

percent of a rapidly growing economy produces more money for the Government than 19 percent of a stagnant economy.

Mr. President, I certainly support spending cuts. We need to enforce spending cuts for a whole series of reasons.

I conclude by saying that the Republicans in this Senate need to recognize, as Senator DOLE called on us to recognize in his speech in Chicago, that our main goal for the economy should be long-term sustained growth in excess of the 2.5-percent rate for which the Clinton administration is prepared to settle.

If we can do that, Mr. President, if we can get the growth rate back up to where it was in the Ronald Reagan years and then with spending cuts get some control over the runaway entitlement pressures, we will see this line of yellow bars begin to move back down as it has done throughout our history.

We will leave to our children not only a Federal debt that is under control but an American economy that is growing rapidly enough to create the number of jobs and job opportunities that our children and grandchildren so richly deserve.

I apologize for the length of this presentation. As I say, we have opportunities only so often in morning business in which to give them, so I have combined several topics here in a single presentation on a Monday afternoon.

I thank the Chair for his attention. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I understand that the distinguished Senator from North Dakota [Mr. DORGAN], has the balance of the time of 15 minutes. I ask unanimous consent that I have a portion of his time, if not all of it.

The PRESIDING OFFICER. The Senator from North Dakota, by previous order, was to be recognized for up to 15 minutes.

Without objection, the Senator from Kentucky is recognized.

DOT INSPECTOR GENERAL REPORT CONCLUDES NO WRONG-DOING

Mr. FORD. Mr. President, earlier this year newspaper reports detailed allegations that FAA personnel may have withheld or destroyed documents to avoid the public release of information embarrassing to our colleague and Democratic leader DASCHLE and Deputy Administrator Linda Daschle, his wife.

Shortly after there appeared further allegations that Mrs. Daschle may

have violated the terms of her recusal at the FAA by involving herself in the agency's consideration of certain policy proposals by the leader for the consolidation of air charter inspections.

The distinguished chairman of the Senate Subcommittee on Aviation, Senator MCCAIN, requested a full investigation of these allegations by the Department of Transportation office of inspector general.

Senator DASCHLE supported that request because he felt the allegations needed a thorough inquiry.

Last Thursday, after an exhaustive investigation of 7 months, the inspector general released his report finding no basis in fact for these allegations.

Mr. President, whenever allegations originally are carried in the press with great fanfare, are investigated and found to be groundless, fairness to all concerned requires that we take the same notice of the resolution as we did the original charge.

Mr. President, let me read just one paragraph from the inspector general's report as it relates to these allegations. I think it says it all.

This investigation disclosed no evidence to substantiate that documents were destroyed as alleged. Nor did this investigation disclose evidence to substantiate that Deputy Administrator Daschle violated her recusal. Accordingly, it is recommended that this investigation be closed.

For the benefit of those who may have missed the stories in Saturday's newspapers, Mr. President, I ask unanimous consent that the report of the inspector general be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Department of Transportation,
Office of Inspector General]

REPORT OF INVESTIGATION—ALLEGED DESTRUCTION OF FAA DOCUMENTS CONCERNING B&L AVIATION

I. PREDICATION

This investigation was predicated on a letter from Senator John MCCAIN to Inspector General A. Mary SCHIAVO dated February 8, 1995, requesting an investigation into allegations raised by Gary M. BAXTER, Aviation Safety Inspector, Federal Aviation Administration (FAA), Great Lakes Regional Office, Des Plaines, Illinois. Senator MCCAIN transmitted a letter which BAXTER wrote to Senator Larry PRESSLER dated January 3, 1995, containing four separate allegations, one of which alleged destruction of records. On February 3, 1995, FAA Administrator David HINSON also referred the allegation of record destruction to the OIG requesting an investigation.

BAXTER alleged that unspecified FAA documents were destroyed by FAA personnel during the processing of a request for documents under the Freedom of Information Act (FOIA). The FOIA request was made by Attorney Matthew MALONEY in April 1994, seeking records pertaining to B&L AVIATION (B&L) of Rapid City, South Dakota. MALONEY represents the families of two of the victims of a February 1994, crash of a B&L aircraft in North Dakota. Essentially, BAXTER alleged that documents were destroyed because the public release of those documents may be embarrassing to Senator

Tom DASCHLE of South Dakota and his wife, Linda DASCHLE, who is Deputy Administrator of the FAA.

Linda DASCHLE was nominated FAA Deputy Administrator by the President on November 19, 1993, and confirmed by the Senate on November 20, 1993. At the outset of our investigation, Deputy Administrator DASCHLE disclosed to the OIG that in the summer of 1994, she had selected an FAA employee from Rapid City, South Dakota, to temporarily serve on her immediate staff. This disclosure raised issues concerning Deputy Administrator DASCHLE's recusal from matters involving her husband because the employee had been directly involved in working with Senator DASCHLE's staff during 1993 and 1994 on the issue of consolidated inspections.

II. BACKGROUND

On February 24, 1994, a plane owned and operated by B&L, crashed in Minot, North Dakota. The crash killed everyone on board, including a B&L pilot and three Indian Health Service doctors. The investigation by the National Transportation Safety Board (NTSB) cited both pilot error and poor weather conditions as factors contributing to the crash.

