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FAA PROCEDURES IN MAKING "NO HAZARD"
DETERMINATIONS WITH RESPECT TO
STRUCTURES NEAR AIRPORTS

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FARRELL C. ARY HEARING
KANSAS STATE UNIVERSITY BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS

SECOND SESSION

SEPTEMBER 10, 1976

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THE PROCEDURES IN MAKING NO HAZARD
DETERMINATIONS WITH RESPECT TO
STRUCTURES NEAR AIRPORTS

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FAA PROCEDURES IN MAKING "NO HAZARD" DETERMINATIONS WITH RESPECT TO STRUCTURES NEAR AIRPORTS

FRIDAY, SEPTEMBER 10, 1976

HOUSE OF REPRESENTATIVES,
GOVERNMENT ACTIVITIES AND
TRANSPORTATION SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Rochester, N.Y.

The subcommittee met, pursuant to notice, at 2:30 p.m., in the Federal Building, 100 State Street, Rochester, N.Y., Hon. Wm. J. Randall (chairman of the subcommittee) presiding.

Present: Representatives Wm. J. Randall and Frank Horton.

Also present: Representative Barber Conable, Miles Q. Romney, counsel; and Richard M. Tempero, minority professional staff, Committee on Government Operations.

Mr. RANDALL. Good afternoon, ladies and gentlemen.

The Subcommittee on Government Activities and Transportation of the House Committee on Government Operations will please come to order.

This afternoon we will take up the matter of the Federal Aviation Administration's procedures with respect to no hazard determinations of structures near airports.

This issue has been raised specifically by the no hazard determination obtained for a radio antenna tower constructed in 1976 near the Rochester-Monroe County Airport. It is called the Malrite tower after the corporation which erected it.

The Committee on Government Operations for many years has been interested in the activities of the FAA, and through this subcommittee particularly.

The charter of our subcommittee from the House is that of oversight and investigative authority in the matter of economy and efficiency of the operations of the various Federal agencies. The FAA is one which is assigned to this subcommittee.

We are here to discuss a matter relating to the national airspace system and will inquire into the matter of the procedures with respect to the Malrite tower.

The controversy surrounding this tower came to the attention of this subcommittee earlier this year.

There was a preliminary investigation into the activities surrounding the construction. Some of the staff of the subcommittee came to Rochester at that time.

I think it is a fair statement that it was the conclusion at that time that the construction of the tower in the vicinity of the airport had

certain complexities, with different people and different governmental levels and bodies involved, each playing its own role.

Our jurisdiction, of course, has to do with the FAA; and our inquiry will fall into two parts.

First, we are going to receive testimony from the FAA, and we are going to ask them to explain the process by which an applicant is able to build a radio tower and what procedures must be followed. We will discuss the relationship between the FAA and the local bodies—the State, city, and county.

We are going to ask the FAA this afternoon to respond concerning certain aspects of the process that they are responsible for. This will include the following:

One, determination of, and notice to, the appropriate interested persons—as the statute states—to attend informal airspace meetings under Federal Aviation Regulations, part 77.

Two, the matter of what constitutes an appropriate record of what should be maintained in these informal airspace meetings.

Three, the responsibility of FAA officials in dealing with members of the public who may not always understand some of the sophisticated and technical FAA requirements.

Four, we will inquire of FAA about the environmental considerations in proceedings under Federal Aviation Regulations, part 77.

Let me mention environmental considerations for a moment.

The FAA has said, and may testify so again, that their determinations of either a hazard or no hazard are prescribed by Federal Aviation Regulations and are limited to considerations of the safe and efficient use of navigable airspace by aircraft.

They have suggested in the past that noise issues are not—in themselves—specifically applicable to aeronautical evaluation of the physical structure.

But we believe that, while this may be a correct statement of the FAA responsibilities, we are going to hear this afternoon exactly what their responsibilities are. And particularly their responsibilities as to airspace safety.

There may very well be a secondary responsibility of the FAA to insure that once the airspace safety has been provided for, consideration of environmental matters and noise matters are properly considered.

Testimony will develop and preliminary investigation has shown that the Federal Communications Commission (FCC) requires an applicant to prepare an environmental impact statement of the effect the proposed tower would have on the environment.

If, in order to reach a no hazard determination, the FAA finds it is necessary to change certain flight patterns, then we are going to listen to the witnesses with respect to what effect that will have on the environment.

