrations and identified component parts, determining whether they were part of the structure of the plane or of the interior and from where within the airplane each part came. Once we did that, we created a full-scale layout. We taped off a concrete area inside a separate hangar that had the same dimensions as the accident airplane. Then, along the center or keel line of the airplane, we established the different seating areas, a cockpit area and the cargo bay areas on a one-to-one scale. Then component parts were laid out on the floor in the same position they would have been in an intact airplane. To aid us in that effort, I sent my TWA and Boeing specialist to Boeing and TWA maintenance and we documented every modification made to the airplane from the date of manufacture to within a week prior to explosion. With that guide, we were able to construct on the floor in two dimensions the passenger seats, crew seats, toilets and all passenger components of the airplane. As more components came in, we were able to

reconstruct about 95% of the airplane. Then, using wooden frames and wire, we fit together the broken metal, seat parts and other components laid out on the floor to recreate almost all the seats, the spiral stairway, the cockpit and other areas of the airplane interior. We also re-built the galleys, lavatories, and cargo bay to complete our reconstruction of virtually the entire interior of the airplane. At that point, we were able to examine the interior and catalogue the specific types of damage sustained. That information was compared with a similar investigation and examination of the victims and their injuries overseen by NTSB forensic consultant and chief Army pathologist Colonel Dennis Shanahan. Our findings matched those of Colonel Shanahan.

As Group Chairman of the Airplane Interior Documentation Group, I also spun off an additional group to conduct a comparative analysis between the damage to the airplane and the passengers' injuries. This required building two distinct databases (one documenting the forensic evidence pertaining the damage and the other documenting the passenger injuries and locations) and then correlating them. Our resulting comparative analysis showed that in general, the injury to the passengers and the damage to the seats and the interior of the airplane correlated, i.e., if a passenger in a given seat was burnt, his seat was burnt. This was expected. What was unexpected was that unlike any other investigation my investigators and I had ever conducted, we discovered that there was no consistent pattern of thermal or impact injuries or damage anywhere on the plane. In other words, In one seat row, one person and his/her seat would be burned while the person and seat located right beside the burned person would have no visible injuries or burns and no significant seat damage. Then, the person and seat next to that intact passenger and seat, would be completely destroyed.

This absolute inconsistency of damage or injury pattern from one seat and victim to the next, led us to conclude that the most likely cause of this as well as the high degree of separation of the component parts of the interior early in the crash sequence, was an ordnance explosion caused by high explosives. The localized low order explosion that NTSB officials said resulted from ignited fuel vapors in a fuel tank between the wings would not have been powerful enough nor dispersed enough to create this kind of widespread damage.

The officially proposed low order explosion (or deflagration) would have caused localized damage to the airplane interior and thermal injuries to passengers and crew in the area where the explosion occurred. The people in the localized area of the explosion would have had similar injuries, which was not the case with Flight 800, where the damage to the interior and the victims' injuries were random.

As Group Chairman of the Airplane Interior Documentation Group, I was also responsible for overseeing the writing of the group's report outlining our findings. I was, however, specifically instructed not to provide an analysis of those findings, which was unprecedented for an NTSB accident investigation. Regarding groups providing analyses of their factual findings, the NTSB's Aviation Investigation Manual, Section 4.4, "Group

Chairman Factual, Studies, and Analysis Reports”¹ states: “Each group chairman shall submit an analysis report based on the information contained in his or her factual report...The analysis report should review and evaluate all facts documented by the group regarding their relevance to the accident and should state the principal findings and their relevance to a probable cause of the accident...group chairmen will submit their analysis reports...to the IIC [Investigator in Charge] for use in the production of the Board’s final accident report.” The result of group chairmen being ordered not to submit analyses of their findings was to censor and keep critical information about the forensic evidence out of the Board’s final accident report. Not including this information in the final accident report is tantamount to covering up the very analyses and expert determinations critical to accurately determining the cause of the crash.

I can confirm that the NTSB’s officially proposed scenario of an internal fuel-air explosion as the cause of TWA Flight 800’s demise is not consistent with the damage to the airplane interior components and the findings of the Airplane Interior Documentation Group that I chaired. Apart from my responsibilities as Group Chairman of the Airplane Interior Documentation Group, every two weeks I was tasked to train FBI evidence recovery teams on basic accident investigation evidence handling and biohazard safety.

This affidavit evidences my deep concern about the National Transportation Safety Board’s conclusions, which resulted from an egregiously conducted investigation. During that investigation, standard protocols and procedures were not followed, regulations governing these protocols and procedures were ignored and, in some instances, participants in the investigation actively undermined the investigation and committed illegal acts. Further, investigators were denied access to witness statements, radar information, and other forensic evidence to which they would normally have access. This irretrievably undermined a proper investigation of the crash.

I confirm that I am voluntarily submitting without any threats, inducements or coercion, this statement to the U.S. Office of Special Counsel. I have made a record of these events because never in my 26 years as an accident investigator for the NTSB did I see or experience such egregious disregard for NTSB regulations and procedures as I did with the investigation of TWA Flight 800. On a regular and ongoing basis from July 17, 1996 until my retirement on April 20, 2010 I directly witnessed, experienced or was made aware of numerous breeches of NTSB regulations, including failures to use proper and customary NTSB investigative practices. I also witnessed, was affected by and made aware of NTSB personnel breaking laws that prohibit fraudulent conduct and impeding a federal investigation. I am speaking out because the NTSB’s conduct of this investigation constitutes a serious breach of its public service mandate to the American people and the international flying public.

QUALIFICATIONS OF HENRY F. HUGHES

My professional career spanned a period of 42 years from 1968 to 2010. During that time

¹ Exhibit FF, Section 4.4, page 29

I was trained and employed as a United States Army Intelligence Specialist (counterintelligence) for four years, a police officer and detective (specializing in fatal accident investigation) with the Fairfax County, Virginia police department for more than twelve years and a certified multi-modal (aviation, highway, railroad, marine and pipeline) investigator with the National Transportation Safety Board for 26 years. During my tenure with the NTSB, I served as an Investigator-in-Charge, Senior Survival Factors Investigator, and Special Assistant to NTSB Board Member John Goglia. I also conceived and developed the NTSB's first occupational safety program and was the Safety Board's first occupational safety specialist. During my assignment to the Office of Aviation Safety as a Senior Accident Investigator, I was assigned to investigate survival factors, aircraft operations, air traffic control, structures, human performance and aircraft systems. During my tenure at the NTSB, I garnered more than twenty awards for outstanding performance, including a cash bonus for outstanding work on the TWA Flight 800² investigation.

OVERVIEW:

Well-established NTSB and International Civil Aviation Organization protocols and regulations govern the conduct of aviation accident investigations to ensure a careful, methodical and efficient means of factually establishing the cause of a crash. When those protocols are not followed and regulations breeched, the investigation is undermined and the true cause of a crash can remain factually undetermined. An undetermined cause of any crash creates serious, ongoing safety and security concerns for the flying public. Such is the case with the investigation of the crash of TWA Flight 800. Ongoing concerns also remain regarding participants in the Flight 800 crash investigation whose activities undermined the investigation and who have thus far not been held accountable for their actions.

DETAILS OF INCIDENTS

Week of July 17, 1996

On July 17, 1996, I was assigned as the Senior Accident Investigator and Senior Survival Factor Specialist of the NTSB's "Go-Team" for the TWA Flight 800 crash investigation. The "Go-Team" is an appointed group of NTSB first responders to an accident scene. In the case of the Flight 800 crash scene, the FBI was immediately and overwhelmingly present. Shortly after the crash, the FBI took control of the investigation under the presumption that a criminal act had occurred. Their presumption was primarily based on eyewitness accounts that indicated a missile had downed the airplane.

Title 49 U.S.C. §1131(a)(1)(A) and Title 49 U.S.C. §1132(a)(1)(A)³ clearly state the NTSB's mandate and authority regarding civilian aircraft accidents. "The National Transportation Safety Board shall investigate...and establish facts, circumstances, and

² Exhibit A: Hank Hughes employment documents and partial list of awards

³ Exhibit B: Title 49 U.S.C. §1131(a)(2)(A), "General Authority," p 116 and Title 49 U.S.C. §1132 (a)(A); "Civil aircraft accident investigations," page 118

cause or probable cause of...each accident involving civil aircraft.” Title 49 U.S.C. §1131(2)(A)⁴ further states that NTSB investigations have “priority over any investigation by another department, agency, or instrumentality of the United States Government.” At the time of the Flight 800 crash, there were no statutory provisions outlining a procedure for the NTSB to cede its investigative process to another agency. Because the FBI is responsible for investigating criminal violations of federal law, it can, if circumstances “reasonably indicate” that a civilian airline crash has been caused by a criminal act, step in to conduct its own investigation. Title 49 U.S.C. §1131(2)(A)⁵ allows the NTSB to “provide for the appropriate participation by other departments, agencies or instrumentalities” in an investigation, but there are no regulations allowing the FBI or any other agency to prevent or interfere with an NTSB investigation. Title 49 U.S.C. §1131(2)(B)⁶ states that even if the NTSB determines that circumstances reasonably indicate that an intentional criminal act occurred and relinquishes its investigative priority to the FBI, doing so “shall not otherwise affect the authority of the Board to continue its investigation...” This is not what happened in the case of the TWA Flight 800 investigation.

Even in the 2005 “Memorandum of Understanding Between the National Transportation Safety Board and the Federal Bureau of Investigation,”⁷ written five years after the NTSB closed its investigation into Flight 800, the “circumstances and method by which the NTSB’s investigative priority shall be transferred” to the FBI does not cede to the FBI any authority over an NTSB investigation or allow the FBI to interfere with an NTSB investigation:

“If the Attorney General, in consultation with the Chairman of the Board, determines and notifies the Board that circumstances reasonably indicate that the accident may have been caused by an intentional criminal act, the Board shall relinquish investigative priority to the Federal Bureau of Investigation. The relinquishment of investigative priority by the Board shall not otherwise affect the authority of the Board to continue its investigation under this section.”

Contrary to the previously mentioned federal regulations and even the ex post facto (to the TWA 800 investigation) 2005 Memorandum of Understanding, the FBI did not notify the Board of any circumstances that reasonably indicated Flight 800’s demise may have been caused by an “intentional criminal act.” Nonetheless, the NTSB leadership deferred critical aspects of its investigation to the FBI without protest or official requests for proper proof or factual information justifying ceding “investigative priority” to the FBI in the case of TWA 800. Having deferred its authority to the FBI, the NTSB failed to conduct its own investigation in conjunction with the FBI’s investigation in a manner

⁴ Exhibit C: Title 49 U.S.C. §1131(2)(A)(B)(C), re participation of other agencies, accident caused by intentional criminal act and preserving evidence of a criminal act

⁵ Ibid Exhibit C

⁶ Exhibit C: U.S.C. §1131(2)(B)[□] re relinquishing investigative priority to criminal investigation and Board’s responsibilities thereafter

⁷ Exhibit D: “Memorandum of Understanding Between the National Transportation Safety Board and the Federal Bureau of Investigation” p1

provided for in the Title 49 “General Authority” regulations⁸. Further, as the agency with expertise far superior to that of the FBI in gathering and preserving evidence from an aviation accident, the NTSB, by completely ceding to the FBI, also failed to ensure that evidence of a criminal act was preserved. If a Federal law enforcement agency suspects that an intentional criminal act has occurred, the NTSB has a responsibility to, “in consultation with the law enforcement agency...take necessary actions to ensure that evidence of the criminal act is preserved.”⁹ This did not occur.

The NTSB allowed the FBI to virtually commandeer the NTSB’s investigation, permitting the FBI to determine who would and who would not have access to the evidence. As a result, from the beginning of the wreckage/evidence recovery effort, the FBI, an agency with virtually no aviation accident investigation expertise, with an Evidence Recovery Team so inexperienced that I was asked to give them a crash course on the subject several weeks into the investigation, had virtually complete control of the critical initial evidence handling phase, even to the point of refusing NTSB investigators access to key wreckage and other hard evidence. The FBI, critically, also refused to allow NTSB investigators to interview eyewitnesses for months after the crash. FBI interviews and recording methods were, per the NTSB’s standards, neither thorough nor reliable. The cost to the investigation in terms of preserving evidence and getting thorough eyewitness accounts was incalculable. From the beginning to the end of the FBI’s participation in the Flight 800 investigation, the NTSB consistently violated previously mentioned regulations pertaining to continuing its own investigation according to normal NTSB procedures and working with the FBI to ensure that “evidence of the criminal act” was properly preserved.

The FBI refused to collaborate with NTSB investigators in a manner that would have been beneficial to both investigations, and the NTSB leadership failed at numerous junctures to act to change these circumstances. In fact, as I will show later, the NTSB leadership actively worked with the FBI and the CIA leadership to expedite their own investigation. The existing federal rules and the ex post facto Memorandum of Understanding clearly outline what should have happened but did not during the Flight 800 investigation:

“FBI personnel will, through the assigned FBI SAC [Special Agent in Charge], coordinate in advance with the NTSB IIC [Investigator in Charge] all FBI activity on-scene as well as any FBI fact-finding activity elsewhere (e.g. interviewing witnesses, collecting documents and other evidence, etc.). This procedure is intended, notwithstanding the provisions of 49 U.S.C. § 1131(a)(3), to ensure that neither NTSB nor FBI investigative activity unnecessarily complicates or compromises the other agency’s investigation. NTSB investigations will be conducted pursuant to NTSB procedures (including 49 C.F.R. Part 831), but modifications to the standard NTSB procedures—including, for example, direct participation by FBI personnel in NTSB

⁸ Exhibit C: U.S.C. §1131(2)(B) re relinquishing investigative priority to criminal investigation and Board’s responsibilities thereafter

⁹ Exhibit B 49 U.S.C. §1131(a)(2)(C) re Board’s responsibility to ensure evidence of the criminal act is preserved

investigation specialty groups, or specific chain of custody procedures, and limitations on information dissemination—will be fashioned on a case-by-case basis by the NTSB in consultation with the FBI.”¹⁰

At the time of the Flight 800 crash, government regulations clearly defined how the NTSB was to work with law enforcement and other agencies: collaboratively. In the event of a suspected criminal event that required a law enforcement agency to conduct an investigation, the NTSB was required to continue properly conducting its own investigation, to cooperate with the law enforcement agency to the mutual benefit of their respective investigations and, critically, to ensure that evidence was properly preserved. These did not occur.

Among the adverse results of the NTSB improperly ceding the investigation were:

1) The FBI assigned inexperienced evidence recovery agents to the scene and prohibited experienced aviation accident experts to accompany them on-scene directly after the crash so proper evidence recovery could be done. The FBI prevented NTSB aviation accident investigators from accessing and analyzing various pieces of wreckage. The FBI screened all physical evidence items before NTSB investigators could see them and withheld wreckage with suspicious damage patterns for unknown periods of time. In some cases, the FBI permanently removed evidence from the reconstruction hangar in Calverton, NY before NTSB investigators could inspect and analyze it. Forensic analysis results from suspicious evidence that the FBI controlled, such as objects recovered from victims' bodies, were never shared with the relevant NTSB groups or the parties to the investigation. Key pieces of evidence were withheld entirely from the NTSB, some of which remain unaccounted for to this day. Given the fact that FBI investigators have no aviation accident investigation training, these prohibitions were tantamount to undermining a federal investigation and violated NTSB standard operating procedures and regulations.¹¹ It remains unknown whether qualified airline crash investigators have ever reviewed critical pieces of evidence that FBI investigators had obtained and withheld from NTSB investigators. It also remains unknown whether qualified airline crash investigators have ever reviewed critical analyses of evidence that the FBI had performed and withheld from NTSB investigators.