B&L was established in 1968 by Mr. Merl BELLEW and a former partner. The company consists of an air taxi operation, a repair station, and a pilot school. It employs approximately eight individuals and owns and operates approximately 20 small aircraft. B&L is an authorized FAA air taxi operation, in accordance with 14 CFR Part 135. As such, it is required to undergo bi-annual inspections by the FAA in order to ensure its compliance with Federal Aviation Regulations (FARS). Additionally, B&L contracts with certain government agencies to provide various services. These agencies include the Department of Agriculture (USDA), U.S. Forest Service (USFS) and the Department of Interior (DOI), Bureau of Indian Affairs (BIA).¹ Unlike the FAA which inspects for compliance with the FARS, these agencies inspect for compliance with contract specifications once a year.

Over the past 10 years, Senator DASCHLE has performed constituent services on behalf of B&L which involved contacts by Senator DASCHLE and his staff with officials of the FAA. The most significant area of constituent service involved the issue of consolidated inspections for aviation charter operations.

In 1992, BELLEW personally raised the issue of consolidating aviation inspections to Senator DASCHLE. B&L voiced concern over alleged redundant inspections conducted by the FAA and the USFS. This prompted the Senator to become involved on behalf of his constituent. Between June 1992, and April 1994, Senator DASCHLE and his staff pursued the issue of consolidating aviation inspections through meetings and correspondence with the FAA and the USFS.

Senator DASCHLE ultimately introduced an amendment to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 transferring USDA aviation inspection authority to the FAA. The amendment was unanimously adopted by the Senate but resulted in compromise legislation based on questions raised by Congressman Charlie ROSE. The compromise legislation required a study be performed by a joint FAA/USDA review committee. In its report, dated May 1995, and signed by the Secretaries of Agriculture and Transportation on July 31, 1995, the committee concluded that "Alternate 1 [i.e., the current system] was the only alternative which fully satisfied the mission preparedness and safety oversight criteria contained in the Act."²VerDate 20-SEP-

¹Footnotes at end of article.

By letter dated August 8, 1995, Senator DASCHLE requested that the Government Accounting Office (GAO) review the results of that study and address nine specific questions concerning the issue of consolidating inspections, leaving the issue unresolved. The merits of Senator DASCHLE's proposal were beyond the scope of this investigation.

Our investigation identified issues beyond the scope of the alleged destruction of documents and the related issue of Deputy Administrator DASCHLE's recusal. These issues are being resolved through a separate inquiry by the OIG.

III. JURISDICTION

The Office of Inspector General (OIG) for the Department of Transportation (DOT) was created under the Inspector General Act of 1978 (P.L. No. 95-452). Under the Act, the OIG has broad authority to conduct audits and investigations concerning the programs and operations of the DOT. The DOT is comprised of 10 Operating Administrations including the FAA. In conducting investigations under the Act, determinations are made concerning investigative authority. The following jurisdictional determinations were made in this case:

1. The allegation concerning the alleged destruction of FAA documents was made by an FAA employee and concerned several aspects of the programs and operations of the FAA including the FAA's regulatory oversight of B&L. OIG determined that investigative authority over alleged destruction of FAA documents, is within the jurisdiction of the OIG. OIG also determined that investigative authority over the FAA's regulatory oversight of B&L is within the jurisdiction of the OIG.

2. An issue was also presented concerning the recusal of FAA Deputy Administrator Linda DASHCLE. On February 6, 1995, Deputy Administrative DASCHLE disclosed to OIG that she had selected an FAA employee from Rapid City, South Dakota, to temporarily serve on her immediate staff. This employee had been directly involved in working with Senator DASCHLE's office on the proposal to consolidate aviation inspection. OIG determined that investigative authority over the Deputy Administrator's adherence to her recusal is within the jurisdiction of the OIG.

3. In many cases, issues are presented in which the investigative authority of the OIG overlaps with other investigative authority. For example, constituent service performed by a U.S. Senator and the programs and operations of the USFS are not within the jurisdiction of the DOT/OIG. The NTSB is independent of DOT and, therefore, is not subject to OIG audit or investigation. However, the Intersection between FAA employees and USFS personnel; the interaction between FAA employees and Senator DASCHLE and his staff; and the interaction between FAA and NTSB personnel were each relevant to the investigation of the alleged destruction of documents. Accordingly, OIG determined that investigative authority over these interactions is within the jurisdiction of the OIG.

IV. METHODOLOGY

The OIG staff conducted the following interviews: (1) Senator Tom DASCHLE; (2) Linda DASCHLE, the Deputy Administrator of the FAA; (3) A current and former member of Senator DASCHLE's staff; (4) FAA officials who interacted with the Deputy Administrator's office; (5) FAA officials involved in responding to the FOIA request; (6) FAA Aviation Safety Inspectors in Rapid City, South Dakota; (7) United States Forest Service personnel; and (8) Departmental and FAA ethics officials.