Some questions we are going to ask are:

Should there be an amendment to the original environmental impact statement evaluating the effect these changed procedures would have on that same environment?

Does the FAA have an affirmative responsibility to alert others—perhaps the FCC—that a changed flight pattern may have an altered result on the environment?

Should there be an evaluation of this changed procedure and an amendment to the environmental impact statement prior to further action by the FCC, or whatever other agency, on the application?

The purpose of this hearing is to give an opportunity to the appropriate citizens and local government representatives to discuss for the record what they consider to be the effect of the tower constructed in the city of Rochester.

As mentioned, there has been some controversy surrounding this construction. It is our understanding the event has had some continuing coverage in the media in this community, and local officials have had the benefit of a large cross section of public opinion.

We want to hear these various interests express their views of the events and circumstances surrounding the tower's construction.

We want to learn whether, through any act of omission or commission, the FAA, or any other Federal agency, has allowed the creation of an obstacle that might be determined to be hazardous or to have undue effects on the local environment on the other hand.

Let me emphasize that we are not here to pass judgment on the actions of any local officials. We are here to see that a complex system, designed to assist in a proper balancing of competing considerations surrounding such a matter as this tower construction near airports, works for and is responsive to those people it affects.

I would add that this hearing is not designed to touch on any other collateral issue of any kind, such as a technical issue of whether the standards in part 77 are proper or strict enough, and whether or not the issues relate to the actions and the responsibilities of local officials.

Our colleagues here this afternoon are Representative Frank Horton, who is the ranking minority member of the full Committee on Government Operations, and Representative Barber Conable. Both serve sections of this community.

We are delighted to have you both here this afternoon.

Do you have a statement you would like to make, Mr. Horton?

Mr. HORTON. Yes; I do.

Thank you, Mr. Chairman.

I would like to take this opportunity to welcome you, Mr. Chairman, to Rochester and Monroe County and the 34th district. I am sure Mr. Conable will extend greetings to you from the 35th district.

I also want to thank you for bringing this subcommittee here today to hold this hearing on this very important matter.

Today we will have the opportunity to hear from FAA officials and local officials.

I do want to thank those who have come here from Washington and other places to be with us and give us the benefit of their comments this afternoon.

I also want to welcome Congressman Barber Conable, who is here with us this afternoon. I know he has been very busy as a member of the Conference Committee on Tax Reform. I understand from the paper this morning that that was just completed yesterday.

The House is in session right now. We had scheduled this hearing for this afternoon, when it was announced yesterday that the House would be in session today. And we cannot be in two places at the same time. So regrettably we have missed and will miss some parts of the session. I want to thank Mr. Conable for being here with us this afternoon.

Several months ago, I was contacted by several of the local officials who expressed to me their concern over the no hazard determination which was made by the FAA on this tower. They also were concerned about the procedures used to arrive at this determination by the FAA.

I talked at that time with the chairman of the subcommittee, Mr. Randall, in my capacity as the ranking minority member of the Government Operations Committee.

I serve on this subcommittee as an ex officio member, although I am not an active member of the subcommittee. But I do keep very closely up on what its work is.

At the time that I talked with Chairman Randall, he agreed that the subcommittee would look into this situation.

On July 8 of this year, two members of the subcommittee staff came to Rochester and talked with interested government officials and others regarding the tower and its effects. They later talked with those in Washington and prepared a memorandum for the subcommittee which I think has been very helpful to us. This hearing, of course, continues our efforts in that connection.

I believe Mr. Randall has very properly set forth the purpose of this hearing, and I agree with him that the primary concern of the FAA must be the safe and efficient use of navigable airspace.

It is also clear to me that the effect of the tower on the local environment, including the effect of changed flight patterns, must be carefully analyzed. It is an integral part of the process which leads to the construction of any tower in the vicinity of an airport.

I further believe that one of the most confusing problems facing the various levels of government today is what part each plays in a given process and how they coordinate those parts.

In this case, it is important that local government officials recognize their responsibilities in the development, maintenance, and enforcement of zoning laws; and that the Federal Government recognize its responsibility of developing adequate expertise and guidance on airspace safety so that it is available to local officials and they can base their zoning decisions on it.

To say that this has been a controversial matter for the areas lying within Mr. Conable's district and mine is, of course, an understatement.