2) NTSB investigators were prevented from interviewing nearly all of the 670 eyewitnesses to the crash. This was a violation of 49 CFR§845.25(a)¹² pertaining to the “Rules of Practice in Transportation: Accident/Incident Hearings and Reports” which states that “witnesses shall be initially examined by the board of inquiry or its technical panel. Following such examination, parties to the hearing shall be given the opportunity to examine such witnesses.” Regarding the timely interviews of eyewitnesses, NTSB interview procedures are more rigorous than those of the FBI and include questions

¹⁰ Exhibit D: “Memorandum of Understanding Between the National Transportation Safety Board and the Federal Bureau of Investigation”, p2

¹¹ See Exhibit C

¹² Exhibit E: 49 CFR§845.25(a), “Examination of Witnesses” section of “Part 845-Rules of Practice I Transportation: Accident/Incident Hearings and Reports”

relevant to aviation accident investigation that FBI investigators would not have the training to ask. NTSB interview protocol requires interviews to be faithfully recorded whereas FBI protocol consists of the interviewer taking notes and then writing interview summaries afterwards. These were not adequate for an NTSB aviation accident investigation.

October 23, 1997 to December 12, 1997

Events leading up to and during the NTSB Hearing on the TWA Flight 800 crash in Baltimore, Maryland confirmed to me that the NTSB's investigation was actively being undermined by FBI staff as well as the NTSB leadership and certain NTSB staff members assigned to the TWA Flight 800 investigation.

Among the most serious examples of altering and suppressing evidence was the NTSB's Dr. David Mayer changing location recovery tags on wreckage. Mayer was in charge of Data Base Management, which entailed documenting the locations where wreckage was found. The locations where wreckage items are recovered from the debris field are critical pieces of information in that they help investigators determine which parts of the aircraft failed first. This information can then be used to resolve the crash sequence and, possibly determine the cause of the crash.

Three main wreckage debris fields were identified and color-coded. The red debris field contained wreckage that had fallen closest to the jetliner's takeoff point. The yellow debris field was next and finally, there was the green debris field, which was furthest from the takeoff point. Wreckage was tagged accordingly.

During the investigation, I personally witnessed Dr. Mayer changing wreckage recovery tags on interior wreckage components without proper authority. Mayer's changes falsified the factual record of the actual physical locations from which those components were recovered. Mayer was not authorized to make any wreckage recovery tag changes without consulting with and getting the approval of my Airplane Interior Documentation Group. Some tag changes were tantamount to illegally altering evidence.¹³

When I directly challenged Mayer, asking why he was changing the debris field locations of various wreckage components, his response was, "I didn't want to confuse the Chairman [NTSB Chairman Jim Hall]." Altering evidence in the course of a Federal investigation is a violation of NTSB procedures, protocols and regulations as well as illegal. I reported Mayer's activities to the NTSB leadership. As a result, prior to a December 8 1997 hearing in Baltimore to review and discuss the evidence all the

¹³ Exhibit F: Title 18 U.S.C. §1512(c)(1): "Whoever corruptly alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair an object's integrity or availability for use in an official proceeding..." p 369. Also see Title 18 U.S.C. §1001(a)(1)(2)(3) "Statements or entries generally": "...whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document know the same to contain any materially false, fictitious or fraudulent statement or entry; shall be fined..." p275

investigative groups had procured and examined so far, several meetings were held to discuss Mayer's actions and the tag database he was in charge of maintaining.

Almost one month before those meetings were held, on September 26, 1997, TWA's Assistant General Counsel Margaret Giugliano wrote a letter¹⁴ to NTSB General Counsel Dan Campbell in which she highlighted an egregious problem with the NTSB's debris location records:

"It has also come to my attention that the FBI has approached Linda Kunz, one of the TWA employees in the investigation, in connection with the FBI's questions about the NTSB's retagging of various aircraft parts to show where they were found during the wreckage recovery. The FBI asked when the NTSB retagging occurred and also asked about the 'graph' that reflected locations shown by the original tagging of the recovered parts. The FBI subsequently informed Ms. Kunz that the NTSB had no record of the original graph and that Ocean Engineering also had no record of the original graph. Fortunately, at the time of the retagging, Ms. Kunz had misgivings (which she expressed) about the NTSB's handling of the retagging, which did not seem in accordance with the appropriate procedures, and, using a camera borrowed on-site from another party to the investigation, she photographed the original graph. She never developed the film or used the film in any way until [this past week] when the FBI told her that there was no record of the original graph and, upon learning that she had photographed it, asked her for the film. Rather than send the film to the FBI, she had it developed and sent the prints to the FBI; Bob Young will be providing a set of these to Al Dickenson, the NTSB investigator in charge."

"TWA believes that this situation should be brought to the attention of the Board because if the FBI is correct in its understanding that the NTSB has no record of the graph or other documents that would confirm the original tagging to show the locations where various pieces of wreckage were recovered. [Sic] Needless to say, this could very adversely affect the proper determination of the sequence of events that occurred in this catastrophe...we believe this most current development should be examined by the Board in order to determine if the FBI is correct and, if so, what can be done to improve the NTSB procedures in order to ensure an investigation that is scientific, objective and properly documented."

On October 23, 1997, my Airplane Interior Documentation Group met with David Mayer, NTSB's legal counsel Dan Campbell and Vicky D'Onofrio from the NTSB Managing Director's office to discuss Mayer's actions as well as his Data Management Report¹⁵ and the inaccuracies therein regarding the tag database. TWA's Assistant General Counsel Margaret Giugliano attempted to attend the meeting but was barred from doing so by NTSB counsel Dan Campbell. In the afternoon, the group physically examined every piece of wreckage for which David Mayer had changed tags and determined there was no justification for any of the changes Mayer had made.

¹⁴ Exhibit G: TWA Assistant General Counsel, Margaret Giugliano, September 26, 1997 letter to NTSB General Counsel, Dan Campbell.

¹⁵ Exhibit H: "Data Management Report" written by David Mayer

On October 30-31, 1997, a second meeting to discuss Mayer's Data Management Report and tagging problems took place in Washington, DC at the NTSB. In attendance on one or both days were David Mayer and Debbie Bruce who were in charge of Data Base Management; NTSB legal counsel Dan Campbell; Vickie D'Onofrio from the NTSB Managing Director's office; Airplane Interior Documentation Group members Gary Graham, Rocky Miller and Linda Kunz; Bob DeSantos of the FBI; Vinnie Cocca and Kurt Hobschaidt of the Airline Pilots Association; and the Navy's Supervisor of Salvage Paul Harkins.

Even though I was Airplane Interior Group Chairman, I was not invited to this meeting. A memorandum titled "NTSB MEETING – DCA OCTOBER 30, 1997" and "OCTOBER 31, 1997"¹⁶ detailed the database issues discussed. These included "changes made without the knowledge of the Cabin [Sic, should be "Airplane"] Doc Group," "inconsistencies in the entire data base," "Mike [mechanized landing boat with a bow ramp used by the Navy] boats had mixed lots of [Sic] all the time," "problems with source tags from August 4-August 8," "serious problems with tags being placed on the Mike boats," "at least 109 tags with no documentation," and "FBI list and tags do not coordinate according to April audit."

At this meeting, NTSB legal counsel Dan Campbell assured the Airplane Interior Documentation Group that our concerns with the database would be addressed after the Baltimore hearing. Our group objected, saying that to present the Data Management Report at the Baltimore Hearing before it was corrected would be to knowingly present inaccurate information. It should be noted here that Investigator-in-Charge Al Dickenson had already signed off on Mayer's report despite the Airplane Interior Documentation Group's deep concerns about the report's accuracy. TWA's legal counsel Margaret Giugliani echoed the Airplane Interior Documentation Group's concerns with a November 24, 1997 letter to NTSB legal counsel, Dan Campbell,¹⁷ in which she wrote that the tag database was "inadequate and too unreliable for any analysis or conclusions" and that "far from settled investigatory information and analysis' would be heard at the Baltimore hearing should Mayer's report be presented uncorrected.

Little more than two weeks later, on November 18, 1997 at 5:05pm, David Mayer emailed Tom Haueter in the Office of Aviation Safety to inform him that NTSB legal counsel Dan Campbell had "advised against" entering Mayer's Data Management Report as an exhibit for the Baltimore hearing. Mayer wrote that he had "discussed this with Bernie [Loeb, Director of the Office of Aviation Safety] and that Dan Campbell had said that the report "could always be entered as an exhibit later, if needed."¹⁸

It was the purpose of the public hearing at Baltimore to display all of the evidence

¹⁶ Exhibit I: "NTSB MEETING – DCA OCTOBER 30, 1997" and "OCTOBER 31, 1997"

¹⁷ Exhibit J: November 24, 1997 letter to NTSB legal counsel, Dan Campbell, from TWA Assistant General Counsel, Margaret Giugliano.

¹⁸ Exhibit K: November 18, 1997 E-mail from David Mayer to Tom Haueter regarding "Data Management Report"

collected up to that date and to share that information with all of the parties to the investigation so they could examine it, ask questions about it and identify problems so as to correct them and ensure the accuracy of the Board's findings regarding the cause of the crash. Mayer's failure to correct his report prior to the Baltimore hearing, the fact that Investigator-in-Charge Al Dickenson signed off on Mayer's report knowing that it was seriously inaccurate, and the subsequent withdrawal of the report as an exhibit are all serious violations of the NTSB's standard protocols, procedures and regulations. It is particularly egregious that Mayer did so with the approval of NTSB counsel Campbell, Office of Aviation Safety Director Dr. Loeb and Investigator-in-Charge Al Dickenson, all of whom were fundamentally tasked with ensuring and protecting the integrity of a transparent and properly run investigation. The purpose of presenting group reports at the first fact-finding hearing is to allow all parties to the investigation to publicly review and analyze each group's work for a several critical purposes. These include a multi-group examination of the accuracy and completeness of the contents of each group's report--which in the case of Dr. Mayer's report, would have been invaluable—and a full, open and transparent discussion of how a problematic report might be amended and/or corrected to provide a true reflection of the forensic evidence. This is utterly necessary to maintaining a high degree of investigative accuracy, because the work of each group impinges on and/or confirms the work done by others.

The NTSB's Aviation Investigation Manual states that "The group chairman should ensure the objectivity and accuracy of information in the factual report". Clearly Dr. Mayer failed to do this. The absence at the NTSB's fact-finding hearing of a proper factual report from Dr. Mayer's group accurately documenting the actual locations where wreckage was found removed from public and multi-group examination evidence that was fundamental for corroborating what did or did not, could or could not occur during the airplane's break-up sequence. Therefore, Dr. Mayer's failure to produce a report for the hearing meant that the conclusions he should have provided and that would have been invaluable to other groups working on other aspects of the investigation were not available for examination, correction or corroboration.

Section 4.7 ("Conducting Public Hearings") of the NTSB's Aviation Investigation Manual states: "Public hearings allow the Safety Board to gather more facts about an accident and to put on record a substantial amount of information about circumstances relating to the accident. Hearings also allow the public to learn more about the Board's investigation..." Because it was inaccurate, Dr. Mayer's report would not have correlated with the findings of the other groups at the hearing. A multi-group discussion of how it did not correlate would have been instructive and useful to the investigation. The problems with and possible corrections to the report would have been transparently addressed. The fact that there was no open discussion of Dr. Mayer's report allowed him to hide the serious issues with his report from the other investigative groups. It also allowed him to claim later on that he had made corrective changes to the report that were approved by my Airplane Interior Documentation Group when they were not.

Investigator-in-Charge Al Dickenson moved to further undermine the examination of

problems with the database in a November 18, 1997 email to Mayer¹⁹. Dickenson concurred with withdrawing the report and then proposed a solution to “deflect” questions the parties to the investigation might ask about the database at the Baltimore hearing: “...I think we should be prepare “Chip” McCord [SUPSALV, Navy] to expect some questions from the parties in this area. And if we deflect them there, then at some other junction, like the sequencing area or the cabin documentation panel [Sic, he is referring to the Airplane Interior Documentation Group]” Dickenson’s comment shows that he knew that the Data Base Management Report’s inaccuracy impinged on the work of several other investigative groups, including the Airplane Interior Documentation Group and the Airplane Breakup Sequencing Group. He proposed that Captain McCord, who had general knowledge about wreckage recovery but no specific knowledge about the details of the database or its improper alterations, be assigned to answer questions instead of David Mayer, who possessed hands-on, detailed knowledge of the database. Mr. Dickenson’s proposition was a direct and conscious effort to undermine the fundamental purpose of the Baltimore hearing²⁰, which was to extensively review and discuss the factual reports so the record could be made as accurate as possible. Replacing Mayer with Captain McCord curtailed all meaningful discussion of the database details while protecting Mayer from being held accountable, criticized and/or embarrassed.

Dickenson’s efforts to suppress discussion of the problematic database did not end there. Prior to the Baltimore Hearing, he met with Rocky Miller, Party Coordinator for the International Association of Machinists and Aerospace Workers [IAMAW]. Mr. Miller attended meetings on the re-tagging issue and had serious questions about Mayer’s database, including the efforts of Mayer and others to alter the database. Miller personally informed me that Dickenson warned him against asking questions or talking at the hearing. “If you believe in corporate memory,” Dickenson told Miller, “you will keep your mouth shut.”²¹ Dickenson’s intimidation²² of Miller worked; Miller did not speak at the hearing. In a subsequent IAMAW report titled “Analysis and Recommendations Regarding TWA Flight 800”²³ Miller detailed the concerns he was barred from raising at the Baltimore hearing:

“Numerous meetings were held to resolve the validity of the tag database during the investigation phase of flight 800. The two meetings at the Calverton hangar did little to resolve the validity issues. The final meeting in October of 1997 at NTSB headquarters in Washington, D.C. raised a much larger issue. During the meeting it was revealed that Mr. Paul Harkin [Sic, the proper spelling is Hankins] working for the government

¹⁹ Ibid, November 18, 1997 E-mail from Investigator-in-Charge Al Dickenson to David Mayer

²⁰ See Exhibit F: Title 18 U.S.C.§1512(c)(2): “Whoever corruptly or otherwise obstructs, influences, or impedes any official proceeding or attempts to do so...shall be fined”

²¹ Exhibit L: *TWA Flight 800* documentary transcript, pg. 23 and DVD

²² See Exhibit F: Title 18 U.S.C.§1512(b)(1)(A): “Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so...with intent to influence, delay or prevent the testimony of any person in an official proceeding; cause or induce any person to withhold testimony or withhold record, document or other object from an official proceeding shall be fined...”