The OIG staff obtained and reviewed the following documents: (1) a copy of the docu-

ments submitted by the FAA to MALONEY in response to the FOIA request; (2) FAA files related to the FOIA request; (3) working files of those responsible to respond to the FOIA request; (4) documents requested from Senator DASCHLE's office; (5) Senator Hank BROWN's inquiry to the FAA pertaining to B&L, based on a letter from Bill DICKSON, Regional Aviation Officer, USFS, dated April 1984; and (6) documents pertaining to the recusal of the Deputy Administrator from FAA matters involving her husband and South Dakota.

The OIG staff obtained and reviewed the following reports: (1) the "Statement of the Office of Senator Tom Daschle Regarding Consolidated Federal Air Charter Safety Inspections and Related Matters," issued on February 17, 1995, in response to media attention given to Senator DASCHLE's relationship with B&L; (2) NTSB Factual Report on the B&L crash, NTSB ID: CHI94GA093; (3) "Boeing 757 Wake Turbulence, A Review of the Actions of the Federal Aviation Administration;" (4) "Interagency Aviation Inspections, A Joint USDA/DOT Study," Report to the United States Congress Pursuant to Section 306 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, P.L. 103-354.

V. INVESTIGATIVE RESULTS

A. Alleged destruction of documents

1. Synopsis

We investigated the alleged destruction of documents related to the April 1994, FOIA request pertaining to the February 1994, crash of an aircraft owned and operated by B&L. The crash, which resulted in the death of three U.S. Department of Health and Human Services, Indian Health Service (IHS) doctors, and a pilot employed by B&L, occurred while B&L was performing services under an IHS contract.

We concluded that no documents were destroyed. However, we confirmed that FAA withheld certain documents. The FAA transmittal of documents to MALONEY indicates that some documents were withheld "for legal review" but fails to appropriately cite applicable exemptions and fails to reference the scope of the documents withheld, thereby denying the requester the right to appeal under the FOIA. The documents withheld primarily consisted of B&L company manuals which may have been withheld under FOIA exemption four, Title 5 U.S.C. §552(b)(4). This exemption allows for the withholding of privileged or confidential commercial information. Nonetheless, the FAA was required to specify this in the response to MALONEY, which was not done. We attribute this to carelessness and a significant lack of procedures in the FAA for handling FOIA requests. We also identified three sets of circumstances which resulted in BAXTER's suspicions that documents were being destroyed. Details surrounding those circumstances are provided below.

Our conclusions regarding a lack of proper procedures for handling FOIA requests parallel the findings contained in a report by the Department of Transportation's General Counsel and the FAA Deputy Administrator in July 1994, concerning a FOIA request on the Boeing 757 Wake Turbulence issue. We confirmed that the FAA has taken corrective actions in response to that report, the report had not been issued and the corrective actions were not yet in place at the time of the MALONEY FOIA request.

2. Background

The statutes and regulations applicable to this matter include: Title 5 U.S.C., Section 552, the Freedom of Information Act; Title 49 C.F.R., Part 7; FAA Order 1200.3, Public Availability of Information; and Title 18

U.S.C. 2071, Concealment, removal, or mutilation of records and reports.

Gary M. BAXTER, Aviation Safety Inspector, FAA, Great Lakes Region (GLR), was the Staff Specialist assigned to handle B&L FOIA requests. By letter, dated January 3, 1995, to Senator Larry PRESSLER, BAXTER alleged that documents which were releasable under the FOIA were improperly withheld or destroyed. The FOIA request in question, dated April 27, 1994, was filed with the FAA by Matthew MALONEY, Attorney, SHERMAN, MEEHAN & CURTIN, P.C., Washington, D.C. The FOIA request was for documents in the custody of the FAA pertaining to B&L, an FAA certified air taxi operation. The request listed nine categories of documents including "all data or information in the custody of the FAA received from any government agency or official, including elected officials."

On May 5, 1994, BAXTER forwarded the FOIA request to Cathy JONES, Manager, FAA, Flight Standards District Office (FSDO), Rapid City, South Dakota, the office responsible for B&L's certification. JONES directed her staff in the FSDO to gather all B&L related documents and provide them to her. On May 12, 1994, BAXTER verbally advised JONES she did not have to provide: national database information; her notes notifying her employees of the B&L accident; her instructions to her employees about gathering information to assist the NTSB; and documents relating to B&L's pilot school and repair station. Nonetheless, JONES decided to only segregate her notes and the national database printout. Our inquiry disclosed that JONES sent all other documents, including the pilot school and repair station records, to BAXTER.

In his letter to Senator PRESSLER, BAXTER stated: "She [JONES] told me that the Division Manager of Flight Standards Division had told her to destroy some parts of B&L's Operator File because of Senator DASCHLE's intervention on behalf of his wives [sic] (Linda DASCHLE #2 in the FAAs) friend Mr. Merl BELLEW, (Owner of B&L Aviation). She went on to say that she did get rid of some of the documents but forgot exactly what other parts she was told to destroy."

