

U.S. Department of Justice



Federal Bureau of Investigation

In Reply, Please Refer to
File No.

26 Federal Plaza
New York, New York 10278
December 3, 1997

Honorable James E. Hall
Chairman
National Transportation Safety Board
490 L'Enfant Plaza East
Washington, D.C. 20594

Dear Chairman Hall,

I write to express again my views, concerns and objections to those portions of the public hearing, scheduled to begin on December 8, 1997 in Baltimore, that address the criminal investigation into the TWA Flight 800 tragedy. As we have discussed previously, the FBI, exercising its jurisdiction and responsibility under the law, conducted an exhaustive and thorough investigation to determine if the Flight 800 tragedy was caused by a criminal act, particularly a bomb or a missile. After sixteen months, having exhausted all avenues of investigation, we found no evidence that this tragedy was the result of a criminal act and we placed the investigation in a pending inactive status. As we have discussed, the FBI has not closed the criminal investigation because of the possibility that new evidence could be discovered in the course of the continuing National Transportation Safety Board (NTSB) accident inquiry, from intelligence sources or wreckage that heretofore has not been found. The possibility of this occurring is, admittedly, remote. Nevertheless, until the NTSB has definitively determined an accidental cause for the crash, I believe it is prudent to withhold from public disclosure or discussion the identities of witnesses and the raw investigative details of the criminal investigation.

Simultaneous with the FBI's criminal investigation, the National Transportation Safety Board (NTSB), exercising its authority and responsibility under the law to investigate civil aviation accident investigations, conducted, and continues to carry out a massive, thorough and exhaustive examination to identify a non-criminal cause for the Flight 800 tragedy. It is our understanding that the results of the NTSB's accident investigation, to date, will be presented at the public hearing in Baltimore. The FBI is the primary criminal investigative

agency of the government and decisions regarding the presence or lack of evidence of criminal activity are committed to and made by the FBI and the Department of Justice. I do not believe it is appropriate for the NTSB, an agency whose jurisdiction is to conduct aviation accident investigations and which has no criminal investigative jurisdiction, to examine the particulars of and to present the results of the criminal investigation at a public hearing, particularly when there is a possibility, albeit remote, that the criminal investigation could be reactivated based on new information.

Due to the enormity of the tragedy and the intensity of the public interest regarding the possibility of criminal activity in connection with the crash, the FBI took the extraordinary step of detailing the scope of the criminal investigative effort, announcing our conclusion and answering questions about the investigation at a news conference as well as providing briefings to the appropriate Congressional Committee and Subcommittee Chairs, ranking members of the minority, representatives of the families of the victims of Flight 800 and representatives of the governments of the foreign victims. At my press conference, which you attended, and at each of the briefings I reiterated what I said above regarding the status of the criminal investigation and concluded the press conference by inviting anyone with any information of possible criminality to contact the FBI. Since then, I have carefully monitored the public reaction to our announcement. To date, that reaction has been almost uniformly positive and there has been no serious questioning, public or otherwise, from any source regarding our investigative conclusions. Thus, from the standpoint of public information, I see no need to again examine and present the results of the criminal investigation.

Set forth below are the specific parts of the hearing, as set forth in the 11/29/97 5:56 AM draft witness list, to which we object and the bases for our objections.

3. PRESENTATION CIA VIDEO

For the reasons noted above, the FBI objects to the use of the CIA video at the hearing if the purpose is to examine the eyewitnesses' observations or negate the possibility that a missile caused the crash. Because they are the product of a criminal investigation and the remote possibility that the criminal investigation could be reactivated, the FBI also objects to requests to disclose or include in the public docket of any FBI FD-302s or summaries of FD-302s prepared by the NTSB that report the results of any interviews or reinterviews of the 244 eyewitnesses whose reports were examined by the CIA in connection with its analysis and to calling any eyewitnesses to testify at the public hearing.