²³ Exhibit M: IAMAW report, “Analysis and Recommendations Regarding TWA Flight 800,” Section 12, “Database”

[Supervisor of Salvage, US Navy] had entered the Calverton hangar and tagged at least 100 pieces of wreckage. Mr. Harkin [Sic] did not and has not provided a list of wreckage items that he tagged or any documentation as to why these items should receive the tags he supplied.”

The additional unauthorized tag alterations Navy Supervisor of Salvage Paul Hankins made combined with Dr. Mayer’s unauthorized tag changes and the FBI’s altering, tainting and removing evidence from the hangar during the investigation (discussed in more detail below) show that members of multiple government agencies acted to undermine the investigation.²⁴ In the case of Dr. Mayer’s database, the fraudulent results of his activities were suppressed and kept hidden from the other parties to the investigation at the Baltimore hearing via direct intervention on the parts of the NTSB legal counsel Dan Campbell, Office of Aviation Safety Director Bernard Loeb and Investigator-in-Charge Al Dickenson.²⁵

One day before the Baltimore hearing, NTSB Board Chairman Jim Hall also stepped in to suppress discussion of Mayer’s database report. TWA’s senior accident investigator on the Flight 800 investigation, Bob Young, confirmed to me that Chairman Hall phoned TWA’s Chairman of the Board, Jerry Gitner and TWA CEO Bill Compton on December 7, 1997 and threatened to throw TWA’s investigators off of the Flight 800 investigation if they continued to press on the database issues or ask questions about the database at the Baltimore hearing. Within days of this phone call, Hall also prohibited any discussion of eyewitnesses (which will be discussed later) at the hearing.²⁶

Linda Kunz, who worked directly under me as TWA’s representative to the Airplane Interior Documentation Group, and who, as I previously mentioned, photographed the original debris chart, was then banned by the NTSB leadership from sitting at the TWA party table during the Baltimore Hearing because of her persistent attempts to correct the improper changes that Mayer had made to the wreckage recovery location data base. Removing Kunz from the TWA party table prohibited her from being able to ask questions at the hearing.

According to TWA investigator Bob Young, the night before the Baltimore hearing he, TWA’s Vice President of Flight Operations Richard Roberts and TWA’s outside counsel Randall Kraft met with NTSB General Counsel Dan Campbell, NTSB Assistant General

²⁴ See Exhibit F: see Title 18 U.S.C. §1001(a)(1)(2)(3) “Statements or entries generally”: “...whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document know the same to contain any materially false, fictitious or fraudulent statement or entry; shall be fined...”

²⁵ See Exhibit F: Title 18 U.S.C. §1512(c)(2): “Whoever corruptly...obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined...”

²⁶ See Exhibit F: Title 18 U.S.C. §1512(b)(1)(A): “Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so...with intent to influence, delay or prevent the testimony of any person in an official proceeding; cause or induce any person to withhold testimony or withhold record, document or other object from an official proceeding shall be fined...”

Counsel Ronald Bottacci and NTSB Managing Director of Government Affairs Peter Goelz. Bob Young said that the NTSB representatives indicated that they did not want Linda Kunz sitting at the TWA party table because they viewed her having taken pictures of the original debris chart as a criminal act. As a member of the TWA party to the investigation Kunz did have the right and authority to photograph the chart. The fact that Goelz and the NTSB legal representatives characterized Kunz's stepping in to preserve critical evidence by photographing the original debris chart as a criminal act demonstrates how eager they were to protect from scrutiny the fraudulent changes Dr. Mayer had made and, possibly, to keep those changes from being corrected. The fact that they further used the fraudulent "she's a criminal" characterization to ban Kunz from sitting at the TWA party table at the hearing--thereby silencing her--and that, according to Bob Young, they also told the TWA representatives that they could not discuss Mayer's debris database or the eyewitnesses, suggests multiple acts of collusion on the part of NTSB leadership and legal counsel to suppress evidence and preserve inaccurate documentation that would support a false crash scenario. Not allowing accredited party members to speak at the fact-finding hearing was unprecedented as was censoring discussion on two key topics of evidence. Bob Young told me that "I've been an investigator on dozens of aviation accident investigations and this had never happened before." Despite the fact that the NTSB's Goelz and NTSB legal counsel Dan Campbell falsely accused Kunz of being a "criminal" and used this to successfully censor her input at the hearing, Kunz continued working as a member of the TWA party to the Flight 800 investigation. In 2000, as a TWA party representative, she participated in a missile visibility study that the NTSB conducted at Eglin Air Force Base.

The threats the NTSB leadership's members made, their pre-hearing clampdown of critical voices as well as their efforts to protect Mr. Mayer and suppress any discussion of his problematic database at the Baltimore hearing, were all violations of NTSB procedures, protocols and regulations as well as federal laws. These all amounted to suppressing information and evidence at a hearing held for the purpose of transparently reviewing these so that an accurate, evidence-based cause of the crash could be determined.

Dr. Mayer's database report was never corrected nor was it presented at the hearing. However, in response to a July 21, 2000 email²⁷ from me asking if the issues raised were resolved, Mayer responded: "Yes, the representatives of the cabin interior group [Sic, he is referring to the Airplane Interior Documentation Group] met with Deb Bruce and me (and others) in Washington on October 30-31 1997. We discussed each tag in question and came to whatever resolution possible about each one. Detailed notes were kept of our meeting (including the changes agreed to) and these notes were incorporated in appendix 17 to the data management report."²⁸

This is not true.

²⁷ Exhibit N: July 21, 2000 email from David Mayer to Hank Hughes

²⁸ Exhibit O: Appendix 17 to "Data Management Report"

As previously shown, the October 30-31, 1997 meetings did not resolve the database tag issues because if they had, Mr. Mayer's report would have been included as an exhibit and discussed at the Baltimore hearing. In the "Cabin interior tags" section of Appendix 17 of Mayer's report, he writes: "The group [Airplane Interior] met on October 30, 1997 to discuss 36 tags."²⁹ This is factually incorrect according to Airplane Interior member Linda Kunz's memo documenting the details of the meeting. As previously mentioned, among the issues raised at the meeting were: "...109 tags that we don't have wreckage logs to verify"; "...there are inconsistencies in entire data base"; "Paul [Hankins].... tagged approximately 100 items with yellow ship tags after they had arrived in the hangar.... Paul stated that he may have placed the wrong ship tags on these items..."; and "Yellow tags B001 thru B080 have 3 different lat longs [latitude and longitude coordinates] assigned."

In the Cabin interior tags section of Appendix 17 of his report Mr. Mayer further writes that at the end of the October 30, 1997 meeting, "18 tags remained unresolved..." The problems with these tags, he wrote, were resolved in a November 16, 1997 meeting between Deborah Bruce and Rocky Miller who "verified the tag and lot numbers for each of these items."³⁰ Rocky Miller told me that he has no recollection of the November meeting and that he would not have met with Bruce or Mayer to discuss the tag issues without the other members of the Airplane Interior Documentation group present. It should be noted here that one day after the meeting Mayer alleges occurred between Miller and Bruce, Mayer emailed Tom Haueter at the Office of Aviation Safety to inform him that NTSB legal counsel Campbell had advised Mayer to withdraw his problematic database report as an exhibit for the Baltimore Hearing. The extraordinary withdrawal of Mayer's report would not have occurred if all the problems with the database had been cleared up as Mayer claimed in Appendix 17 of his final report.

The importance of the tag database and the egregiousness of altering it and suppressing discussion of its problematic contents cannot be overemphasized, particularly given the domino effect of its inaccuracy on the contents of the reports of several other investigative groups. Critical aspects of any airline crash investigation include information sharing among the various parties and agencies assigned to the crash investigation and careful, unbiased analyses of all factual information. In the case of the crash investigation of TWA Flight 800, these did not occur.

In addition to suppressing Mayer's database report and any meaningful discussion of its contents at the Baltimore hearing, the contents of my own report—the Airplane Interior Documentation Group Factual Report of Investigation, Docket number SA-516, Exhibit No. 6A—were amended and excised without my authorization or knowledge. My report, which was almost five hundred pages long with photographic supplements, had been reduced to 27 pages.³¹ Section 4.6 titled "The Public Docket" of The NTSB's Aviation

²⁹ Ibid, pg. 4

³⁰ Ibid.

³¹ Exhibit F: Title 18 U.S.C. §1505(c)(1) "...whoever alters...a record, document...with the intent to impair the object's integrity or availability for use in an official proceeding..."

Investigation Manual³² states that the besides entering factual reports in the Public Docket to be released on the morning that a fact-finding hearing begins, copies of the following shall also be entered into the docket: “addenda to the factual reports, errata sheets, photographs, and pertinent correspondence from the parties...” The 200 pages of photographic supplements I included in my report provided a complete visual depiction of the interior of the airplane. This was very significant photographic evidence graphically showing the random damage pattern I discovered that supported the conclusion that a high ordnance (military explosives) explosion caused Flight 800’s demise. The photographic evidence that I provided in my report was supported by the conclusions at which the Suffolk County Medical Examiner, Dr. Charles Wetli, and the NTSB’s medical forensic consultant Colonel Dennis Shanahan, MD, arrived. The burn and fracture patterns they found on victims did not correlate, which could only result from a high explosive event. Also, the photos I provided showed that there was no significant thermal damage to the area in the cabin above the fuel tank, which proved that the fuel tank explosion was not powerful enough to cause the catastrophic damage I documented in the photographs that were excised from my report. The removal of the photographs was tantamount to suppressing evidence.

The other addendum that was excised from my report was a comprehensive factual record of hundreds of pages documenting all the original component parts of the airplane interior, their locations and their history. This record was used to reconstruct the interior and to show a comparison between the component parts prior to and after the explosion. This record served not only as a guide for reconstructing the interior of the airplane but to provide a precise, graphic record of exactly how each component was damaged. This addendum to my factual report was not only part of the record of forensic evidence, it served as a critical reference for reviewing my group’s final report and checking it for inaccuracies. Removing these addenda was tantamount to suppressing critical evidence.

When I found out about the hundreds of pages documenting the forensic evidence that were excised from my factual report, I notified Investigator in Charge Dickenson and to Aviation Office Director Loeb and nothing was done.

In addition, contrary to customary NTSB protocols, procedures and regulations, investigative groups, including mine, were required to provide a factual report, but ordered not to write an analysis. As Group Chairman of the Airplane Interior Documentation Group in charge of determining whether or not the damage to the airplane’s interior fit the official crash scenario, it is clear to me in hindsight that my analysis would have fit with what the suppressed eyewitness accounts (discussed below), explosives evidence and accurate wreckage locations showed: that the official theory for the crash-- an explosion of the center wing tank--was not consistent with the hard evidence, eyewitness accounts and locations in which the wreckage was actually recovered.

The damage patterns my team catalogued--including seat damage and passenger injury

³² Exhibit FF, Aviation Investigation Manual, Section 4.6, “The Public Docket”

patterns--were random, which indicated a high ordnance (military explosives) detonation, not a low speed explosion like the center fuel tank blowing up. The damage patterns were consistent with a high degree of separation of parts early in the crash sequence, which is consistent with a high-order explosion from a military-type explosive detonating a significant distance away from the airframe and which could not have been caused by the officially adopted low-velocity fuel-air explosion.

As the investigation progressed, many NTSB personnel, including my superiors, were aware of the factual evidence and patterns that I cataloged, as well as my reservations with the official theory for the crash. Most significantly, they suppressed my analysis of these facts by ordering me not to write the customarily required analysis report. In all of the other NTSB investigations to which I have been assigned, each chairman of the designated groups (such as the Airplane Interior Documentation Group that I chaired for the Flight 800 investigation) writes a factual report and then based on that factual report writes an analysis of the significance of the facts and circumstances of that aspect of the accident. This was the first time in my 26 years as an NTSB accident investigator that I had been ordered not to write an analysis, which is a violation of standard NTSB protocols and regulations. The analysis report that I was ordered not to write would have included my disagreement with the official theory for the crash and my conclusion that the explosive forces that initiated Flight 800's demise came from outside the airplane, not the center fuel tank.

Others, including Chief Medical Examiner Dr. Charles Wetli and the NTSB's Aero-Medical Forensic Consultant, Col. Dennis Shanahan, MD, confirm that they too were asked for their findings without analysis. "I was basically requested to supply autopsy reports and photographs and so forth but there was no analysis," says Dr. Wetli. "All we issued were factual reports," Dr. Shanahan says, adding, "To determine really what happened," he observed, "you've got to put everybody's findings together and analyze it which we've done that in every investigation I've been involved in except this one."³³

The NTSB's Major Investigations Manual in section 4.4 titled "Group Chairman Factual, Studies, and Analysis Reports"³⁴ states: "Each group chairman shall submit an analysis report based on the information contained in his or her factual report... The analysis report should review and evaluate all the facts documented by the group regarding their relevance to the accident and should state the principal findings and their relevance to a probable cause of the accident." By specifically requesting that analysis reports not be done, the NTSB leadership omitted a critical procedure that had been followed in every accident investigation before TWA Flight 800. No explanation was provided for this critical deviation in procedure that was tantamount to suppressing evidence because the NTSB leadership ordered that group findings not be gathered into a coherent analysis.

On the same day that NTSB legal counsel Dan Campbell and Office of Aviation Safety Director Bernard Loeb moved to remove David Mayer's Data Management Report as an

³³ Exhibit L: *TWA Flight 800* documentary transcript, pg. 24, and DVD

³⁴ Exhibit FF, see Section 4.4 of NTSB Aviation Investigation Manual, "Group Chairman Factual, Studies and Analysis Reports", p. 28

exhibit at the Baltimore hearing, the FBI's investigator in charge, James Kallstrom, unveiled an FBI-commissioned video produced by a team of CIA analysts led by Mr. Randy Tauss³⁵. The video featured misrepresented eyewitness accounts that served to discredit the notion that any eyewitnesses had seen a missile or other object rise off the earth's surface and go up to TWA Flight 800. Several times and with great emphasis, the narrator of the CIA video can be heard saying that the eyewitnesses "did not see a missile." Instead, the narrator states, the eyewitnesses only saw the TWA aircraft itself, which "looked like a missile" as it climbed sharply in the air while on fire.

The CIA video's portrayal of Flight 800 climbing sharply after exploding is physically impossible given what the FAA radar tracking data shows. I personally reviewed an internal CIA memorandum dated October 1997 with the subject line "New Radar Plots Impact TWA800 Analysis,"³⁶ that makes it clear that the CIA was aware of this major problem before they released the animation. The CIA video team member who wrote the memorandum reports that the animation "could not possible [Sic]" be correlated with the FAA radar tracking evidence.³⁷ This team member also wrote that based on the NTSB's analysis of the radar and other data provided to him, what a key eyewitness who was featured in the animation saw "could have been a missile rising up and striking the aircraft."

Despite the CIA team member acknowledging that there were critical discrepancies between their animation and the radar tracking evidence and that an eyewitness specifically referenced in their "not-a-missile" animation may actually have seen a missile, the FBI's Assistant Director James Kallstrom presented the video as credible. That same day, Kallstrom also announced the suspension of the FBI's investigation and said that there was "absolutely no evidence" that a criminal event had caused Flight 800's demise.

A DVD and transcript of the CIA video along with point-by-point rebuttals of the inaccuracies therein is provided with this affidavit as Exhibit P.