3. Circumstances which raised suspicions about documents

Our inquiry disclosed no evidence that David HANLEY, Division Manager, FAA GLR, or JONES, destroyed or withheld documents in response to the FOIA request. Additionally, HANLEY did not instruct JONES to destroy or withhold any documents pertaining to the FOIA request. JONES and HANLEY each provided sworn affidavits denying the allegations. However, the inquiry disclosed that three sets of circumstances involving the FAA's handling of documents contributed to the basis for questions raised by BAXTER concerning the response to the request.

a. The Bown memorandum

The first circumstances involves a misinterpretation of instructions from JONES to BAXTER. On May 13, 1994, JONES called BAXTER to advise she was sending the FOIA package to him. During that conversation, JONES suggested to BAXTER that HANLEY review the documents. JONES wanted the package of documents reviewed because it contained an unedited draft memorandum of a meeting between Richard BOWN, Operations Unit Supervisor, Rapid City FSDO, and William DICKSON, Regional Aviation Officer, United States Forest Service (USFS), Lakewood, Colorado. At the time of its original preparation, in December 1993, two paragraphs from the draft version were

edited out before the memorandum was finalized. This editing was done at the direction of HANLEY because he viewed these paragraphs as containing BOWN's opinions. OIG's review of the draft memorandum disclosed that BOWN's opinion supported the consolidation of inspections. The final version of the memorandum was sent to Senator DASCHLE's staff by BOWN at the request of Senator DASCHLE. Because the draft memorandum differed from the final version, JONES was unsure whether the release of the document under the FOIA request was appropriate and wanted HANLEY to review the document.

Our inquiry disclosed JONES affixed a yellow post-it note to the package of documents which indicated HANLEY needed to review the package containing the draft memorandum described above. Despite written and verbal requests from JONES to BAXTER for HANLEY to review the documents, BAXTER did not follow through on JONES' request and HANLEY never saw the documents. The FOIA response was signed out by [deleted] Flight Standards Division, FAA GLR, for HANLEY on July 14, 1994.

b. The package of Forest Service documents

The second circumstance which contributed to BAXTER's suspicion involves a package of 61 pages of USFS documents pertaining to B&L, which were received by BAXTER from JONES in response to a subsequent B&L FOIA request in December 1994. During an interview, BAXTER told the OIG these documents raised concern on his part because he did not receive them from JONES during his processing of the earlier MALONEY request and because one document in particular was titled "Response to DASCHLE Squeeze."

We have reviewed the documents in question. They contain information pertaining to USFS inspections which were critical of B&L, and USFS opinions of the FAA which were also critical. The documents also detail efforts by Senator DASCHLE's office to have the USFS relinquish its inspection authority. However, our investigation disclosed that at the time the FAA responded to the MALONEY FOIA request in July 1994, the FAA was not in possession of these documents. The FAA did not receive these documents until September 1994, when they arrived in the Rapid City FSDO. The documents were sent to Rapid City by an air safety investigator, National Transportation Safety Board (NTSB). An interview of the NTSB investigator disclosed that the documents received were from an attorney (name unrecalled by the NTSB investigator). The investigator told the OIG that since the accident investigation of the B&L aircraft that crashed in February 1994, had been concluded, the documents were of no further use and were forwarded to the Rapid City FSDO.

c. Documents withheld for further legal review

The third circumstance involves 28 pages that were initially withheld in July 1994, under the MALONEY FOIA request. These documents contained, among other things, information relating to the FAA's interaction with Senator DASCHLE's office and USFS inspections of B&L. In November 1994, MALONEY inquired as to the disposition of the documents. BAXTER became suspicious of the way these documents were handled when he inquired with the Office of Assistant Chief Counsel (OACC), GLR, and learned they had misplaced the documents. Upon receipt of a second copy of the documents from BAXTER, OACC eventually approved their release.

In a cover letter sent with the initial release of documents to MALONEY, dated July 14, 1994, the FAA GLR indicated that they released 615 pages in response to the FOIA re-

quest. They advised MALONEY that "the Great Lakes Assistant Chief Counsel is currently reviewing a small number of pages. This office will respond to you regarding the additional information as soon as it has been cleared." Our interview with the GLR Assistant Chief Counsel's Office disclosed they misplaced the documents in question, and, therefore, forgot to review them. Our investigation disclosed OACC never located their original copy of the pages but obtained a second copy from BAXTER. Following a subsequent written request by MALONEY in December 1994, these additional pages were reviewed and released.

4. OIG's analysis of FAA's FOIA response

Our investigation disclosed that the FAA maintained no record of the documents released nor did they maintain an exact duplicate set of the documents produced in response to the MALONEY FOIA request. Instead the investigation disclosed the FAA lacked proper procedural guidelines in handling FOIA requests as described below. As part of our inquiry, we obtained from MALONEY a copy of all documents he received in response to his FOIA request. We also obtained a copy of the documents from the FAA, Office of Public Affairs (OPA), for comparison purposes.⁴

The documents sent to OPA were prepared by [deleted] FAA, GLR, on February 7, 1995. As part of that process, [deleted] told the OIG [deleted] created a handwritten index of items sent and withheld under the MALONEY FOIA request.⁵

The handwritten index reads as follows:

Items sent to APA [sic]	616 Pages
1. Provided to RAP FSDO by USFS on 9-23-92	13
2. Letter from Sen. DASCHLE to Administrator	89
3. Follow up Action by PMI	32
4. Repair Station File	45
5. DME File	17
6. Current 135 File	276
7. Archived 135 File	144
Total	616
Items not sent	
1. Accident Prevention Counselor File	23
2. Written Test Examiner File	52
3. Pilot School File	93
4. IA File	18
Total	186

The index identified seven groups of records sent to MALONEY (616 pages) and four groups withheld (186 pages). Individual documents were not identified with either group.⁶

Our analysis determined the following discrepancies:

1. The items indicated on the index as "Items not sent" were, in fact, sent to MALONEY in July 1994.

2. The "Accident Prevention Counselor File" identified as Item (1) in the "Items not sent" section consisted of five pages, not 23 as indicated. We determined this through interviews and a review of the original file at GLR.