4. REVIEW OF WITNESS STATEMENTS PANEL

As noted above, the FBI objects to the use of any of the 244 eyewitness FD-302's or summaries prepared from those FD-302s by the NTSB in connection with this hearing. As I have discussed with you previously, the FBI has serious reservations about the presentation by NTSB of expert testimony regarding the limitations of eyewitness observations. The FBI is well aware of the general issues relating to the reliability of eyewitness observations and testimony and factors those limitations into our criminal investigations. Many of the factors that affect the reliability of eyewitness testimony, e.g., age, visual acuity, position, stress, focus, etc. are peculiar to the individual eyewitness as well as the actual event viewed, e.g., lighting conditions, violence etc., I believe it is inappropriate to use "experts" to present general observations about eyewitness reliability and to apply those general observations to the particular situation presented by TWA Flight 800 when the "experts" have not had the opportunity to review the eyewitness reports or to evaluate the various factors as they relate to the particular eyewitnesses. In addition, because the experts have not had the opportunity to review/evaluate the particular eyewitnesses whose accounts were analyzed by the CIA and have not discussed with the CIA its evaluations of the witnesses' accounts, there is a risk that the expert presentations questioning eyewitness reliability will have the unintentional effect of undermining the CIA's work. As you know, I have always stated that the eyewitnesses are good people who told us what they saw. I believe that the presentation of expert testimony that could cast doubt on the eyewitness' veracity does not further the accident investigation and could complicate our efforts if the criminal investigation were to be reactivated.

The witness list does not explicitly indicate that you desire to use summaries prepared by the NTSB from FBI FD-302's reporting the results of interviews of individuals other than the 244 eyewitness reports analyzed by the CIA. While we object to the use of any of the FD-302s or summaries prepared from those FD-302s by the NTSB of the 244 eyewitnesses whose reports were reviewed by the CIA in connection with its analysis, we do not object to the use of and inclusion in the public docket of summaries prepared by NTSB of FBI interviews of other individuals to the extent their information may relate to mechanical or similar issues, e.g., fuelers, aircraft mechanics, passengers on the flight from Athens, etc., provided that the names of those individuals are deleted to protect their privacy and this office has the opportunity to review those summaries prior to their disclosure.

5. INVESTIGATION FOR MISSILE/WARHEAD IMPACT
6. e., f., g. Bombs/Explosives; Residue Examination
(exhibit 20I); PETN Findings
9. k. Small Explosive Charges

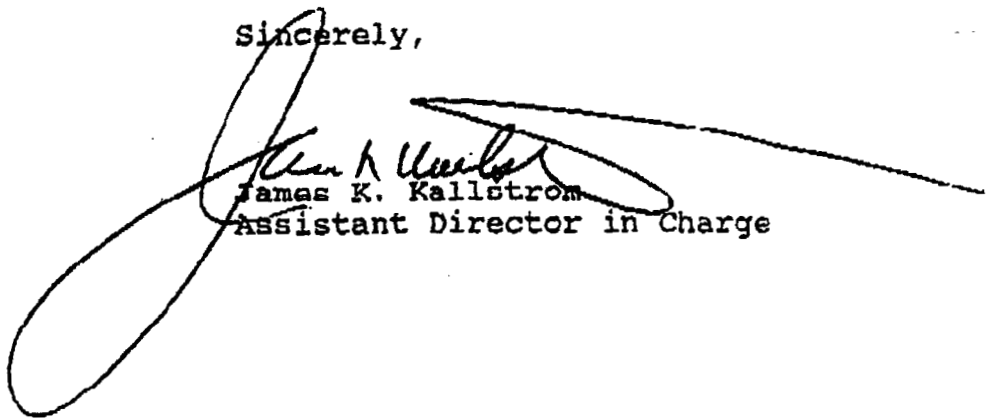
Because each of these items address matters addressed by the criminal investigation, the FBI believes, for the reasons stated above, that it is not appropriate for the NTSB to address them at the public hearing.

In addition to the general objection, we particularly object to discussion of the residue examination and the use of exhibit 20I, an FBI Laboratory report on the chemical analysis of the red residue found on the seats. As you know, this office and the office of the United States Attorney, Eastern District of New York is vigorously investigating a conspiracy to steal and the actual theft of pieces of the seats that contained this red residue in support of an "investigation" by an author/journalist. We fully expect this investigation to result, shortly, in a prosecution of those responsible. The residue examination and the FBI Laboratory report of the results of that examination will likely be evidence in this prosecution.