This has had continuous local government attention, continuous media coverage, and has, of course, been of great interest to the people living in and around that particular area.

It is important that those with specific interests in the effects of the tower have an opportunity to express their views for the record, so that we are in a position to deal with them.

I am particularly interested in Mr. Randall's comment that we ascertain that no actions of the FAA or any other Federal agency have allowed the creation of an obstacle that might be determined to be hazardous or to have undue influence or effect on the local environment.

I also agree with his statement that we are not here to pass judgment on the effects of the actions taken by the local officials.

Lastly, we do face a continuing problem at all levels of government of insuring that our activities and actions are, in fact, responsible and responsive to the constituencies we serve.

In a way, that is what this hearing today is all about. I am hopeful it will assist us in being responsive; and, further, that it will help resolve this controversy.

In that connection, I would like to add that I have been asked the question, on numerous occasions after the announcement of this hearing, of what effect we expect to have on the tower and what has happened here.

I would like to explain that this subcommittee is an oversight committee. We have jurisdiction over the FAA.

As is our procedure in Washington and as it will be here, we will hear the witnesses and then make a report with regard to what the subcommittee feels was or was not done properly or improperly as a result of the action taken by the FAA.

We will ultimately issue such a report. We will not have any decision made here at the end. It is not like a court proceeding or anything like that. But we will make a report, hopefully before this session is over, as a result of what we hear here today.

Mr. Chairman, again, I want to thank you for coming and being with us on this occasion. I know it is an inconvenience to you, and you have to miss some rollcalls, as the rest of us do. But we are appreciative of your interest in our community and this problem, which does come under the jurisdiction of your subcommittee.

Mr. RANDALL. Thank you very much for your contribution to the record.

The Chair is going to take just a moment to dwell on the business of missing rollcall votes.

We are finishing our 18th year in Congress and retiring at the end of this year.

Once in a while, I will receive a letter asking me where I was on a particular day and why I missed a particular vote. But my colleagues and I are on official business today, and you simply cannot be two places at the same time.

In 18 years I have had a 93-percent attendance record. In some years it has even been 98 percent. But it has never been lower than 89 percent.

You are not doing a good job as a Member of Congress if you have 100 percent or 99 percent, because there are some things that can only be done outside the city of Washington.

I am privileged to yield to our good friend, and colleague, Barber Conable.

Mr. CONABLE. Thank you, Mr. Chairman.

I have a very brief statement, and then I think we should get on with the hearing.

Needless to say, I would like to add my thanks to you for accepting the inconvenience of traveling all the way to western New York to participate in what we consider to be a very important and somewhat tangled matter which may need legislative attention.

If this is the case, the subcommittee's assistance in the oversight of this matter is vital. So we are grateful for your accepting this responsibility—and for your expressing your interest in government and your friendship for Mr. Horton and myself—and for coming and participating.

I represent the area where the Malrite tower is located and where the airport is located. It is slightly within the edge of my district.

I know from experience that the people who reside in the vicinity of the Rochester-Monroe County Airport are greatly distressed by the hazard they believe the broadcasting tower presents and by the increased noise which results from the change in flight pattern following the construction of the tower.

Many people interested in the airport are concerned also about the procedures which were employed in examining the proposed construction of the tower and evaluating its impact on the area.

It is appropriate that the subcommittee has convened this hearing to examine these factors to see what can be done to prevent the repetition of similar events and to provide some indication of what might be done to improve the conditions which now exist as a result of the tower.

One of the important elements to be considered in these hearings is the attention given to the noise impact on the community when considering any changes in the operating conditions at the airport.

This seems to receive very little, if any, consideration in examining the appropriateness of this broadcasting tower. This seems to me to be a major weakness in the procedures which were employed.

I understand there was an environmental impact statement, but it ignored the changes in noise patterns resulting from the tower.

In addition, there is a strong feeling that many of the interested parties did not have a properly adequate role in the consideration of this decision. Certainly, the people who live in the vicinity of the airport and who bear the impact of any changes in operations at the airport should be a party to the discussions and consultations given to this proposal.

This is another area which should be examined to improve citizen participation in the actions of government which are going to have a significant effect on them.

I think we will all be interested to hear the witnesses discuss these issues, Mr. Chairman, and other issues affecting airport procedures which they believe Congress should examine and reexamine as a result of this tangled business.

Thank you.