3. The "Repair Station File" identified as Item (4) in the "Items sent to APA" section was, in fact, not sent to MALONEY. The file consisted of the company manual and related documents.

4. The "Current 135 File" identified as Item (6) in the "Items sent to APA" section consisted of 275 pages. However, MALONEY only received 124 pages. The 151 pages not received were the "B&L Aviation Company Manual."⁷

5. The "Provided to RAP FSDO by USFS on 9-23-93" group of documents identified as Item (1) in the "Items sent to APA" section consisted of 23 pages. MALONEY received

only nine of these pages. The remaining four pages, which were USFS documents, were not sent.

In addition, we compared the pages withheld for legal review by the OACC with the documents initially received by MALONEY. The comparison disclosed that in the original response to the FOIA request, MALONEY, in fact, received all of the substantive documents. Therefore, MALONEY received the documents twice, in July 1994, and December 1994. This contradicts FAA GLR's assertion that the documents were "withheld" by OACC.

5. Senator Daschle's interaction with the FAA

We examined the official activities of FAA personnel in connection with B&L during the period 1985 to 1995, including the issue of consolidating aviation inspections of air charter companies. This examination also included a review of documents provided by Senator Daschle's office in response to our request. We also interviewed Senator Daschle and current and former members of his staff. These investigative steps were necessary in order to identify documents generated in connection with Senator Daschle's interaction with the FAA and thus identify the universe of documents which may have been the subject of the alleged destruction.

The investigation disclosed three pertinent areas of constituent service performed by Senator Daschle involving B&L, during the period 1985 to 1995. In each case, Senator Daschle's efforts were in response to complaints about specific government aviation inspectors or inspection processes. The most significant area involves the issue of consolidating aviation inspections. Our examination of documents provided by Senator Daschle's office disclosed no documents which may have been the subject of destruction by FAA employees.

6. Conclusion

As stated above, our inquiry disclosed no evidence that David Hanley, Division Manager, FAA, GLR, or Jones, destroyed or withheld documents in response to the FOIA request. Additionally, Hanley did not instruct Jones to destroy or withhold any documents pertaining to the FOIA request. Jones and Hanley each provided sworn affidavits denying the allegations.

Our inquiry concluded that the FAA GLR's procedures for processing FOIA requests were careless and haphazard at best. The procedures followed by the GLR were vague and did not require accountability for what documents were sent, or not sent, to the requester. Because accountability records were not maintained, the FAA was unable to provide an accurate description of which documents had and had not been sent to Maloney. The FAA GLR was unable to recreate the B&L FOIA file as it existed at the time they responded to Maloney's request. In addition, the FAA GLR did not follow proper procedures by its failure to: (1) notify the requester in writing that documents were withheld; (2) cite a FOIA exemption which justifies the withholding of documents; and (3) set forth the names and titles of each person responsible for a denial of records.

A comparison of the records obtained by the OIG from OPA with the records obtained from Maloney disclosed the FAA GLR improperly withheld 200 pages of documents from Maloney. The FAA failed to notify Maloney that documents were withheld and, therefore, did not afford Maloney the opportunity to appeal the withholding. Of the 200 pages, 151 pages were composed of the "B&L Aviation Company Manual" and 45 pages were B&L's "Repair Station File", which consists of the repair station manual and related certifications. The remaining four

pages were generated by the USFS and pertained to their inspections of B&L. The company manuals may be protected under exemption four of the FOIA, which protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential" information.⁸ No explanation can be given for the withholding of the remaining four pages.

Our inquiry disclosed that the cited deficiencies on the part of the FAA GLR in processing FOIA requests reflect an agency-wide lack of procedures in the FAA. Further evidence of the agency's lack of procedural safeguards for the processing of FOIA requests is included in a report, dated July 28, 1994, prepared by the General Counsel of the Department of Transportation and the FAA Deputy Administrator, submitted to Secretary Federico Pena and Administrator David Hinson, pertaining to the review of the FAA's response to a FOIA request regarding the B757 wake vortex. The report cited national problems including: a lack of sufficient resources and attention on the FOIA function; no restriction on who may be asked to process FOIA requests; and, inadequate searches for documents. Due to the inadequacies of the FAA in dealing with FOIA requests, the report recommended the following: "(1) The FAA Administrator should give consideration to enhancing organizational responsibility and accountability for FOIA responses. (2) The Administrator should give serious consideration to establishing an FOIA office within the FAA Office of Public Affairs. (3) There appears to be a real need for FOIA training that focuses on the procedural requirements of the FOIA as well as the substantive exemptions."⁹

Our inquiry disclosed that the FOIA request regarding the B757 wake vortex was received by the FAA on December 27, 1993, and responded to on February 10, 1994, approximately three months before the MALONEY FOIA request was received by the FAA GLR. Additionally, our inquiry disclosed by the time the report regarding the FAA's response to the B757 wake vortex FOIA was issued on July 26, 1994, the FAA GLR had already submitted its first response to MALONEY on July 14, 1994. Therefore, the corrective action suggested in the report submitted by the General Counsel of the Department of Transportation and the FAA Deputy Administrator was not in place at the time the FAA was responding to the MALONEY request.