Four months earlier, at a July 10, 1997 House Subcommittee hearing on TWA 800, Kallstrom had testified under oath that no eyewitnesses had "described [seeing] a missile,"³⁸ a claim that I know to be factually incorrect since I personally reviewed FBI summaries documenting eyewitnesses specifically using the term "missile" to describe

³⁵ Exhibit P: DVD of CIA video, "TWA Flight 800. What Did the Witnesses See?" and Transcript of the video with rebuttals of inaccuracies

³⁶ Exhibit Q: October 27, 1997 CIA internal memo, "New Radar Plots Impact On TWA 800 Analysis"

³⁷ See Exhibit F: Title 18 U.S.C§1001(a)(1)(2)(3) "Statements or entries generally": "...whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document know the same to contain any materially false, fictitious or fraudulent statement or entry; shall be fined..."

³⁸ Exhibit L: *TWA Flight 800* documentary transcript, pg. 17, and DVD with video of James Kallstrom's testimony

what they saw³⁹. After retiring from the NTSB, I personally interviewed several eyewitnesses who had spoken to the FBI and they confirmed the statements they had previously made.

I noted with interest upon reading a 3/15/1999 letter from CIA Director George Tenet to NTSB Chairman Jim Hall⁴⁰ that directly after the FBI released the inaccurate CIA-produced video, Dr. David Mayer (the same NTSB official I witnessed changing debris field locations without authorization) began to work “closely” with the CIA’s lead analyst on the “CIA’s Flight 800 effort” for “16 months.” Mayer’s working relationship with the lead CIA analyst began three weeks before the NTSB’s first hearing on the crash in Baltimore and continued up to the NTSB’s final Sunshine hearing on the crash in August 2000. According to CIA Director George Tenet, the purpose of Mayer’s 16-month collaboration with the CIA analyst was to help Mayer with “the NTSB’s analysis of the eyewitness reports.” Thus, Dr. Mayer began working with the lead analyst of a small, secretive CIA team whose work preempted both NTSB hearings by independently forging a false official story about TWA Flight 800’s demise in the form of a video animation for the FBI--all before the NTSB hearings presenting the evidence NTSB investigators had gathered had been held. In his March 1999 letter, Tenet clearly expressed the CIA’s desire to keep the analytical details buttressing their animation under wraps. Prior to the CIA holding a briefing to help Mayer’s Eyewitness Group “understand CIA’s evaluation of the witness statements,” Tenet wrote, “I understand that the briefing will be in a closed session, that no transcript will be made of CIA’s presentation and that appropriate safeguards will be made to protect any extraneous CIA and FBI interests.”

Five days before the NTSB's first public hearing in Baltimore, Mr. Kallstrom moved to suppress eyewitness testimony and discussion of eyewitness accounts at the hearing. In a December 3, 1997 letter to NTSB Chairman Hall⁴¹, Kallstrom asked that the NTSB not present any eyewitnesses or “exhibits dealing with eyewitness observations of the aircraft destruction.” Kallstrom also requested the exclusion of testimony regarding Exhibit 201, the “FBI Chemical Study of Residue,” as well as any discussion of PETN (explosives) tests. Chairman Hall responded favorably to Kallstrom’s letter on the very same day he received it. “I understand your request to be an objection to the presentation of the results of the criminal investigation at a public hearing,” Hall wrote, “particularly when there is a possibility, albeit remote, that the criminal investigation could be reactivated.”

The suppression of eyewitness accounts at an NTSB hearing was unprecedented. This has never occurred before or since the NTSB investigation of TWA Flight 800. NTSB regulations only prohibit the public examination of specific medical records, proprietary information and classified information. Prohibiting eyewitnesses from testifying and suppressing eyewitness accounts were violations of NTSB procedures and “Examination

³⁹ Exhibit R: FBI 302 eyewitness summaries with “missile” descriptions.

⁴⁰ Exhibit S: March 15, 1999 letter from CIA Director George Tenet to NTSB Chairman Jim Hall

⁴¹ Exhibit T: December 3, 1997 James Kallstrom letter to Chairman Hall and Chairman Hall’s response to Kallstrom.

of witnesses”⁴² regulations as well as the spirit, if not the letter of Title 49 U.S.C. §1131 (2)(A)⁴³ stating that while “The Board shall provide for appropriate participation by other...agencies in the investigation,” “...those...agencies...may not participate in the decision of the Board about the probable cause of the accident.” By releasing the fraudulent CIA video before the NTSB hearings and then formally requesting that the NTSB not consider eyewitness testimony or explosives evidence at the Baltimore hearing, the FBI was, if not participating in, at least greatly influencing the Board’s decision-making about the probable cause. By acceding to the FBI’s request, Chairman Hall allowed the FBI’s participation in the NTSB’s probable cause decision-making process after the FBI had closed its own investigation. Hall’s rationale for doing so—the “remote” possibility of a reactivated criminal investigation—involves and gives priority to a non-existent circumstance in the NTSB’s probable cause deliberations. Hall’s rationale allowed for an unlawful usurpation of the NTSB’s federally mandated “priority over any investigation by another...agency” as stated in 49 U.S.C. §1131 (a)(1)(A)⁴⁴.

Hall’s decision, made on the heels of the public release of the CIA video, was also tantamount to allowing the CIA (via the FBI) to not only exert undue influence on the NTSB’s probable cause deliberations but to lay the groundwork for getting the press and public to accept a false crash scenario. His decision also contravened Federal Statute 49 U.S.C. §845.25 (a)⁴⁵ that states: “Witnesses shall be initially examined by the board of inquiry or its technical panel. Following such examination, parties to the hearing shall be given the opportunity to examine such witnesses.”

As a direct challenge to Chairman Hall's unprecedented banning of the eyewitness evidence at the fact-finding NTSB hearing in Baltimore, NTSB Witness Group Chairman Norman Weimeyer resorted to manually distributing copies of his “Witness Group Factual Report”⁴⁶ to congressional and media representatives at the hearing. This report included statistics that significantly undermined the CIA's video and contradicted the NTSB's official theory that the crash was caused by an event inside the airplane. Among the statistics listed in this factual report was the following: of the 102 eyewitnesses who reported to the FBI that they had seen the origin of a streak of light, 96 eyewitnesses (94% of the 102) said that the streak rose off the earth's surface.

It should be noted here that after Flight 800 crashed, it had taken Mr. Wiemeyer six months of continually pressuring his supervisors before he was granted permission to speak directly to eyewitnesses. This is emblematic of how profoundly anomalous the NTSB’s TWA Flight 800 investigation was, because conducting immediate, in-depth interviews of eyewitnesses has always been a critical standard operating procedure for NTSB accident investigations. After the Baltimore hearing, the NTSB leadership

⁴² Exhibit E: 49 CFR§845.25(a), “Examination of Witnesses” section of “Part 845-Rules of Practice I Transportation: Accident/Incident Hearings and Reports”

⁴³ Exhibit C: 49 U.S.C. Federal Statutes, pg. 117

⁴⁴ Ibid, pg. 116

⁴⁵ Exhibit E: 49 CFR§845.25(a), “Examination of witnesses” section of “Part 845-Rules of Practice I Transportation: Accident/Incident Hearings and Reports”

⁴⁶ Exhibit V: NTSB Witness Group Chairman Norman Weimeyer’s “Witness Group Factual Report”

removed Wiemeyer from his position as Eyewitness Group Chairman. Dr. David Mayer, who had been responsible for altering debris field evidence and who was already “working closely” with the CIA’s lead analyst responsible for producing a fraudulent video discrediting eyewitnesses, replaced Wiemeyer as Eyewitness Group Chairman. Wiemeyer, who was not voluntarily removed as Eyewitness Group Chairman, later expressed his concerns to me about how Dr. Mayer mishandled and manipulated the witness group.

Having improperly ceded the crash investigation to the FBI early on, NTSB Chairman Jim Hall persisted in undermining and impeding the NTSB investigation by agreeing to the suppression of eyewitness testimony and explosives evidence at the hearing.⁴⁷ Hall consented to Kallstrom’s request even after the FBI had suspended its criminal investigation and Kallstrom had declared that there was “absolutely no evidence” of a crime. If there was no evidence of a crime, the FBI had no reason to continue suppressing the evidence and the NTSB was violating its own regulations by accommodating the FBI.

Hall agreeing to suppress the FBI’s Chemical Study of Residue report and any discussion of PETN explosives testing violated NTSB regulations regarding transparency and information sharing. The FBI had already concluded its investigation, so there was no reason to prohibit a review of the report at the Baltimore hearing. Here, NTSB Chairman Hall colluded with the FBI’s James Kallstrom to impede sharing of critical information among the parties to the investigation. It should also be mentioned that the NTSB made no effort to correct Kallstrom when he perjured himself before a July 10, 1997 House Subcommittee hearing.

Kallstrom testified that traces of explosives found on TWA Flight 800 wreckage had been placed there during a dog-sniffing exercise that had been carried out on the plane on June 10, 1996. This statement is demonstrably false⁴⁸. In a September 5, 1997 letter to Congressman James A. Traficant, Kallstrom wrote that the patrolman who had conducted the exercise did not note the tail number of the aircraft on which he had placed packages of explosives for his dog to detect and that he had conducted the exercise on an empty aircraft. Kallstrom also wrote that the patrolman began his exercise at 11:45 am and that it lasted fifteen minutes or until 12:00 noon. Records show that the plane that became Flight 800 left the gate fully boarded with more than four hundred passengers at 12:35 pm. TWA regulations require the cabin crew to be on the plane an hour before departure, which in this case would be 11:35am. The patrolman said he finished conducting his exercise at noon, which means he could not have conducted his exercise on the plane that was Flight 800 because by that time, not only would the crew have already been on board (which means that particular plane was not empty), but by noon, boarding would have already begun. So the plane that became Flight 800 could not have been the plane on

⁴⁷ See Exhibit F: Title 18 U.S.C. See Exhibit G: Title 18 U.S.C. §1512(c)(2): “Whoever corruptly...obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined...”

⁴⁸ Exhibit UU: See Dog Sniffing Exercise documents, including Kallstrom’s 9/5/97 letter, TWA regulations manual page on “Preflight and Post Flight Duties” and “Pilot Activity Masters at Close” page for airplane that became Flight 800 showing flight left St. Louis at 12:35pm.

which the patrolman conducted his dog-sniffing exercise.

The NTSB leadership also failed to act when the FBI removed from the Calverton hangar evidence that had been tested on-scene for explosives and yielded positive results. The FBI removed the evidence and never returned it to the hangar or the investigation. FBI explosives examiner Bob Heckman, who was in charge of determining what wreckage should be tested for explosives, claimed that Egis machines used on-scene at the Calverton hanger to test wreckage for explosives “got multiple positive hits,” but that because the Egis machine “is susceptible to false positives” all wreckage that tested positive for explosives had to be sent to the FBI laboratory in Washington for further testing⁴⁹. Dr. Frederic Whitehurst, who was the FBI’s Supervisory Special Agent at their Washington laboratory at the time of the Flight 800 crash investigation, says Heckman is wrong and that “at the point of TWA 800, the Egis detector was very specific and very sensitive.” Dr. Whitehurst further questioned the FBI’s procedures regarding sending wreckage to Washington for explosives testing: “I don’t understand why material would be taken from that hangar to the FBI laboratory. It could be sampled right at that hangar. When you take it anywhere you’re exposing it to potential contamination vectors.”⁵⁰

The NTSB leadership accepted the FBI’s false claims about the Egis machine and allowed the FBI to remove numerous pieces of wreckage evidence from the hangar. Further, the FBI abruptly ended their chemical swabbing and testing of wreckage, even though numerous pieces had tested positive for explosives and a great deal more wreckage was ready to be and should have been tested. Stopping the chemical swabbing was tantamount to suppressing and/or concealing potentially key evidence in the investigation.

May 10, 1999 testimony before Senate Subcommittee on Administrative Oversight (three months before the Sunshine Hearing presenting the NTSB’s final report on the TWA Flight 800 crash investigation)

Deeply concerned about the FBI’s activities, I testified before the Senate Subcommittee on Administrative Oversight and the Courts of the Senate Committee on the Judiciary⁵¹. I provided first-hand evidence of the FBI’s deleterious activities that occurred as a result of the NTSB improperly ceding its investigative authority to the FBI and making no provisions for keeping all parties to the investigation apprised of ongoing activities and developments. The testimony I provided was based on contemporaneous notes I had written from the time I responded to the crash.

Among my first and deepest concerns was the inexperience of the FBI’s Evidence Recovery Team in charge of recovering and processing critical evidence. At the hearing, I testified that 28 of the 32 members of the FBI Evidence Recovery had little or no forensic science training whatsoever. It got to a point where, after a few months, I was

⁴⁹ Exhibit L: *TWA Flight 800* documentary transcript, pp. 6,7, and DVD

⁵⁰ Ibid, pg. 8, and DVD

⁵¹ Exhibit V: May 10, 1999 testimony of Hank Hughes before Senate Subcommittee on Administrative Oversight

asked by the FBI to teach a 4-hour class on basic forensic procedures and biohazard protection to the newly arriving Evidence Recovery Teams to provide them with basic knowledge of how to perform their duties at the accident reconstruction area. As a result of these facts, critical evidence was lost and or mishandled as a result of the FBI team's inexperience and incompetence as well as their unwillingness to collaborate with the NTSB's experienced investigators. Here are some hard examples that I personally encountered:

- 1) It was very important to know where the victims had been recovered, yet little or no effort was made to do a GPS fix on the victims so in many cases, we did not have this critical information.
- 2) Clothing was improperly collected and commingled. The proper procedure for processing any clothing in a crime scene or other accident site is to air dry the clothing, wrap it in clean butcher paper after it has been photographed, catalog it and put it away for safekeeping. In the case of TWA, FBI team members took all of the clothing to a refrigerator truck marked "Anderson" on the side, which had been towed to the accident site. About seven or eight weeks into the investigation, the truck's refrigeration unit ran out of diesel fuel, and for approximately a day-and-a-half, the clothing got warm, began to mold and (along with other materials in the truck) was destroyed as far as any evidentiary value.
- 3) Many of the seat covers--there were 430 passenger seats and 21 crew seats--had been removed and were commingled in a dumpster. About two months into the investigation, I went to the dumpster and with the assistance of an FBI agent, tried to sort out the materials in there. We found that in addition to the seat covers, seats that were missing had also been thrown into the dumpster. This is an example of grossly negligent mishandling of critical evidence. Because an explosion was suspected of causing the plane's demise, and because investigators needed to determine whether a mechanical or structural problem or an intentional event was responsible for the crash, any damage to any part of the airplane, including the seats, should have been scrutinized closely after having been properly recovered and preserved as evidence.
- 4) Two other areas of concern with regard to the reconstruction of the interior, for which I was responsible, were the chemical swabbing and x-raying of the seats for the presence of projectile shrapnel or other debris. The FBI's team failed to consistently x-ray or chemical-swab the seats even though as the seats were collected, my team and I went to great pains to specifically tag the seats to identify those that had not been examined. At the time I testified before the senate subcommittee in May 1999, a number of seats were still tagged as having yet to be x-rayed or swabbed by the FBI.
- 5) Approximately two months into the investigation, evidence began disappearing from the hangar in which we were reassembling the interior of the airplane. I voiced my concerns about this at several of our nightly investigative progress meetings, but the NTSB investigator in charge, Mr. Al Dickenson, ignored me. Finally, the group that I worked with, which included Alcohol, Tobacco and Firearms agents, TWA personnel and

three New York State Troopers scoured our hangar to determine what had been removed. We found that seats were missing and other evidence had been disturbed. The FBI, on my last complaint, did act and they found at 3:00 a.m. on a Saturday morning, two or three of their own agents broke into our hangar for reasons that were never explained to me. I supervised that project and these people had no connection to it.