Mr. RANDALL. Thank you, Mr. Conable.

Before we proceed, the record will show that this is a regularly constituted, valid subcommittee hearing. The Chair would make the comment that none of the witnesses this afternoon will be put under oath. Although a subcommittee is empowered to administer the oath putting the witness under penalty of perjury, we are not going to do that.

I admonish you this is going to be a public record. This hearing will be printed, and will be available to any interested persons. So all witnesses will guide themselves accordingly.

This is a matter which will be subject to scrutiny, but there will be no oaths administered.

Our first witness is Mr. Keith Potts from the Federal Aviation Administration.

You may proceed, sir.

STATEMENT OF KEITH POTTS, CHIEF, AIRSPACE OBSTRUCTION
AND AIRPORTS BRANCH, AIR TRAFFIC SERVICE, FEDERAL AVIA-
TION ADMINISTRATION; ACCOMPANIED BY ALBERT B. RANDALL,
OFFICE OF CHIEF COUNSEL

Mr. Potts. Thank you.

I am pleased to appear before you today to discuss the procedures which the FAA follows in determining the impact of proposed structures on navigable airspace.

At the outset I would like to describe in brief FAA's implementation of part 77 of the Federal Aviation Regulations relating to "Objects Affecting Navigable Airspace."

Part 77 provides the regulatory means through which the FAA Administrator implements section 1101 of the Federal Aviation Act of 1958—title 49, United States Code, section 1501.

This statutory provision directs the Administrator to require adequate public notice of construction or alteration of any structure where notice would promote safety in air commerce.

Subpart B of part 77 requires that notice of construction or alteration be provided to the director of the FAA region wherein construction is proposed. It further sets forth the circumstances under which notice is required as well as the time and form in which the notice must be provided.

When notice is filed with a regional office, as prescribed in subpart B, an air traffic specialist screens the form to determine if the notice was in fact required for the proposed construction and acknowledges its receipt.

Upon determining that notice was in fact required under part 77, the specialist then considers the proposed construction in light of the obstruction standards of subpart C of part 77. If the construction does not meet those criteria, the construction proponent is advised his structure is not an obstruction. If the construction meets or exceeds the screening requirements of subpart C but would clearly not pose a hazard to air navigation, the specialist advises the proponent accordingly. However, if the construction could constitute a hazard to air navigation, the proponent is advised that further aeronautical study is necessary.

The criterion used is fundamentally the height of the structure and the consequent interference into the airspace used by navigating aircraft.

Normally when an aeronautical study is conducted, the notice of proposed construction is circularized to other FAA regional elements responsible for flight safety in order to solicit their views and comments regarding the potential impact of the proposed structure on air navigation.

Concurrently, a notice of aeronautical study, containing the notice of proposed construction, is circularized to known interested persons who are invited to offer their aeronautical comments to the FAA regarding the proposal.

However, the FAA does not solicit nor can it consider comments on the proposed construction except those based on the aeronautical impact.

We are not empowered by the FAA act to consider other factors, such as zoning, esthetics, construction quality, in our obstruction determinations.

If the comments which are received set forth substantial reasons why the proposed construction could have an adverse effect on air navigation, then it is determined whether an informal airspace meeting would assist in resolving the issue.

When such a meeting is held, among others, those persons who initially provided comments are invited to attend. This affords the opportunity for further discussion of the matter and provides an informal forum in which differences may often be resolved.

The purpose of this entire procedure is to assure that the impacted persons, as well as aeronautical experts, are given a meaningful opportunity to participate in the FAA decisionmaking.

Subsequently, all comments are evaluated and a determination is made by the agency as to whether the proposed construction would have a substantial adverse effect on air navigation. If it is determined to have such an effect, a determination of hazard is made. Otherwise, a determination of no hazard is made.

The determination is then issued to the proponent as well as to the other persons who participated in the aeronautical study. This determination becomes final 30 days after issuance unless a petition for discretionary review is filed with the Administrator. Except in the case of FCC building permits for towers, the determination expires 18 months after its effective date.

The proponent or any person who presents a substantial aeronautical objection concerning the determination is authorized to request the Administrator, through his delegate, the Director of Air Traffic Service, to review the regional determination.

The petition for review is examined by the Director of Air Traffic Service and a decision is made whether to grant the review and the basis on which the review will be conducted.