On July 17, 1995, Administrator HINSON forwarded to the OIG a summary of the FAA's "FOIA Activities and Improvements," for the period September 1994 through June 1995. Administrator HINSON cited a number of agency-wide improvements including: the establishment of a national FOIA office in OPA; the development of a FOIA checklist; and the installation of a new automated headquarters FOIA tracking system.

B. The recusal of Linda DASCHLE, Deputy Administrator

1. Synopsis

We investigated a number of issues concerning Deputy Administrator DASCHLE's recusal from participating in certain matters before the Department. The primary issue concerned her selection of an FAA Aviation Safety Inspector (ASI) from Rapid City, South Dakota, to temporarily serve on her immediate staff. The ASI was directly involved in the consolidation of inspection issue during 1993 and 1994, including direct contacts with Senate DASCHLE's staff. The ASI also has supervisory duties pertaining to FAA inspections of B&L, and had personally met Senator DASCHLE. Other issues concerned reports that Deputy Administrator DASCHLE and her staff had discussions and

contacts concerning the issue of consolidated inspections. We also examined the failure of Deputy Administrator DASCHLE to document her recusal until a year after her appointment.

We concluded that Deputy Administrator DASCHLE did not violate her recusal. We found that Deputy Administrator DASCHLE refrained from discussing the consolidated inspection issue or otherwise participating in the issue of consolidated inspections. Deputy Administrator DASCHLE told the OIG that she had been unaware of the ASI's involvement in the consolidated inspection issue. She does not consider her selection of the ASI to contradict her recusal but told the OIG that had she known beforehand about the ASI's involvement she would not have made the selection. We find her position on this issue to be credible.

We confirmed that Deputy Administrator DASCHLE did not discuss the consolidated inspection issue with a USDA official who contacted her. We reviewed the federal regulations governing such matters. We also consulted with DOT and FAA ethics officials. We concluded that no requirement existed that Deputy Administrator DASCHLE file a written disqualification (i.e., recusal).

2. Background

As part of our inquiry, we examined the recusal of Linda DASCHLE from all FAA matters involving her husband. We examined this issue based on the self-disclosure made by Deputy Administrator DASCHLE to Inspector General A. Mary SCHIAVO and Deputy Inspector General Mario A. LAURO, Jr. on February 6, 1995. During that meeting, Deputy Administrator DASCHLE advised of her selection of Richard BOWN for a temporary detail as her special assistant in the Summer 1994. A controversy arose concerning BOWN's selection to work on Deputy Administrator DASCHLE's immediate staff because of his previous involvement with the USFA on the consolidated inspection issue. Deputy Administrator DASCHLE advised Inspector General SCHIAVO and Deputy Inspector General LAURO that during his detail to her immediate staff, BOWN had documents in his possession in FAA headquarters relating to the duplicate inspection issue which he offered to show her. She refused to review them and informed BOWN of her recusal.¹⁰

3. The selection of BOWN to the Deputy Administrator's staff

Our inquiry disclosed Deputy Administrator DASCHLE attempted to personally call BOWN to invite him to a breakfast meeting she was hosting in Sioux Falls, South Dakota, on June 25, 1994. Deputy Administrator DASCHLE was unable to reach BOWN and made the invitation through BOWN's supervisor, who also attended. The meeting consisted of FAA management employees from South Dakota. During this meeting, Deputy Administrator DASCHLE and BOWN met face to face for the first time. At the conclusion of the meeting, Deputy Administrator DASCHLE related to BOWN that she was interested in detailing a pilot/safety inspector to Washington for a temporary period in order to enhance her goal of bringing field experience to her staff.

Subsequent to this conversation, Deputy Administrator DASCHLE and BOWN engaged in approximately one to two telephone conversations during which she asked him to accept a temporary detail as her special assistant, and defined to BOWN what his responsibility would be. By August 1994, BOWN had agreed to accept a 90 day detail to Washington D.C. BOWN, a GS-14, was temporarily paid at the GS-15 level, which according to Deputy Administrator DASCHLE is standard pay for her special assistants.

Our interview of Deputy Administrator DASCHLE disclosed that she did not contact JONES, BOWN's supervisor, about his qualifications nor did she examine BOWN's personnel file for information about his employment history. Deputy Administrator DASCHLE indicated she selected BOWN for the following reasons: 1) she was impressed by BOWN because of his participation during the June 25, 1994, breakfast meeting; and, (2) her husband's statements to her regarding his knowledge of BOWN.