6) I personally observed FBI agent Ricky Hahn altering evidence. I saw him in the middle of the hangar with a hammer in the process of trying to flatten a piece of wreckage. In investigative work, you do not alter evidence. You take it in its original state and preserve it. But I actually saw this man with a hammer, pounding on a piece of evidence, trying to flatten it out.

7) I also observed during the course of documentation that the FBI's bomb technicians did not seem to use the conventional method of documenting the evidence. When you look at a piece of potential evidence, it should be photographed, measured, and then collected safely. On one occasion, I observed an agent walk up to a seat back, a tray table, if you can envision where they might be mounted on the back of the seat, and instead of looking at this piece of metal--it was a piece of plastic that was embedded in metal--and documenting it properly, the individual took out a pair of pliers, a Leatherman tool, and put tool marks on that piece of evidence and attempted to pull it out of the seat back to examine it--totally unacceptable procedure that alters the evidence.

8) Regarding "the release of personal items without consultation of the Safety Board, had this been a criminal act," Hughes noted, "and there is no evidence to suggest that it is, I would think that every piece of material on that airplane, to include personal items, should have been documented and inventoried, and before any release was authorized, it should have been with the consensus of the NTSB and other parties to the investigation."

Other NTSB colleagues provided additional examples of FBI agents mishandling, altering and tainting at the May 1999 senate hearing including NTSB metallurgist Frank Zakar and Michael Marx, who was part of the Structure Metallurgy Sequencing Group.

Excerpts of Zakar's testimony⁵² provide further examples of the FBI's problematic conduct of their investigation and how it impeded the NTSB investigation:

"I found that, for example, the FBI had an evidence room which locked up personal items and other objects from the wreckage. I also found out, at times, we were interested in finding out what wreckage or what pieces of components from the airplane were being sent between the hangar and the FBI headquarters for laboratory examination. I found that to be a difficult subject. It took several days for us to find out what was being sent between the hangar and the headquarters in Washington, DC. When inquiring about getting a list of items that were sent to the headquarters office, the response was, basically, we cannot give you a list, but we will verbally give you the information that we have available and you jot it down on a piece of paper. I thought that was a rather

⁵² Exhibit W: May 10, 1999 testimony of Frank Zakar before the Senate Subcommittee on Administrative Oversight

awkward way of conducting business.”

“The other concern is altering of physical evidence. As Mr. Hank Hughes has indicated earlier, this is in regard to the examination of a passenger seat. I recall several agents working on a chair of a passenger and pulling out fragments from within the chair. There was some tearing involved and rather sloppy handling of the material that was removed from within that seat. I do want to stress is that we have expertise within the Safety Board which handles the area of seating, and one of them is Hank Hughes, and I think it would have been proper at that time if anybody was going to handle any part of the wreckage that they would notify the specific investigator at the NTSB what the activities were being performed and to what extent.”

“One of the problems we faced is that after the wreckage is moved from one side of the hangar to the other, the evidence could be altered and that could at the end cause a problem in interpretation of what will come out of the investigation.”

“Another problem I had with observation at the hangar was a specific person, a special agent of the FBI, who rushed to judgment in looking at some evidence in the hangar. One of them was specifically--as I recall, this special agent was raising above his head a leg portion of a chair, and because he noted that the piece was severely damaged, he concluded that the damage was a result of bomb damage, without any scientific evidence, and this was in front of other investigators...I walked up to this gentleman and I asked him what basis did he have for this, and his answer was, basically, if it is that badly damaged, what else could cause that damage?”

NTSB Senior Metallurgist Michael Marx, who was part of the Structure Metallurgy Sequencing Group for the investigation testified that the FBI refused to allow the NTSB’s experts to take their own photographs of the evidence for analysis, which impeded and delayed their work. Only FBI photographers could take photographs, only FBI could develop those photographs even though they did not have the expertise to know what photos were germane to the aviation accident experts. Eventually the FBI did allow Marx to take photos, but serious problems persisted. Marx testified⁵³: “if you did take photographs, you had to then have a certain procedure, but all the film had to be developed by the FBI. In October, and when I was taking photographs, having the FBI photographer take photographs, he had a film, of course, which he then took and went back to the New York field office to get developed. And I was there for a period of time of 3 to 4 days at that particular time, and then a month later, when I came back to get the photographs, they also said that it would take a week to 2 weeks to get these photographs. These photographs never showed up. To this day, I do not have those particular photographs. So how does it impede the investigation is that there was no apparent record of the photographs that was taken and it was not disseminated properly so that we could get these particular photographs later on.

NTSB metallurgist Frank Zakar’s testimony mirrors that of Marx with respect to the

⁵³ Exhibit X: May 10, 1999 testimony of Michael Marx before the Senate Subcommittee on Administrative Oversight

FBI's handling of critical photographs: "I recall during my first submission, I submitted one roll of film and that roll of film was not returned. I had a second submission of photographs, which I submitted two or three rolls of film that documented the wreckage. There was something very critical that I wanted to have on the second submission and those were photographs that I took within the hangar of the entire layout of the operation. Our management had basically asked--they were interested in finding out how the operation had gone in the hangar and I felt at that time that it was important to get an overall photograph of the entire layout. Because that film was given to the FBI and it was not returned, I was not able to make a presentation to our headquarters office concerning the operation within the hangar...to the best of my knowledge, the film has not been recovered. I would like to add that when the film and prints were delivered, they were supposed to be delivered to a specific metal hangar within our command post. Our name would be on the envelope, and all we had to do was pick them up. I remember the first 3 weeks after the submission of these rolls of film, I checked every one of those envelopes in the metal file cabinet and they were not to be found...I feel that possibly there were too many people involved in the proceedings and the procedure and that possibly the film was mishandled. And, of course, that brings other suspicions as to why photographs of the entire operation could not be delivered to the NTSB. It raises concern."

Marx also questioned the FBI's choice of Brookhaven National Laboratory to examine evidence: "...they have neither the expertise nor the experience to do any aircraft accident investigation. They have never looked at any wreckage. They had basically a very poor background to do any forensic-type investigation or any kind of an accident investigation in this particular case because the Safety Board had all the expertise that is needed to do that and was advising the FBI that this was not--we were just kind of like stand-by, looking at what they were trying to produce, but we more or less discouraged this type of an operation." Marx further questioned the FBI's fundamental investigative expertise and judgment pertaining to their bringing a psychic into the hangar: "...at the Safety Board itself, we would never bring in a psychic to do any investigation because it is the scientific examination of wreckage and the overall investigation that determines the causes or at least towards the causes. So we would not bring any--it would be against the grain to bring a psychic in to find out what happened on the aircraft."⁵⁴

I was also made aware of an internal U.S. Department of Justice "Memorandum of Investigation" dated October 8, 1996 pertaining to an OIG investigation into scientific misconduct (uncovered and reported by Dr. Whitehurst) at the FBI laboratory⁵⁵. The "Memorandum of Investigation documents OIG Inspector Alison Murphy's telephone interview with FBI metallurgist Bill Tobin. In the interview, Murphy writes about Tobin telling her about a memo he'd written in which he had mentioned FBI Explosive Unit Examiner Tom Thurman's behavior while working on the TWA 800 investigation. "The NTSB questioned the behavior of Explosives Unit Examiner [Tom Thurman] because

⁵⁴ Exhibit X: May 10, 1999 testimony of Michael Marx before the Senate Subcommittee on Administrative Oversight

⁵⁵ Exhibit Y: October 28, 1996 "Memorandum of Investigation" documenting OIG Inspector Alison Murphy's telephone interview with FBI metallurgist Bill Tobin

they felt some of his behavior was unscientific and that he had acted inappropriately during parts of the investigation. [Tobin] said he fully expected [Tom Jourdan, Head of Explosives Unit] to review the memo and tell [Tobin] to rework it so that no names were mentioned...In addition, [Tobin] said, at one point during the investigation [Tom Thurman] dug into passenger seats and proceeded to place fragments in pillboxes without any concern for trajectory. [Tobin] described [Tom Thurman] as exhibiting 'storm trooper' behavior. The contents of this memorandum mirror what NTSB metallurgist Frank Zakar and I had observed and testified to at the Senate Subcommittee Administrative Oversight hearing. Also, in their report to the NTSB, members of the Air Line Pilots Association assigned to the Flight 800 investigation wrote: "...some of the methods and behaviors that were practiced or exhibited by the FBI and ATF [Alcohol, Tobacco and Firearms] personnel were directly contrary to established civil investigative techniques...One example of this was the law enforcement personnel's handling of the wreckage; they did not seem particularly aware of the need to preserve the existing evidence by preventing further damage to aircraft parts."

After testifying at the hearing, I was reassigned to the Office of Highway Safety. Joseph Osterman, Director of the Office of Highway Safety told me that my reassignment was in retaliation for my testimony and that I would no longer be permitted to work in the Office of Aviation Safety as long as Dr. Bernard Loeb and the other senior management remained at the NTSB. Metallurgist Michael Marx was also harassed after testifying. He retired shortly thereafter and was replaced by Jim Wildey.

I received a letter after the hearing from Senator Charles E. Grassley (Chairman of the Subcommittee on Administrative Oversight and the Courts) in which he requested that I answer a question from Senator (Strom) Thurmond. The Senator wanted to know if I had advised my superiors at the NTSB of the errors the FBI had made in handling and processing evidence. Excerpts of my response in a June 14, 1999 letter⁵⁶ are below:

"I and others advised Investigator-in-Charge Alfred Dickenson, Office of Aviation Safety Director Dr. Bernard Loeb, and NTSB Chairman Jim Hall of the problems related to the collection, processing, and safeguarding of evidence as well as the investigative process on a continual basis. Unfortunately, such things as 'evidence control log' which should be used to document all evidence submitted to any laboratory for examination or testing fell on deaf ears and was not accepted despite many complaints over a several month period by all parties to the investigation. The absence of an evidence control log make it impossible to know what evidence had been removed from hangars, what laboratory it had been sent to or by whom, what the nature and results or [sic] the tests were, and what the final disposition of the evidence was. To this day there are still unanswered questions concerning evidence sent for examination."

"I saw little positive action taken by the NTSB to address these problems. In my opinion, we (NTSB) had a serious leadership problem during the course of the investigation. One of the many examples of this was the Vice Chairman's [sic] Robert Francis absence on a

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Exhibit Z: June 14, 1999 letter from Hank Hughes to Senator Charles E. Grassley

daily basis in charting the progress and direction of an investigation. I have participated in over 110 major transportation accident investigations while with the NTSB and the TWA-800 investigation is the only one in which the NTSB Board Member in charge was never available to the investigative staff.”

During the course of the onscene [Sic] investigation, which lasted over a 15 plus month period, the NTSB Vice Chairman in charge of the NTSB investigation not only never showed up for daily progress meetings, he gave away the Safety Board’s authority, to without, [sic] to my knowledge, consulting the staff or the headquarters managers. It is easy to see how the FBI just resorted to their usual modus operandi of taking charge even if they didn’t know what they were getting into.”

May 17, 2000 to August 23, 2000 prior to and during Sunshine Hearing: Final Report on TWA Flight 800 Investigation

Less than three months (May 17, 2000) before the NTSB’s August 22-23, 2000 final Sunshine hearing, Human Performance Division Chief Malcolm Brenner sent an email⁵⁷ to David Mayer’s supervisor, the NTSB’s Office of Aviation Safety Director Bernard Loeb to express his concerns about the NTSB failing to interview Donald Eick, an NTSB employee with training and a degree in meteorology who was an eyewitness to the crash. When Brenner received no response to his email, he emailed NTSB Chairman James Hall on May 30, 2000: “FYI, Mr. Chairman. As far as I know, no action has been taken as a result of my email. I believe you should be advised as these concerns have the potential of raising public issues about the integrity of our investigation.” The NTSB ended its investigation and held its final “Sunshine Hearing” without directly interviewing or presenting the accounts of Eick and hundreds of other available eyewitnesses. Besides failing to interview hundreds of competent and available eyewitnesses, in an unprecedented breach of its own regulations, the NTSB prohibited eyewitnesses from testifying at either of its hearings on the TWA Flight 800 crash.

At the final Sunshine Hearing where the NTSB officially ended its investigation and issued its final report, Eyewitness Group Chairman David Mayer told NTSB Chairman Hall that the NTSB “consider[s] eyewitness information as one type of factual evidence that we collect in an investigation.”⁵⁸ He then went on to describe the NTSB’s protocol for interviewing eyewitnesses: “When we conduct an interview of an eye-witness, as I said, we do so under group process. Group members would assemble with the eye-witness and each of them, as interviewed, each member would take notes what the witness reported. We would ask questions such as, what did you see, tell us about your experience. Sometimes, if we felt it was prudent, we’d ask for a tape recorder or ask a court reporter to be present at the interview. Our strategy would be to produce a complete and detailed record of what the eyewitness told us, and I say that because we like to minimize ... so we don’t have to interview at a later date. Frequently, we ask eye-

⁵⁷ Exhibit AA: Malcolm Brenner emails. May 17, 2000 email to Bernard Loeb and May 30, 2000 e-mail to NTSB Chairman Jim Hall.

⁵⁸ Exhibit BB: Transcript of NTSB Board meeting on TWA 800. August 23, 2000, day 2, part 3 of 4, pg. 8, Dr. David Mayer testimony

witnesses to sign or review a transcript of the interview or interview notes ... I didn't note how interview notes were prepared. I told you that each group member would take notes during the interview. Once the interview was concluded, the group members would reconvene and go over the notes in some detail, and develop from them one set of notes that each member signed as official notes of the interview. We do our best to avoid asking questions that are presuming knowledge -- in other words, we might ask a witness, did you see the control surfaces of the airplane before it took off? Rather than, did you see that the flaps were set? We know it's very easy to bias a witness and we tried not to. I think that is essentially what we tried to do when we interviewed witnesses.”

Hall responded to Dr. Mayer’s description of the interviewing protocols by saying that he wanted to “acknowledge that normal board procedures were not followed in this investigation and we are addressing that because that, unfortunately, has added to a lot of the misconception that has been generated around this.”⁵⁹

Later on during the Sunshine Hearing after Dr. Mayer had characterized eyewitness accounts as one type of “factual evidence” and Hall had confirmed that normal NTSB protocols had not been followed in the TWA Flight 800 investigation, Dr. Mayer proceeded to misrepresent eyewitness accounts that if presented accurately, would not have fit the NTSB’s probable cause (of the crash) conclusion. After spending 16 months “working closely” with a CIA analyst charged with helping him evaluate eyewitness accounts, Dr. Mayer’s presentation at the NTSB’s final hearing was tantamount to a disinformation effort to discredit key eyewitnesses.⁶⁰ Mayer testified about Joseph Delgado⁶¹, an extremely important eyewitness because of his detailed observations--which included references to several landmarks--and his wide, unobstructed view of the crash. The landmarks he mentioned matched critical locations of airborne events that occurred during the plane's breakup sequence and that were confirmed by the aircraft’s black box and FAA radar sites.