If the review is granted, the petition and the record previously developed during the regional aeronautical study may form the basis for review, or it may be augmented by additional written submissions.

Further, a hearing may be held pursuant to subpart E of part 77 in lieu of reviewing the regional record.

A determination rendered after discretionary review is administratively final.

Another means is available for persons to seek administrative review of the regional determination.

If actual construction has not commenced, an interested person may, no later than 15 days before the expiration of the final determination, petition the FAA official who issued the determination to revise the determination based on new facts that change the basis on which the determination was made at the time.

I would like to underscore at this time that the FAA's determination under part 77 does not approve, permit, or prohibit construction of any proposed structure. Neither does it waive, suspend, or otherwise affect local rules, statutes, ordinances, or other such requirements.

The FAA has no legal basis with which to prevent construction of a structure, even one determined to be a hazard to air navigation.

Authorization for construction is a matter which rests with others and is totally outside the scope of the FAA's legal authority.

Thus, the FAA determination serves merely as an advisory opinion regarding the anticipated effect of the proposed structure on aeronautical operations and the safe and efficient use of navigable airspace.

Our responsibility is to assure that a structure will not be a hazard in actual terms even if we term it a hazard administratively.

The determination of hazard is merely an administrative announcement prior to altering the flight paths or use of an airport to keep aircraft away from the structure.

I would like to turn now to a brief discussion of several areas of concern brought to our attention by the subcommittee staff.

The first area I will address relates to the notice provided by the FAA to interested persons regarding aeronautical studies conducted to determine whether a proposed structure represents a hazard or no hazard.

In this connection, the subcommittee has noted that the FAA maintains lists of persons who have expressed an interest in being advised of impending aeronautical studies. These lists are maintained on a regional basis and consist of those persons who have advised a region of their interest in being notified of airspace matters, including notices of proposed construction, that take place within that region.

When a notice of aeronautical study is circularized, these persons are provided a copy.

Additionally, this list is augmented on a case-by-case basis to include other persons known to have an aeronautical interest in the matter under consideration.

Proposed guidelines for determining interested persons were issued to regional offices in January 1974. These guidelines are generally applied by the regions when aeronautical studies are conducted.

However, because of the subcommittee's expressed concern that, in some instances, the lists of interested persons are being mechanically used without supplementation of additional known interested persons, the Director of Air Traffic Service has now reminded regional officials to insure that notification lists are actually being augmented as necessary on a case-by-case basis.

The subcommittee staff has also expressed their view that inadequate records of informal airspace meetings are maintained by the FAA. As they note, the number of these meetings conducted annually would make the expense of transcription prohibitively high.

Apart from the significant expense of obtaining such records, it is the FAA's view that detailed, official records of such informal meetings are not necessary. We do not believe that there is a need to retain for record purposes those matters raised at these meetings which have previously been transmitted to the FAA in the form of written comments to our notice of aeronautical study.

However, we do recognize the benefit of requesting those persons who raise new issues and concerns at these meetings to subsequently provide this information in written form for inclusion with the written comments previously received.

We believe that this should adequately address the situation.

We intend to formally adopt such a procedure after consultation with our regional offices, absent any compelling reasons they might advance which would persuade us to do otherwise.

We appreciate the subcommittee's focusing our attention on this matter.

Regarding the subcommittee's concern about FAA dealings with the public under part 77, we can assure the subcommittee that the FAA considers it a fundamental responsibility to be responsive to public concerns.

In our proposed guidelines, which set forth those persons who should normally be informed of aeronautical studies, we specifically provided for circularization of these notices outside the aeronautical community to the nonaeronautical public when there is known controversy regarding the proposed construction.

We also recognize, as the subcommittee has pointed out, that at times FAA actions under part 77 may be confusing to members of the public at large, due to the inherently technical aspects of the aeronautical study process and the narrowly defined FAA role.

While the use of technical terms facilitates communication among knowledgeable members of the aviation community, we will review the problem as stated by the subcommittee to determine what actions may be appropriate to improve the general public's understanding.

Further, we will continue as we have in the past to attempt to improve public understanding of actions we take and the FAA role under part 77 when problems or concerns are brought to our attention.

The subcommittee has indicated concern regarding the consideration of environmental consequences which might arise from changes in flight procedures precipitated by the construction of towers issued under Federal Communications Commission—FCC—construction permits.