Deputy Administrator DASCHLE indicated BOWN was very vocal during the breakfast meeting as he was very willing to speak out candidly about his critical feelings involving FAA leadership in headquarters. Regarding Senator DASCHLE's comments about BOWN, Deputy Administrator DASCHLE stated her husband related to her he knew BOWN through his (the Senator's) involvement in the aviation community in South Dakota.¹¹ Deputy Administrator DASCHLE stated her husband never specifically recommended or suggested she select BOWN but only related he was impressed by BOWN and other employees in the Rapid City FSDO. According to Deputy Administrator DASCHLE, the Senator characterized the employees in that office as "good people."

During our interview of the Senator, he stated he advised Deputy Administrator DASCHLE that he had heard of BOWN. He disclosed to us he has met BOWN on three or four occasions, the first time occurring several years ago. Their contact has been very limited, and he does not believe he would recognize BOWN if he saw him. The Senator stated he did not connect BOWN with the consolidated inspection issue and was not sure at what point he knew of BOWN's involvement in the issue. The Senator was "almost positive" Deputy Administrator DASCHLE had no knowledge of BOWN's involvement.

[deleted] Assistant to Senator DASCHLE, told the OIG that [deleted] never discussed BOWN'S involvement in the consolidated inspection issue with Deputy Administrator DASCHLE. [deleted] communicated with BOWN several times each week while working on the issue, but [deleted] never suggested to Senator DASCHLE that BOWN be rewarded for his efforts. [deleted] did not know how BOWN was selected for the temporary position with Deputy Administrator DASCHLE, and [deleted] stated that [deleted] did not communicate with BOWN on the consolidated inspection issue while BOWN was assigned to Deputy Administrator DASCHLE's staff. [deleted] was aware of Deputy Administrator DASCHLE's recusal policy.

Deputy Administrator DASCHLE stated she did not become aware of BOWN's involvement with her husband in the consolidated inspection issue until September 1994, when BOWN arrived in Washington. She and Senator DASCHLE each told the OIG they never discussed BOWN's involvement in the consolidated inspection issue. In fact, Deputy Administrator DASCHLE stated she did not become aware of her husband's involvement in the issue until the Spring 1994, when she received a telephone call from James R. LYONS, Assistant Secretary, Natural Resources and Environment, USDA, soliciting her involvement in the consolidated inspection matter. Deputy Administrator DASCHLE stated that when informed during the telephone call of her husband's interest in the issue, she immediately informed LYONS of her recusal and terminated the conversation. We confirmed this with LYONS.

When BOWN began his detail in September of 1994, he advised Deputy AdministratorVerDate 20-SEP

DASCHLE he had brought with him a package of USFS documents relating to B&L.¹² Many of these documents made reference to Senator DASCHLE and his involvement in the duplicate inspection issue. Deputy Administrator DASCHLE stated BOWN never showed her the documents but just wanted her to be aware that he had them. Due to the nature of the documents, Deputy Administrator DASCHLE advised BOWN he should not have the documents in the office due to her recusal from matters involving her husband. The Senator stated Deputy Administrator DASCHLE advised him of the incident involving the documents.

4. Deputy Administrator DASCHLE's recusal

The applicable regulations governing recusals is found at 5 CFR Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch. Specifically, Subpart E, "Impartiality in Performing Official Duties," Section 2635.502 states, in part: "Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter. . . ."

In addition to the regulation, [deleted] General Law Branch, FAA, advised the OIG that the FAA follows an unwritten policy that an employee must recuse himself or herself from all matters, not just financial matters, with which he or she has a conflict of interest.

Deputy Administrator DASCHLE stated that from the outset of her appointment in November 1993, she recused herself from all matters with which her husband has a specific interest. Our inquiry disclosed Deputy Administrator DASCHLE did not officially circulate anything in writing to her staff regarding her recusal although she indicated she verbally advised her staff of her recusal. Senator DASCHLE and Deputy Administrator DASCHLE told the OIG that her recusal policy does not prevent her from generally knowing about certain issues such as the consolidated inspection matter, but from acting on them. We confirmed this with the Department's ethics attorney.

In her first memorandum memorializing her recusal, dated November 18, 1994, (one year after her appointment) Deputy Administrator DASCHLE stated, in part, "As you are aware, upon assuming the position of Deputy Administrator, I recused myself from participation in all DOT/FAA matters in which my husband, Senator Thomas Daschle, has had a role." Then, on advice of FAA Counsel, she revised her recusal due to the election of her husband to Senate Minority Leader. Her revised recusal, dated January 19, 1995, states, in part, "Because my husband represents the State of South Dakota in the United States Senate, I have disqualified myself from participating in any [emphasis added] particular matter that would have a direct and predictable effect on that State. . . ."

Deputy Administrator DASCHLE maintained she had no conversations with her staff members regarding the consolidated inspection issue nor did she discuss the issue during the June 1994, breakfast meeting she attended in Sioux Falls. However, during one interview of an FAA official, it was alleged to the OIG that [deleted] FAA, had conversations with Deputy Administrator DASCHLE about the consolidated inspection issue. Allegedly, [deleted] received a directive from

Deputy Administrator DASCHLE to settle the USFS matter and subsequently conveyed this to a senior staff member. In a sworn statement, [deleted] indicated, ". . . I have made statements on DASCHLE wanting issues resolved. In such cases, I was making reference to Senator Tom DASCHLE."