We do not object to a presentation of the metallurgical findings and are willing to allow Dr. Shabel, the outside expert retained by the FBI, to testify regarding his factual observations and his conclusion that his observations are consistent with an over pressurization of the center fuel tank, the break-up of the aircraft and the aircraft impact with the ocean.

Finally, I have discussed these concerns with Director Freeh and the United States Attorney for the Eastern District of New York, Zachary Carter, and they are in agreement with the position and concerns set forth above.

Sincerely,



James K. Kallstrom
Assistant Director in Charge



National Transportation Safety Board

Washington, D.C. 20594

December 3, 1997

Office of the Chairman

James K. Kallstrom
Assistant Director in Charge
U.S. Department of Justice
Federal Bureau of Investigation
26 Federal Plaza
New York, New York 10278

Dear Mr. Kallstrom:

We appreciate your letter of December 3, detailing the objections of the Federal Bureau of Investigation to certain of the issues and exhibits proposed for the December 8 National Transportation Safety Board hearing into Trans World Airlines Flight 800. We are especially grateful for your willingness to work within the tight timeframe that the approaching hearing necessitates.


After careful consideration of the issues you raise, I find, in my capacity as Chairman of the Board of Inquiry for this accident, that proper regard for the distinct jurisdictional mandates of our two agencies requires that NTSB accede to your request for withdrawal of those witnesses and exhibits dealing with eyewitness observations of the aircraft destruction. Additionally, we will honor the request for the exclusion of testimony regarding Exhibit 20I, FBI Chemical Study of Residue and the exclusion of any discussion of the results of the PETN tests. On the other hand, I believe it is incumbent on NTSB to proceed in this investigation, to the extent consistent with our respective mandates, in accord with normal NTSB practices and procedures. Consequently, with regard to research undertaken by NTSB independent of the criminal processes of your agency, I feel compelled to deny certain of your specific objections. However, in view of your general objection, I have asked staff to revise and delimit the format of several presentations, to make clear that the work undertaken was necessary (and usual) work of this agency in documenting accident wreckage and evaluating potential ignition sources. I will make a revised agenda available to you as soon as one is completed.

In making these rulings I wish to emphasize again that I do not see any fundamental disagreement between our agencies. I understand your request to be an objection to the *presentation of the results of the criminal investigation at a public hearing, particularly when there is a possibility, albeit remote, that the criminal investigation could be reactivated*. Hence, although it would normally be a part of NTSB practice to evaluate eyewitness observations of a particular accident, we have agreed not to do so next week, as the underlying data needed to make such an evaluation comprehensible is largely FBI work product, and you have declined to permit this to be made public at this point. Your declination is based on the remote possibility of a reactivated criminal inquiry into terrorism, and we appreciate your corresponding willingness to permit use of witness statements that run to mechanical or operational issues.

While we do seek to honor the request not to examine the results of the *criminal investigation* at our hearing, I believe that it would be inadvisable for NTSB to decline to examine its own work done outside of the criminal investigative process, even where there is some overlap in substance. Wreckage documentation, including the presence or absence of causal information, is a standard and necessary part of any NTSB investigation. Equally important to this specific investigation is the extent to which NTSB has undertaken the examination of any and all potential ignition sources. As you are aware, one of the items put in controversy by this accident is the aeronautical design choice between fuel cell protection limited to ignition control and protection which includes limitations on the presence of flammable vapors. Intelligent discussion of this issue is not possible in the absence of data regarding the full universe, to the extent it is or can be known, of potential ignition sources. NTSB has undertaken in this regard a number of studies, some of which do consider explosive charges, and I feel this material, like the material relating to wreckage documentation, needs to be included in our public hearing.

Let me reiterate my sincere gratitude for the cooperative spirit that has prevailed throughout this investigation, and let me assure you that I have given the most careful consideration to your requests here. I hope you can appreciate my belief that the decisions rendered are ultimately in the best interest of both agencies, as the preservation of our respective independence of action remains critical to our ability to earn public trust.

Sincerely,



Jim Hall
Chairman