We recognize that current practice may not completely address, prior to actual tower construction, all potential adverse environmental impact of these resultant changes in flight procedures. However, we do not believe that it is either desirable or practicable for these considerations to enter into the part 77 determination process by the FAA.

It is not desirable for environmental considerations to be addressed within the part 77 determination process because, in our view, part 77 is not an appropriate forum for environmental assessments. The determination process is merely concerned with the impact of a structure, if constructed as proposed, upon the navigable airspace.

Further, even if we were able to predict at the time the determination was issued that necessary changes in flight procedure could have adverse environmental impacts, the FAA has no authority to prohibit the construction.

As stated earlier, a part 77 determination is merely an advisory opinion.

Performing environmental assessments within the scope of the part 77 process is not generally practicable for the following reasons:

Normally, when a determination of no hazard is issued, we do not know the specifics of changes in flight procedure that may ultimately be implemented. The determination may signify only that a change in flight procedure would be necessary and safe to make.

There may exist a number of alternative changes which could be made. It is ordinarily not feasible to specifically identify what changes in flight procedure will be subsequently effected because of the uncertainties inherent in these situations.

Construction may not take place for a significant period of time after issuance of the determination. During this intervening time, the anticipated impact of a proposed flight change may be substantially altered by reason of changes in flight procedure unrelated to the proposed construction or by modification in the proposed structure itself.

Consequently, we believe that the difficulties associated with environmental assessments during the part 77 determination process would not only be burdensome, but in many instances would result in an environmental assessment which would not reflect the actual environmental impact at the time of construction.

However, we can offer one possible suggestion.

As noted by the subcommittee, the FCC already reviews the environmental considerations which result from the tower construction itself. It has been recommended that this environmental assessment be expanded to include consideration of environmental changes resultant from alterations in aircraft operations.

The FAA believes that, when possible, we should identify for the FCC prospective alternative operational changes that might be called for in order for the FCC to determine if there has been adequate assessment of their environmental impact.

While we are willing to provide this information to the FCC, we defer to them on the merits of their reviewing this additional environmental information from the standpoint of their available resources and other similar considerations.

Mr. Chairman, that concludes my prepared statement.

I am prepared to answer any questions you or the members of the subcommittee may have.

Mr. RANDALL. Thank you, Mr. Potts.

The Chair has a few questions.

In your statement you said that the "notice of proposed construction" is circulated to known interested persons. Who are these known interested persons? If you leave Malrite out of it, who would you regard as an interested person?

Mr. POTTS. We regard interested persons, for purposes of evaluating the effect of the structure on air commerce, as those persons who are directly related to the aeronautical industry.

Mr. RANDALL. In other words, you are sticking by other remarks in your statement that you have nothing to do with environmental aspects at all?

You are simply going to give it only to those who use the airspace?

Mr. POTTS. At the particular points in time when we are making the study, or when we initiate the study, I am not sure that we would be aware of that at that time. So we stay within the provisions of part 77 with which we would evaluate the aeronautical impact.

Mr. RANDALL. You are going strictly on part 77. We will get around to this speculative matter in a minute.

But back to my original question: What interested persons do you notify? Who do you call interested persons?

Mr. POTTS. We call interested persons the airport authority or the persons who operate the airport in the area where the tower is proposed.

Mr. RANDALL. That is the size of it?

Mr. POTTS. No; we go beyond that.

It would be local aviation groups, such as fixed-base operators at the airport; the State and local aviation bodies, such as the State Aviation Commission, as well as the groups who are interested in these proposals on a national basis, such as the Aircraft Owners and Pilots Association, the Air Line Pilots Association, and those types of groups; and anyone else who has asked to be placed on our distribution list.

Mr. RANDALL. We will get around to the distribution list in a minute.

I know it is old hat to some of you, but you keep using the word "proponent." Proponent is synonymous with the word "applicant"? Is that correct? The proponent would be the Malrite people?

Mr. POTTS. Yes; that would be the person who proposes the construction.

Mr. RANDALL. For the record, the proponent and applicant are one and the same?

Mr. POTTS. Yes.

Mr. RANDALL. All right.

The Chair is quite concerned about the continued use of the word "informal" hearing. What do you mean by an informal hearing?

Mr. POTTS. By an informal meeting, we mean that it is a factfinding process.

Mr. RANDALL. Who presides and who is in charge of it? Your local counterpart or regional counterpart?