5. Deputy Administrator DASCHLE and B&L

Deputy Administrator DASCHLE told the OIG she has taken flights on B&L aircraft since her appointment as Deputy Administrator. According to Deputy Administrator DASCHLE, these flights were with her husband on his official business and were either paid for out of personal funds or campaign funds. Deputy Administrator DASCHLE has not utilized B&L aircraft in her capacity as Deputy Administrator.

Deputy Administrator DASCHLE and BELLEW have known each other for approximately 14 years. She met BELLEW in 1981 while she was working for the Civil Aeronautics Board. Deputy Administrator DASCHLE stated she has never intervened on behalf of B&L in any FAA matter and, further, was never approached by BELLEW in an attempt to solicit her intervention. In addition, no documentation was discovered which suggested that Deputy Administrator DASCHLE intervened with respect to the consolidated inspection issue or with regard to B&L.

An additional allegation was raised during our inquiry that Deputy Administrator DASCHLE dispatched an accident investigation team from Washington D.C. to investigate the crash of a B&L aircraft that occurred on February 24, 1994. The dispatch of a headquarters team deviates from standard practice of local investigative teams conducting crash investigations in their immediate area. The allegation was not substantiated. Deputy Administrator DASCHLE and Senator DASCHLE both deny any involvement in sending an accident investigation team from FAA headquarters. An interview of an FAA official involved in the accident investigation disclosed that certain characteristics of the flight, the operator, and of those individuals killed in the crash prompted the FAA headquarters Accident Investigation Division's involvement.

VI. RECOMMENDATIONS

1. This investigation disclosed no evidence to substantiate that documents were destroyed as alleged. Nor did this investigation disclose evidence to substantiate that Deputy Administrator DASCHLE violated her recusal. Accordingly, it is recommended that this investigation be closed.

2. This investigation disclosed that at the time of the subject FOIA request, FAA lacked sufficient internal procedures and safeguards concerning the processing of FOIA requests. The investigation disclosed improvements have since been made in response to recommendations from a previous Departmental review. It is recommended that FAA Administrator HINSON continue to monitor the FAA's FOIA activities and improvements. In addition, the OIG will include in its FY 1997 annual planning, a Department-wide review of FOIA procedures.

FOOTNOTES

¹In April 1995, press reports indicated the USFS no longer contracts with B&L. OIG confirmed with the USFS that all approvals of B&L have expired and a decision was made not to renew approvals at this time.

²The GLR received five FOIA requests pertaining to B&L.

³BAXTER informed JONES that the national database information would be obtained from the FAA, Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma.

⁴On February 7, 1995, as a result of media interest in the case, the OPA requested from GLR a copy of all documents sent to MALONEY.

⁵The index, created months after the fact, is the only record we found which itemizes, in any way, the FAA's response to the MALONEY FOIA request.

⁶A review of the documents within each group disclosed that each index category was labeled according to the top document in that grouping and, according to [deleted] does not mean that all documents in that group are appropriately described. For example, Item 2 in "Items sent to APA" reflects 89 pages of a letter from Senator DASCHLE. The letter was actually one page. The other documents in this group were unrelated to this letter.

⁷The FAA did not create a record or otherwise justify withholding these documents or any other documents under a FOIA exemption in reference to the MALONEY request. The FOIA regulations require that the requester be notified of his right "to appeal to the head of the agency any adverse determination." The regulations further state that "any notification of denial of any request for records . . . shall set forth the names and titles or positions of each person responsible for the denial of such request."

⁸Reference The Freedom of Information Act, 5 U.S.C., Section 552(b)(4).

⁹See "Boeing 757 Wake Turbulence, A Review of the Actions of the Federal Aviation Administration" for more detailed information. The report also suggested preparing a FOIA Processing Checklist that could be attached to each FOIA request. Our inquiry disclosed that this recommendation has been implemented in the GLR.

¹⁰These documents are the same documents discussed in Section V(A)(3)(b) of this report, "Circumstances Which Raised Suspicions about Documents."

¹¹Senator Tom DASCHLE is an FAA-certified pilot.

¹²During an interview of BOWN, he indicated he received the package of documents from an inspector in the Rapid City FSDO shortly after beginning his detail in Washington.

Mr. FORD. Mr. President, I have a footnote to these remarks. I have known TOM and Linda Daschle for a good many years now. In the position that Senator DASCHLE is in as leader of the Democratic minority here in the Senate, one of the attributes that Senator DASCHLE has is that he is straightforward, that he is honest, and he is of great character.

I have known his wife, Linda, now for a good many years, having dealt with her and the association she represented and now as Deputy Director of FAA. I do not think anyone that has known her would doubt her character. Being the daughter of a Baptist minister, the training that she received in her early years is still with her today.

Those who know them well believe that the allegations were not true, and I think our belief in this couple was vindicated by the report from the Inspector General of the Department of Transportation.

Mr. President, I felt it was incumbent upon me as a friend and as a part of this side of the aisle that these remarks be made for the record and the vindication of our good friends be noted in the RECORD.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. VerDate 20-SEP-95 02:15 Oct 03