At the final Sunshine Hearing, however, Dr. Mayer said that “everything” Delgado saw “occurred between two flagpoles,”⁶² indicating an extremely narrow line of sight that would have made it difficult if not impossible for Delgado to see anything significant. In fact, Delgado had a virtually unobstructed line of sight when he saw an object rise up from behind a line of trees that was beyond and above a building located precisely in the line of sight to TWA Flight 800’s position when it lost electrical power and began breaking up in midair.

⁵⁹ Ibid, pg. 9

⁶⁰ Exhibit F: Title 18 U.S.C§1001(a)(1)(2)(3) “Statements or entries generally”: “... whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document know the same to contain any materially false, fictitious or fraudulent statement or entry; shall be fined...”

⁶¹ Exhibit CC: FBI 302 summary of eyewitness account of Joseph Delgado

⁶² Exhibit BB: Transcript of NTSB board meeting on TWA 800. August 23, 2000, Day 2, part 3 of 4, pg. 12, Dr. David Mayer testimony

Dr. Mayer also misrepresented Air National Guard pilot Fred Meyer's eyewitness testimony by saying that "he observed a streak in flight for about one or two seconds and then saw an enormous fireball develop."⁶³ Dr. Mayer's description omitted Meyer's critical, expert testimony about seeing a detonation of military explosives (that Meyer had often seen while serving in Vietnam as a helicopter pilot) before Meyer saw the "enormous fireball" develop.

Major Meyer said that "I saw a streak of light in the sky...I observed it for somewhere in approximately three to five seconds moving in a gradually descending arc—sort of a gentle descending trajectory...I observed the streak of light for three to five seconds. And then I saw an explosion. And about one to two seconds after that I saw a second, and possibly a third explosion...this looked like flak [debris ejected from high-velocity military explosive]. It's a hard explosion. It's like an HPX explosion as opposed to a soft explosion like gasoline or something... And then, from that approximate position emanated this fireball, which was a soft explosion. And it was definitely petroleum. If you've ever seen a—I—I did not fly attack; I flew rescue. But I was in a position to observe A-4s and F-4s hitting storage depots and watching the color of a storage depot that's being hit and exploding and blowing up. And I knew at that moment—of course we all know now—but I knew at that moment that that was a petroleum explosion."⁶⁴ Major Meyer clearly explained to NTSB interviewers that he saw a fireball evolve and descend to the ocean *after* seeing the detonation of military explosives. Dr. David Mayer's failure to mention the critical portion of Major Meyer's account where Meyer described in detail seeing military ordnance cause the crash is tantamount to Dr. Mayer suppressing "factual evidence" (the terms Dr. Mayer himself used to describe eyewitness testimony).

Besides misrepresenting the eyewitness accounts at the final hearing, Dr. Mayer dishonestly answered a critical question that Chairman Hall asked: "Now, if you could show that the airplane did not climb after the nose departed, will that change your analysis?" Mayer's response, "No sir..."⁶⁵ willfully ignores the obvious fact that proof that the aircraft did not climb (which the radar data clearly shows) would mean that what the eyewitnesses saw going up was something other than Flight 800 climbing. Chairman Hall did not ask Mayer why his analysis would not change if the evidence showed that Flight 800 did not climb. It should be noted here that even though the NTSB's radar group had the radar data and the expertise to properly analyze the data, they went along with the CIA's preemptively broadcast assessment. The NTSB even produced its own breakup sequence animation that explained away the eyewitness accounts in the same false manner.

The NTSB did, however, amend the CIA's version by showing that Flight 800 turned left

⁶³ Exhibit L: *TWA Flight 800* documentary transcript, pg. 42, and DVD

⁶⁴ Exhibit DD: National Transportation Safety Board interview transcript. NY ANG Maj. Frederick Meyer, January 11, 1997. Pgs. 6 – 9.

⁶⁵ Exhibit BB: Transcript of NTSB board meeting on TWA 800. August 23, 2000, Day 2, part 3 of 4, pg. 9, Dr. David Mayer testimony

prior to making the physically impossible zoom climb that the CIA had fabricated in its own animation⁶⁶. Even though the NTSB's probable cause scenario does not account for the left turn and even though, like the CIA animation, the NTSB's animation does not match the radar data that was available to the NTSB radar group, the NTSB animation was publicly entered into the record as valid and correct.

At the final hearing, Mayer also misrepresented the work of eyewitness expert Dr. Ira Hyman in an effort to discredit the eyewitness accounts⁶⁷. Hyman, who is a false childhood memory expert, said of Mayer and his eyewitness group, "I was never contacted by these individuals before they quoted me and referenced my research." Nevertheless, Mayer referenced Hyman's childhood memory research out of context to discount the observations of hundreds of eyewitnesses who were never called to testify at any federal hearing.

Although Mayer was not under oath when he misrepresented the eyewitness and other evidence of the case, the false statements that he made for the official record of the National Transportation Safety Board's final hearing on the crash investigation are prohibited per Title 18 statutes, including §1001 (1)(2), "Statements or entries generally" which states that "...whoever, in any matter within the jurisdiction of the executive, legislative or judicial branch of the Government of the United States, knowingly and willfully...falsifies, conceals, or covers up by any scheme, or device a material fact or makes any materially false, fictitious or fraudulent statement or representation...shall be fined...imprisoned..." Mayer's actions are also prohibited per Title 18 statute §1505 (c)(2) "Obstruction of proceedings before departments, agencies and committees" which states that "whoever corruptly alters, destroys, mutilates or conceals a record, document, or other object...with the intent to impair the object's integrity...shall be fined...or imprisoned...."

Dr. Mayer's false testimony at the Sunshine hearing and his previous actions as Eyewitness Group Chairman and manager of the debris database all show that he was engaging in covering up, suppressing and altering evidence--all of which obstructed a federal investigation and are prohibited per the previously mentioned Title 18 statutes.⁶⁸

December 2001

News 12 Long Island aired a video of TWA Flight 800 wreckage being junked at Coram Metals recycling yard and reported that the NTSB had authorized the disposal⁶⁹. This was done without my prior permission as chairman of the Airplane Interior Documentation group or the permission of other group chairmen. In the "Release of Wreckage" section of The NTSB "Aviation Investigation Manual-Major Team

⁶⁶ Exhibit L: *TWA Flight 800* documentary transcript, pg. 30. NTSB animation in DVD.

⁶⁷ Exhibit L: *TWA Flight 800* documentary transcript, pg. 41, and DVD.

⁶⁸ See Exhibit F

⁶⁹ Exhibit EE: DVD of news package reporting on NTSB disposal of TWA Flight 800 wreckage

Investigations”⁷⁰ it is clearly stated that all group chairman must be consulted prior to wreckage being released: “When the IIC [Investigator in Charge] and the *group chairmen* [my emphasis] have determined that parts or all of the wreckage is no longer needed for investigative purposes, the IIC (or a group chairman so designated) in consultation with the OAS [Office of Aviation Safety] Director, will be responsible for preparing and signing Part 1 of the wreckage release form (NTSB form 6120.15).”

2012-2014

The extent to which the NTSB investigation had been compartmentalized and undermined became even more evident after I joined an investigative team working on a documentary focusing on independently analyzed hard evidence pertaining to the Flight 800 crash. In mid-2012, physicist Tom Stalcup, Ph.D., who had spent 14 years gathering documentation and evidence pertaining to the crash via Freedom of Information Act Requests, lawsuits and independent research, asked me to work with him to review the evidence. Dr. Stalcup and I then invited other former members of the original NTSB investigation to join us, including TWA’s top safety official Bob Young, and Jim Speer, investigator for the Air Line Pilots Association. Later, others participated in our evidence review process, including Colonel Dennis Shanahan, M.D. who was the NTSB’s chief aero-medical forensic consultant for the Flight 800 investigation, Dr. Charles Wetli, Chief Medical Examiner in charge of conducting all of the Flight 800 victims’ autopsies, Dr. Merritt Birky, the NTSB’s Chairman of the Fire and Explosives Group, Rocky Miller, Party Coordinator for the International Association of Machinists and Aerospace Workers and John Desmond of the Independent Federation of Flight Attendants who was a member of the First Eyewitness Group and also served on the Airplane Interior Documentation Group.

The unfettered access we former members of the original investigation now had to each other to review documents and evidence as well as to conduct relevant, unbiased tests that had not been conducted during the investigation, revealed to us a pattern of consistent efforts to ignore, alter and/or suppress the available hard evidence while trying to force or fabricate evidence to fit a questionable probable cause theory. There was also a pattern of failing to conduct necessary tests and analyses, failing to share critical evidence among all the investigative groups and conducting tests using invalid conditions to achieve results that could not be achieved in conditions experienced by the aircraft and its component parts and systems.

This, I learned as our team’s investigation moved forward, was done in various ways:

After he began participating in our investigative team’s efforts, Jim Speer, the Airline Pilots Association investigator, made me aware of his encounter with the FBI limiting his activities as a member of the NTSB investigation and with his experience of the FBI using the “false positive” ruse to keep him from having further access to wreckage testing positive for explosives:

⁷⁰ NTSB manual, “Aviation Investigation Manual – Major Team Investigations” Section 3.12 p 25

“On my first day there when I had the tour of the Calverton hangar,” Speer said, “there was a structural piece of the aircraft lying on the floor that had three holes blown through it like a twenty-two through a tin can with an obvious entrance and exit side of the penetration...the part was really a very sturdy piece of metal. I was convinced that the part had been damaged by a high explosion because of the entrance hole and the exit hole where you could obviously see the entrance side and obviously see the exit side. I was about to take a picture of it and somebody tapped me on the shoulder and said, ‘Don’t take that picture.’ And I said, ‘Who are you to tell me not to take the picture?’ And he said, ‘FBI. Don’t take the picture.’”⁷¹

Speer then decided to look for other wreckage parts with similar holes. When he found one, he took it to the FBI’s explosives testing field laboratory and asked them to swab it. When the piece tested positive for explosives residue, Speer says, “they picked up the phone and called somebody and in 90 seconds three FBI agents ran in the room in their coats and ties and physically pushed me aside and wouldn’t let me hear the conversation. Then they turned to me and said, ‘The machine has frequent false positives.’”⁷²

“So they run the test four more times,” Speer said, “but they physically would not let me watch them run the test. And they turned to me then and said, ‘The last four tests are negative. We’re going to declare the first test a false positive and the overall results negative.’” Then Speer says, the part was sent to Washington, ostensibly to confirm the testing done at the FBI field laboratory. The part, says Speer, was never returned to the Calverton hangar. Again, Dr. Whitehurst says there was no need to remove the part from the hangar, as the Egis machine was reliable and precise.⁷³

Speer also provided another example of his direct experience with the FBI withholding evidence from the NTSB investigation. This occurred when Speer was asked to watch ROV (remotely operated underwater vehicle) video of the TWA 800 wreckage to search for the engine and engine parts. “...in looking at the tape,” Speer said, “there’d be a little time clock on the top that had all the data, like the heading, the depth and time and after a while I began noticing that on the same heading, there’d be interruptions in the time clock. And I turned to the FBI guy and said, ‘This tape’s been edited.’ And I said, ‘I want to see the unedited version.’ And he said, ‘No.’”⁷⁴

Another example of a failure to share critical information that I learned about while working with the TWA Flight 800 documentary investigative team had to do with NTSB Fire and Explosives Group Chairman Dr. Merritt Birky’s testing of suspicious splatter on the top of the center fuel tank and on specific interior wreckage components. The splatter was significant because it had melted on the *fuel tank prior to the tank breaking to pieces*. Proof of this was the fact that when the center wing fuel tank was pieced back together

⁷¹ Exhibit L: *TWA Flight 800* documentary transcript, pg. 5, and DVD

⁷² Ibid, pg. 7, and DVD

⁷³ Ibid, pg. 8, and DVD

⁷⁴ Ibid, pgs. 11, 12, and DVD

like a jigsaw puzzle, the splatter was continuous across the fracture lines of several pieces of the tank, but it was not found within the fractures themselves. The NTSB officially reported that the initiating event causing Flight 800's demise was an explosion in the fuel tank, but Dr. Birky's group had documented another high temperature event that had occurred *before* the fuel tank exploded. This raised the probability that the event that caused the splatter was the initiating event, not the fuel tank explosion. In his "Fire and Explosion Group Field Notes on Splatter Deposits,"⁷⁵ which all of the investigators from his specially convened "Splatter Group" signed off on, Dr. Birky admitted that a high temperature event preceding the fuel tank explosion most likely caused the splatter material. He also wrote: "The temperatures associated with the [splatter] deposit generation process exceeded the auto-ignition temperature of the fuel in the WCS [Wing Center Section, of which the center wing tank where the fuel ignited is a part] possibly by an appreciable margin...[which] raised the question as to whether an overheat that had generated the [splatter] deposit could also have caused the WCS initial event." Birky's group's finding directly refutes the officially proposed scenario of a fuel-air explosion in the center wing tank initiating the aircraft's destruction but was ignored.

When Dr. Birky sent samples of the splatter to Mr. Charles Bassett at NASA for testing, Bassett's results showed that nitrate anions (explosives indicators) were present in two samples of the splatter. Bassett wrote that while he did not attempt to determine the origins of the anions, that it was "of concern and is under further investigation."⁷⁶ But after receiving Bassett's report, Dr. Birky stopped all testing of the splatter material, even though his group suspected that the splatter could have resulted from the actual initiating event that caused the crash. Dr. Birky also failed to tell me about his group's findings or even that the splatter had been found on wreckage components under my purview. As the Airplane Interior Documentation Group Chairman, I should have been advised of the presence of the splatter. Dr. Birky also apparently failed to inform FBI explosives examiner Bob Heckman about them. Heckman was in charge of overseeing all the FBI's chemical testing but said he was never informed of the existence of the splatter material on top of the center wing fuel tank⁷⁷. It should also be noted here that the nitrates NASA's Bassett found in the splatter were not mentioned in Birky's "Factual Report on Splatter Deposits."

When asked by our investigative team why he did not do the follow up testing, Dr. Birky answered that he didn't recall why and then posed this rhetorical question: "Should more analytical work been done? Well, uh, that's, that would be appropriate."⁷⁸ To this day, the source of the nitrates in the splatter has yet to be positively identified.

Dr. Birky's failure to conduct the follow-up testing is part of a pattern of numerous instances of incomplete and invalid testing or analysis conducted that prevented

⁷⁵ Exhibit GG: November 6, 1997, NTSB Office of Research and Engineering, "Fire and Explosions Group Field Notes on Splatter Deposits," section 8.2, "Possible Scenarios," p. 9

⁷⁶ Exhibit HH: NASA Report 97-1C0063. "National Transportation Safety Board (NTSB) Samples MB-1 and MB-2 TWA-800". April 29, 1997.

⁷⁷ Exhibit L: *TWA Flight 800* documentary transcript, pg. 28, and DVD.

⁷⁸ *Ibid*, pg. 30 and DVD.

determining conclusively whether or not the officially proposed scenario was valid or not.

Testing and analysis of certain key evidence was avoided altogether and when inconvenient results were obtained—like explosives traces found throughout the internal and external wreckage of Flight 800—they were explained away with demonstrably false information, i.e., the incorrect “false positives” explanation and the previously mentioned dog-sniffing exercise that could not have occurred on the airplane that became Flight 800.⁷⁹

A good number of the invalid tests, false results and false statements that were made by CIA, FBI and NTSB investigators and leaders had to do with evidence indicating that ordnance explosives caused the crash. Besides suppressing and misrepresenting eyewitness accounts at hearings, misrepresenting what the radar data showed and producing an animation inaccurately depicting TWA 800’s breakup sequence, NTSB investigators also included the results of blatantly invalid explosives testing in the NTSB’s final Aircraft Accident report⁸⁰. I learned this when Dr. Joseph Kolly, the NTSB’s Director of the Office of Research and Engineering, made a statement about explosives on Flight 800 wreckage at a press conference on July 2, 2013. The conference was being held in response to the NTSB receiving a formal petition to reconsider the probable cause determination of the crash that I submitted on behalf of the TWA Flight 800 investigative team.

Dr. Kolly told the press that explosives detected in TWA Flight 800 wreckage would have dissolved in the ocean water where the plane crashed and indicated that any explosives detected would therefore have to have come from contamination of the wreckage after it was recovered from the ocean. Besides directly conflicting with the previous, highly publicized explanation (albeit false) of explosive traces on the wreckage having resulted from a dog-sniffing exercise that occurred weeks before TWA 800 crashed, Dr. Kolly’s comments were based on inaccurate testing and analysis. Dr. Stalcup and our investigative team discovered that the test⁸¹ the FAA conducted to see how quickly explosives dissolve in seawater was done in the shallow, nutrient-rich water of Brigantine Bay off the New Jersey coast. Brigantine Bay, an estuary fed by fresh-water rivers and marshes in the area, teems with microbial life. This water is very different from where TWA Flight 800’s wreckage lay in 125 feet of ocean water approximately ten miles off the coast of Long Island, New York. The difference is that the deeper and farther away from shore the ocean water, the less microbial life it typically contains. A peer reviewed study titled “Spatial and Temporal Variations in Microbial Activity in the Mediterranean Sea” confirmed this, showing that in seawater, there can be a 1000 percent

⁷⁹ Exhibit L: *TWA Flight 800* documentary transcript, pg. 25, and DVD

⁸⁰ Exhibit II: National Transportation Safety Board, Aircraft Accident Report. July 17, 1996. PB2000-910403, NTSB/AAR-00/03, DCA 96MA070, page 119, 1.16.4.8.1 FAA Studies on the Effects of Sea Water on Explosive Residue Contamination

⁸¹ Exhibit JJ: Hazardous Materials Security Group Chairman’s Report, “Immersion Studies of Aircraft Parts Exposed to Plastic Explosives”. April 27, 1999.

or more reduction of microbial activity in off-shore areas.⁸²

Most significantly, the microbes were found to play a key role in the dissipation of the explosives.

The FAA report's authors found that when the high-density microbe population in the bay water was killed off by boiling the water, the explosives did not dissipate rapidly or at all. The boiled bay water would more closely match the microbial density in the distant sea water where TWA 800 wreckage ended up, which explains why explosives traces remained on a significant number of TWA 800 pieces of wreckage even after they had been underwater for some time.

Dr. Stalcup also explained to me that a three-dimensional commercial aircraft is a far better and more efficient target for capturing and retaining explosives residue than the small number and widely dispersed metal objects placed on a two-dimensional and highly porous metal fence that was used to capture explosives in the NTSB-sanctioned study. Dr. Kolly's misrepresentation of the presence of explosives on the wreckage was in line with the ongoing multi-agency (CIA, FBI, NTSB) efforts to minimize the actual presence of explosive on the wreckage. Subsequent written requests that our team sent to NTSB legal counsel David Tochen asking the NTSB to publicly correct the record on this matter have gone unheeded.

Another example of an NTSB investigator willfully ignoring critical evidence and fitting evidence to the officially proposed scenario can be seen in metallurgist Jim Wildey's work. Wildey took over for (previously mentioned) NTSB metallurgist Michael Marx as Chairman of the NTSB's Structures/Metallurgy Group. It should be noted here that the officially proposed crash scenario rests heavily on Mr. Wildey's work, which is why the integrity of his work was so critical. Dr. Stalcup brought to my attention the fact that the breakup sequence that Wildey's group proposed did not match the FAA radar data. When Stalcup alerted Wildey to this discrepancy while Wildey was still employed by the NTSB and offered to send him the radar analysis, Wildey refused, saying that he was not in the radar group. Wildey should have consulted and shared information with the radar group to correct this critical discrepancy. The fact that he avoided doing so was in keeping with a number of other egregious efforts he made to fit whatever evidence he could to the officially proposed exploding fuel tank crash scenario while ignoring or discounting evidence that contradicted this scenario.

Wildey readily admits this in his metallurgy/sequencing report (NTSB Exhibit 18A). He wrote that his group "strove to fit a proposed scenario to all relevant observations...[and] had to accept that some feature[s] either could not be explained by the proposed scenario or might even be in conflict with the proposed scenario." Wildey listed the presence of "localized re-crystallization of portions of the rear spar"⁸³ (which indicates a localized high-temperature heat source in that area instead and to the exclusion of the officially-

⁸² Exhibit KK: *Archo Oceanogr. Limnol.* 22 (2001), 199-206. "Spatial and Temporal Variations in Microbial Activity in the Mediterranean Sea". Pg. 202.

⁸³ Exhibit LL: "NTSB Report No. 97-38 Metallurgy/Structures Sequencing Study," p 30

proposed fuel fire that would not have been able to produce such localized damage) and the recovery location of a piece of the front wall center fuel tank (CW-504) as conflicting with the officially proposed crash sequence. These were two examples that Wildey openly admits conflict with the official theory for the crash, but they are not the only examples. It should be noted here that the CW-504 piece was not only recovered in a location that contradicts the official theory for the crash, this piece also had a significant amount of the previously mentioned nitrate-containing splatter material on it. Further, The NASA report indicating the presence of nitrates in the splatter material was, very significantly, withheld from the NTSB docket during the fact-finding phase of the investigation, which included the public hearing in Baltimore. Failing to include the NASA report in the NTSB docket was tantamount to suppressing evidence.

Examples of Wildey ignoring key evidence and limiting testing to avoid inconvenient results that would conflict with the officially proposed scenario are also evident in his reports on small holes, wing damage and spike tooth fractures evidence.

As the sole author of the NTSB's "Examination of Small Holes,"⁸⁴ Wildey failed to mention the inward trajectory of objects into the fuselage that made many of the holes. The significance of this critical oversight cannot be overemphasized. The inward moving trajectory of these objects is evidence of a proximity fuse missile exploding a distance away from the aircraft and sending projectiles into the jetliner. Further, in his report, Wildey analyzed two specific holes with "high-velocity" characteristics that were found in the horizontal pressure deck, just behind the center wing fuel tank. These two very similar holes were about 3/16" in diameter and were created by objects travelling downward. This trajectory is significant because it is consistent with these objects originating from a proximity fuse missile detonating above the aircraft. Such a missile engagement is also, significantly, *inconsistent* with a possible shoulder-launched missile strike on which investigators exclusively focused. In his December 1997 report, "TWA Flight 800 Missile Impact Analysis," China Lake missile expert Richard Bott said shoulder-launched missile "fly-out" simulations had demonstrated that shoulder-launched missiles could not reach the necessary altitude to explode above the plane⁸⁵. This raises a very serious question about why Bott did not propose looking into other missiles that better fit the evidence and eyewitness accounts.

Wildey did try to recreate the holes in the fuselage by firing projectiles out of a gun into test pieces. But when he realized that whatever caused those holes had to be moving faster than the objects he was shooting out of a gun, his report abruptly ended. Wildey never reported the speed at which the objects that made those holes were moving because he did not conduct the necessary tests to find out. Had he done so, the results would more likely than not have been problematic for the official scenario, as they may have indicated that the officially proposed low velocity fuel air explosion could not have caused such fast-moving projectiles in any direction.

⁸⁴ Exhibit MM: NTSB Report No. 97-81, "Metallurgist's Factual Report"; examination of holes in the airplane structure written by Jim Wildey

⁸⁵ Exhibit NN: Richard Bott's "TWA Flight 800 Missile Impact Analysis", Section heading: "Left Side Hole From STA1040-1241, Stringer 26L to 20L, pp16,17, December 1997

In his report submitted before the Baltimore hearing, Wildey admitted in a footnote that “internal and external” left wing components were recovered from the earliest debris field⁸⁶, indicating that this damage to the left wing occurred in the air, early in the crash sequence. In fact, the left wing was shattered into small pieces, which if occurring in midair as these recovery locations indicate, means that a high energy explosive event was involved in the wing’s destruction, not the low-velocity deflagration of the center wing fuel tank. Instead of looking further into what could have caused the left wing to shatter so early in the crash sequence, Wildey simply wrote in his report that the wing parts were “under review.” Wildey never provided any follow-up reports or results indicating that he actually completed such a review. In direct contradiction to this clear evidence of early midair left wing damage, Wildey stated at the 1997 NTSB public hearing that this left wing damaged was caused by water impact alone.

Dr. Stalcup told me that he had several exchanges with Wildey about spike tooth fractures. According to the NTSB, spike tooth fractures are caused by high-energy events. Wildey initially said that they had occurred on ocean impact, but when Dr. Stalcup pointed out that some pieces of wreckage bearing these fractures had been recovered from the earliest debris field, indicating they were created by a violent, high-energy event while the aircraft was in the air, Wildey suggested that the center tank explosion could have been the energy source for some of the fractures. This suggestion directly contradicts the NTSB’s own claim that spike tooth fractures are caused by high-energy events, because the official fuel-air explosion was a low-energy event. As a trained metallurgist, Wildey could not have been unaware of the inaccuracy of his comment to Dr. Stalcup. Fire and Explosives Group Chairman Birky initially denied any knowledge of spike tooth fractures to Dr. Stalcup even though they were covered in his group’s factual report under the heading “Spiketooth Fracture Sooting.”⁸⁷ When Dr. Stalcup suggested to Dr. Birky that spike tooth fractures found throughout the wreckage in a random pattern could be consistent with a missile that exploded some distance from the aircraft, Dr. Birky agreed, saying, “it could be consistent with that, but it doesn’t prove that.” Dr. Stalcup replied that, “it could be an indicator, used with other evidence such as radar evidence...”. Dr. Birky agreed, saying, “that’s right.”⁸⁸ This exchange, along with Wildey’s work and report on spike tooth fractures shows the willful disregard for and sidelining of important evidence that occurred on a regular basis during the investigation. It also demonstrates the lack of communication about important evidence that existed between NTSB and FBI investigators. FBI explosives examiner Heckman told Dr. Stalcup that he knew nothing about spike tooth fractures and that he’d “never heard that term.”⁸⁹

International Association of Machinists and Aerospace Workers party coordinator Rocky Miller, told me he felt that the L-3 door area just above the left wing needed to be

⁸⁶ Exhibit LL: Report 97-38: NTSB “Metallurgy/Structures Sequencing Study” p 25

⁸⁷ Exhibit OO: NTSB’s “Fire and Explosion Group Factual Report” pp. 97 – 101.

⁸⁸ Exhibit L: *TWA Flight 800* documentary DVD. *Extra Scenes* : “Spike Tooth”.

⁸⁹ Ibid

investigated to a far greater extent than it had been. The L-3 door area is located just above the left wing. “The significance of the L-3 door area,” Miller said, “is that it’s a combination of a lot of small pieces of evidence that indicate that there was a penetration of the fuselage from the exterior to the interior of the aircraft. The four locking pinions on the door indicate that the door was blown in and up into the aircraft which shows a movement from the exterior to the interior of the aircraft. The pickle fork is right there-- which is the strongest part of the aircraft--was bent in such a manner that also indicates that there was this circular area of penetration into the aircraft. The L-3 jump seat [a flight attendant seat] was the most destroyed jump seat on the aircraft...the next three rows of passenger seats were almost completely destroyed.” The damage Mr. Miller noted is also consistent with the early departure of left wing components from the airplane, which is confirmed by their recovery locations. All of this is consistent with an external high-velocity detonation near the left wing. China Lake missile expert Richard Bott agrees that a missile diving down from above and hitting the aircraft could have caused the hole Miller described.

“It is physically possible that the aft end of this hole could be an entry hole because of the missing substructure....”⁹⁰ Bott further describes how a missile would enter the plane based upon what the damage shows: “The most likely entry angle would range from an azimuth of 100 to 135 degrees from the nose of the aircraft and an elevation of -5 to -60 degrees from the horizontal plane of the aircraft. These negative elevation angles mean the missile would have been higher than TWA Flight 800 and diving down at impact...”⁹¹ Bott’s trajectory description dovetails with the eyewitnesses describing an object rising up above TWA 800 before heading downward into the jetliner. In his report, Bott immediately dismisses his depiction of what happened and the possibility of a missile causing the damage by saying that “fly-out” simulations of shoulder-fired (Manpad) missiles show that they do not have the necessary range to fit the trajectory from above. But he does not comment on whether or not other types of missile could have flown that trajectory.

In his testimony at the Baltimore hearing, Bott admitted that missiles other than Manpads could have caused TWA Flight 800’s demise: “It’s possible that several types of missiles could have been in the vicinity of TWA Flight 800 at the time of the uh, the mishap...”⁹²

Arguably the most disingenuous and expensive effort on the part of an NTSB group to fabricate evidence supporting the officially proposed scenario using invalid testing parameters was a fuel tank explosion test done on an out-of-service 747 airplane between July 28, 1997 and August 2, 1997 at the Bruntingthorpe aerodrome in the United Kingdom. Essentially, Dr. Birky and his Fire and Explosives group used elements they knew were invalid to try to fabricate evidence showing that the fuel tank explosion was powerful enough to destroy TWA flight 800.

⁹⁰ Exhibit NN: Richard Bott’s “TWA Flight 800 Missile Impact Analysis” p 16.

⁹¹ Ibid

⁹² Exhibit L: DVD and TWA Flight 800 transcript, page 37; China Lake missile expert Richard Bott’s testifying at NTSB’s Baltimore hearing

“We went over there to blow up the center wing tank on that aircraft to see what the effects would be and see how we could correlate that with what happened to TWA 800,” Dr. Birky told Dr. Stalcup.

Air Line Pilots Association investigator Jim Speer said that he and other colleagues asked that all the same circumstances present at the time TWA Flight 800 exploded be faithfully recreated for the test: “We requested that they use fuel with an anti-static inhibitor that would have been in the tank and that they use an ignition source available from the airplane.”⁹³

Speer said that the reasonable and scientific requests he and his colleagues made were denied outright: “They said ‘no we’re not going to do that, we know it won’t go off [the tank won’t explode] if we do that’”⁹⁴. This confirms that Birky’s group willfully prepared to conduct testing that they knew was invalid in terms of reproducing what happened to Flight 800.

According to the NTSB’s Jim Wildey, instead of using an electrical spark similar to that which was officially alleged to have set off the TWA 800 explosion, Birky’s group used “plastic explosives,”⁹⁵ which, coincidentally, is the same type of explosives contained in missile warheads.

TWA investigator Bob Young said that he was told that Dr. Birky’s group was going to fill the center tank with a “jet A simulant,” or substance with the same level of flammability as the Jet A fuel that was in TWA 800 at the time it exploded. “We filled the center wing tank with propane gas,” said Birky. But propane gas is far more flammable than Jet A fuel and therefore not a representative simulant. “The explosion, I think, was a bit more violent than TWA 800,” said Dr. Birky. Wildey characterized the results more accurately: “...the damage from the explosion kind of obliterated everything and made comparison to 800 impossible,”⁹⁶. Dan Rephlo, a structural engineer for TWA and member of the NTSB’s Structures Group, briefed Young on the results of the Bruntingthorpe test. Rephlo said that the test did not “remotely resemble” what happened to Flight 800. Rocky Miller said that shortly after Bruntingthorpe, Investigator in Charge Al Dickenson held an “all hands” meeting with the party coordinators to the Flight 800 investigation. When asked when they would be briefed on the results of the Bruntingthorpe testing, Miller said that Dickenson replied, “Bruntingthorpe has nothing to do with this investigation.”

While Dr. Birky’s team’s testing at Bruntingthorpe bore the hallmarks of being conducted for the purpose of manufacturing evidence, another series of tests conducted at the same time by an outside expert were critically relevant to the Flight 800 investigation. Mr. Stuart Dyne of the UK’s University of Southampton devised a series of sound

⁹³ Exhibit L: *TWA Flight 800* documentary DVD. *Extra Scenes* : “Bruntingthorpe”.

⁹⁴ Ibid.

⁹⁵ Exhibit PP: July 22, 2012 Email from Jim Wildey to Dr. Stalcup with subject line: “Re: Bruntingthorpe ignition source”

⁹⁶ Ibid

spectrum tests to determine whether Flight 800's cockpit voice recorder [CVR] had recorded a high order detonation or a low order fuel-air explosion (referred to as a "deflagration"). In their April 2000 report⁹⁷ to the NTSB, the Air Line Pilots Association [ALPA] described the testing:

"The first phase of the trials, consisting of forty-one high explosive events, was completed during the first week of March 1997. The test instrumentation and recording devices were similar to what had been previously agreed upon, but only a portable VHF radio was used, with no definitive results. A 'stand-alone' three-axis acceleration recorder, still photographs and video augmented the recording devices."

As per a well-established, documented pattern of tainting, altering or suppressing evidence pertaining to determining if explosives caused Flight 800's demise, the sound spectrum testing, the ALPA report noted, was expurgated:

"...the sound spectrum group has never met to review or discuss any of the testing that was conducted. The valuable data that was collected during those tests have never been published, nor has there been any group or party opportunity to analyze the CVR from TWA 800 in the light of the work that was done. Furthermore, the NTSB has not made the analysis of a third-party's study on this subject available to investigators or the public.

An enormous amount of time, money and human resources went into planning and conducting this series of tests; the results should have been made available to the Sound Spectrum group in a timely manner, for inclusion into the overall investigation of TWA 800. Additionally, whatever valuable scientific data that could have been developed by careful analysis of the results of these tests should have been published and made available to the worldwide accident investigation community. Finally, the Sound Spectrum group has never been briefed regarding the analysis of the data completed at the University of Southampton, nor has the group met to finalize any type of report of its activities in relation to the investigation of TWA 800."⁹⁸

In light of ALPA's descriptions of the aim of the sound spectrum testing and what happened to the results of that testing, Mr. Dickenson's comments about Bruntingthorpe having nothing to do with the Flight 800 investigation implicate him in the suppression of the test results.

The NTSB delayed releasing its report on Bruntingthorpe for two years. The report showed that out of nine summary comparisons, only two described any similarities between Flight 800 and the Bruntingthorpe wreckage. The remaining seven were completely at odds. For example, at Bruntingthorpe, the explosion caused nearby structures to be ejected in all directions. Immediately after the explosion, the wings on the Bruntingthorpe aircraft were severed from the rest of the fuselage, whereas on Flight

⁹⁷ Exhibit QQ: "Submission of the Air Line Pilots Association to the National Transportation Safety Board Regarding the Accident Involving Trans World Airlines Flight 800 Off Long Island, New York on July 17, 1996". April 30, 2000, "Sound Spectrum Analysis" pp 5, 6

⁹⁸ Exhibit F: Title 18 U.S.C. §1001(a)(1) and §1505(c)(1)(2)

800 they remained intact for more than 2 kilometers after the initial explosion. These results significantly diminished the chances that a similar explosion caused the Flight 800 crash. The two-year delay in releasing the report, Bob Young noted, “allowed the NTSB and specifically, NTSB metallurgist Jim Wildey to write the report with no party input. Normally the party participants would have initialed the final report and this was not done.”

The Bruntingthorpe test was only mentioned in passing at the NTSB’s final hearing in August 2000 and there was no discussion of the critical differences between the damage to Flight 800 and the damage to the test airplane.

Investigator in Charge Al Dickenson, Fire and Explosions Group Chairman Merritt Birky and Structural Group Chairman Jim Wildey acted independently and together to conduct unscientific tests and ignore negative results to create a fraudulent record showing that the available evidence was consistent with the officially proposed scenario. Evidence that directly conflicted with that scenario, like the Bruntingthorpe test results, was minimized and suppressed in direct violation of normal NTSB investigative protocols. Bypassing normal party review procedures, delaying the report’s release, and limiting discussion of the test results were all breaches of NTSB rules.

“When you have an investigation that only takes into account facts that it likes,” Young observed about the NTSB’s Flight 800 investigation, “then it’s probably not a good investigation. This was that sort of investigation.”⁹⁹

Another example of limiting the parameters of investigation so as not to find inconvenient evidence had to do with both the FBI and NTSB limiting the kinds of missiles considered as possible culprits of Flight 800’s demise. Only shorter-range, shoulder-fired missiles were used in tests when my own group’s findings as well as metallurgic damage signatures, the radar data and eyewitness accounts were all consistent with the nearby explosion of one or more proximity fuse missiles. These missiles leave damage signatures that are completely different from those left by small contact fuse missiles. The contact fuse missiles considered during the investigation explode on contact with their targets and leave pockmarks and pitting. Proximity fused missiles explode fifty to one hundred feet away from their targets and do not leave pock marks and pitting. Investigators inaccurately concluded that since there were no pockmarks on Flight 800’s fuselage, a missile was not involved. This illogical and unscientific conclusion was repeated on numerous occasions by investigators and official spokespersons, most of who had no experience identifying any type of missile damage on anything.

Besides the above-mentioned distortions and suppression of the physical evidence, the CIA, FBI, and NTSB misrepresented eyewitness accounts to explain away possible missile sightings. And while doing so, as I learned recently, the NTSB Radar Group failed to accurately plot Flight 800’s breakup sequence.

⁹⁹ Exhibit L: *TWA Flight 800* documentary DVD. *Extra Scenes* : “Bruntingthorpe”.

A very high percentage of eyewitnesses who saw the earliest portions of the breakup sequence all said they saw a streak of light rise off the earth's surface heading toward TWA Flight 800's position 2.6 miles up. This streak of light ended with an explosion at the jetliner's position prior to any of the confirmed observations of the aircraft's fuel igniting.

The official explanation is that the eyewitnesses were watching the jetliner climb sharply while on fire, and that what they saw was "not a missile." This was according to the 14-minute animation that the CIA produced titled "TWA Flight 800: What Did The Eyewitnesses See?"¹⁰⁰ This video was broadcast nationally on November 18, 1997 and preempted the NTSB's first public hearing on the crash by three weeks. Five days before this NTSB hearing, and as stated above, FBI Assistant Director James Kallstrom wrote a letter formally requesting that no eyewitnesses be allowed to testify at the NTSB's public hearing, unless those eyewitnesses supported a mechanical malfunction as the cause of the crash.

The climbing aircraft was the only way officials could account for the rising streak seen by eyewitnesses, because in the official scenario, there were no external objects near Flight 800. The CIA and the NTSB therefore created animations of the aircraft climbing that contradicted the radar data recorded by many FAA radar sites that tracked the aircraft's actual flight path¹⁰¹.

Accurate plotting of the radar data shows that Flight 800 did not climb significantly or at all. Given the NTSB's long experience working with radar data and the fact that two agencies—CIA and NTSB—inaccurately plotted Flight 800's break-up sequence indicates a deliberate effort to alter the evidence and suppress factual information.

Besides improperly animating the jetliner's flight path, NTSB investigators should have, but never did, triangulate eyewitness sightings to see if they matched any proposed flight trajectories.

A very significant eyewitness triangulation effort in which I was personally involved determined that many eyewitnesses saw an object head southbound towards TWA Flight 800's left side. This trajectory is consistent with missile expert Richard Bott's assessment of the trajectory of an object that may have created a hole in the jetliner's left side. In January 2014, our investigative team met with high-level NTSB officials at their headquarters in Washington, DC to brief them on this and other analyses. We stressed to these officials that many FAA radar sites that recorded the crash supported the existence of a high speed, southbound object because they showed fast-moving debris hurl out to the right of the aircraft at virtually the same time the aircraft lost electrical power.

¹⁰⁰ Exhibit P: DVD of CIA animation, "TWA Flight 800. What Did the Witnesses See?"

¹⁰¹ Exhibit RR: NTSB Office of Research and Engineering, "Main Wreckage Flight Path Study" by Dennis Crider, pg. 9, Figure 9, November 21, 1997. Graph in Figure 9 shows the CIA simulation data contrasting with the FAA radar tracking. This graph directly compares the 'longitudinal motion only' simulation data with radar data points representing both Islip and White Plains radar sites

During the TWA Flight 800 investigation, the FBI's expert radar consultant Michael O'Rourke pointed out debris "kicking out" to the right of the aircraft at the moment of its demise but the NTSB did no additional analysis to understand what O'Rourke had found. It was only after I had started working with Dr. Stalcup that he made me aware of a ballistics analysis¹⁰² he had done showing that the debris O'Rourke had identified was initially moving at four times the speed of sound—or faster. No deflagration in the center wing fuel tank can account for this high-speed debris. All the relevant experts agree with this point. Dr. Stalcup's results demonstrate that the very analysis that the NTSB's radar group had failed to pursue was, again, an analysis that would have refuted the official theory for the crash.

In the end, the NTSB closed their investigation after holding two hearings where critical information had been altered and suppressed, after avoiding conducting critical testing and analysis, and before they could provide any hard evidence of their own probable cause scenario, including any conclusive evidence of a source of the alleged spark that ignited the fuel tank.

The experience I had working with the TWA Flight 800 documentary investigative team from 2012-2013 made very clear the overarching modus operandi for undermining the official crash investigation: willful and unexplained removal of factual content and context. As the Group Chairman for the Airplane Interior Documentation Group, my findings required not only the analysis that I was ordered not to do, but to make sense, they also required being placed within the context of the findings and analyses of all the other investigative groups. The lack of analysis and context and all the efforts made to alter, suppress, fabricate and otherwise invalidate the evidence gathered by the other groups, made it literally impossible for my work and that of the other groups to be properly assessed and gathered into a cohesive, scientifically sound conclusion.

Having provided details of my knowledge of NTSB personnel and leadership malfeasance during the Flight 800 investigation I think it is important here to emphasize the pertinent regulations detailing how they are expected to perform their duties. Title 49 CFR §805.735-3(a), Title 49 CFR 805.735-3 (b)(c) (4) (6) and Title 49 CFR §805.735-13¹⁰³ state respectively:

“The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by its Members and employees and special Government employees is essential to assure the proper performance of the Board's business and the maintenance of confidence by citizens in their Government. Therefore, the Board requires that its Members and employees and special Government employees adhere strictly to the highest standard of ethical conduct...in their official actions.”

¹⁰² Exhibit SS: Dr. Tom Stalcup's "Ballistics Analysis" pp13, 14 in The TWA 800 Project Petition for Reconsideration, June 18, 2013.

¹⁰³ Exhibit TT: Title 49 CFR §805.735-3(a)(b)(c)(4)(6), "Policy" p485 and Title 49 CFR §805.735-13, "Conduct prejudicial to the Government" p587

“Members and employees shall avoid any action, whether or not specifically prohibited by the regulations in this part which might result in, or create the appearance of:

(4) Losing complete independence or impartiality

(6) Affecting adversely the confidence of the public in the integrity of the Government”

“Members and employees shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Board or to the Government”

While the investigation was being corrupted by evidence altering and suppression, and along with the purposeful failures to conduct necessary analyses, NTSB and FBI leadership mounted a public relations effort to disseminate false and misleading information about the facts of the case to the American public. The most obvious effort in this regard was the CIA’s now-discredited animation. The generation, perpetuation and wide dispersal of misinformation and falsehoods regarding the facts of TWA Flight 800 continues to this day and is often done by former officials who were directly involved in the original misinformation campaign. Their deleterious actions during and since the original official investigation as well as the falsehoods repeated by a press corps that broadcasts and records their comments, encourage and allow continuing malfeasance not only in the case of TWA Flight 800 and the agencies involved in that particular crash investigation, but in the case of all government investigators and agencies. The extent to which the TWA Flight 800 case was misconducted sends the message to all government agency employees that egregious--even criminal--activities can be engaged in with impunity. The cumulative effect is to encourage widespread unethical and illegal conduct within government agencies. This, in turn, threatens our nation’s social fabric. I believe that bringing the truth and accountability to this case can serve as a model for doing so in others.

Conclusion:

My reason for filing a complaint with the Office of Special Counsel is a matter of integrity. During the course of my 42-year career as an investigator, the investigation of TWA Flight 800 was the only case in which I witnessed deception, lies and corruption on the parts of investigators and their management. The extraordinary measures to which the NTSB, FBI and CIA went to falsify and distort witness statements or accounts of what occurred, to alter and hide physical evidence and to mount a false public relations campaign to misinform the public, was unconscionable. As a result of these actions by the NTSB, CIA and FBI, I joined with other members of the original investigative team who felt as I did as well as physicist Dr. Tom Stalcup and investigative reporter Kristina Borjesson in an effort to see that the truth is finally told. As Dr. Stalcup said, “If they can get away with lying about the deaths of 230 people, what else are they capable of?”

I sincerely hope that the many critically important issues, including evidence tampering, altering of evidence, official intimidation, failure to follow established rules and protocols and the omission of expert testimony discussed above will finally be properly

investigated so that similar actions do not occur during future investigations and that the probable cause of the crash of TWA Flight 800 can be determined based on an accurate and unbiased review of the available evidence and expert testimony.

I have read the foregoing 45-page statement, and declare, that it is true, accurate and complete to the best of my knowledge and belief.

Executed on _____ 2014

(Affiant's name)

Subscribed and sworn to before me

This _____ day of _____, 2014

Notary Public

My Commission Expires on: _____