Mr. POTTS. Our regional counterpart.

Actually, it would be a specialist in one of our 11 regional offices who is assigned to this specific duty.

He would call a meeting of those persons who had indicated an interest or, in fact, may have objected to a particular proposal, along with the person who is proposing the construction, in order to make sure that we uncover all the aeronautical facts which should be considered in evaluating that particular proposal's effect on air commerce.

Mr. RANDALL. You said in your statement: "A determination rendered after discretionary review is administratively final."

Do you mean that that is the end of it so far as the FAA is concerned? Anything beyond that has to go to the courts? Using the word "judicial," as distinguished from "administrative." Is that correct?

Mr. POTTS. Yes.

Mr. RANDALL. All right.

I am disturbed about your apparent conclusion that you have no legal basis to prevent the construction of the structure, even though it is determined to be a hazard to air navigation.

I am going to yield to the gentleman from New York on questions such as that—to Mr. Horton. I am sure he will ask those questions.

I am going to ask you about what you said about the compiled list you receive from the regional office. You said: "Additionally, this list is augmented on a case-by-case basis to include other known persons." Known by whom?

Mr. POTTS. That is known to the FAA in that area. What we mean there is that the list, which we would refer to as a permanent list which would be revised and updated as necessary, contains those persons who have indicated an interest in all airspace proposals.

On a case-by-case basis, we mean that the specialist would then locate the proposed structure on an aeronautical chart or other suitable chart, and then look for airports in that area and for State groups in that area.

Obviously, the State of New York would not be interested in a proposal in Arizona. That is what we mean by a "case-by-case basis."

Then he lists all of those persons and obtains addresses and that is his supplemental list.

Mr. RANDALL. You are quite right in your conclusion when you say that the subcommittee is concerned that this list is used mechanically. I think that that is the staff's word for these lists in the regional offices.

But I must commend you—and do—if what you have really done is what you say you have done, on augmenting these lists; that you have reminded the regional officials that they are going to have to augment these lists with something other than a mechanical list.

The question I would ask is: Have you done this since the Malrite tower?

Mr. POTTS. Yes, sir, we did that this week.

Mr. RANDALL. In other words, we have that much of an accomplishment anyway, since the Malrite tower?

Mr. POTTS. Yes.

Mr. RANDALL. All right.

The Chair is concerned and disturbed by your comments when you say you are going to address the problem about the concerns of providing the information in a written form to all the people who need to know. Then you mentioned the cost of the transcript and why you do not believe you should go to the expense of a transcript.

Let me say at this point, that the ranking minority member of the full committee, Mr. Horton, has had a very important part in being right at the very center of the effort on the government in sunshine legislation.

I am sure he will have some questions on that.

But I am disturbed when you say that you are going to change the procedure "after consultation with the regional offices and absent any compelling reason they might advance." Are you the boss over these regional offices? You are the head of the whole thing.

Mr. POTTS. Right.

Mr. RANDALL. Then if the regional office is wrong, why should you be concerned about the regional office?

Mr. POTTS. We are the boss, there is no question about that. But we are not as knowledgeable in the mechanics of handling these things as are our regional people. We cannot be expert in everything and certainly we are not.

We would not want to leave the impression that we were, so we would go to them and merely ask for suggestions on our proposal to see if there is any reason they have against changing it.

Mr. RANDALL. Isn't the pattern the same all over the United States? Is there anything peculiar to the New York region?

Mr. POTTS. No.

Mr. RANDALL. You said in your statement that you are going to circularize these notices outside the aeronautical community to the nonaeronautical public when there is a known controversy.

Why do you wait until there is a known controversy? Why don't you always do it as a matter of routine to these local officials and the residents of the area?

Mr. POTTS. First of all, we would see a problem in identifying each body politic in the total United States. There are many different types of local subdivisions, such as cities, townships, counties, and whatever.

It would mean we would then have to go to some kind of a blanket thing, which we do not really feel would cover it. We would rather go to the local aviation interests and expect them to cooperate and coordinate.

However, where we see there is a possible controversy, we do intend to change that; and we will make an honest attempt to identify all of those types of subdivisions. We would not want to miss anyone. We would not want to send to one city and not to a neighboring city, or that type of thing.

Mr. RANDALL. We hear a lot about putting the cart before the horse. Would it not be the best procedure to give widespread notice to be sure there is no controversy? If there is, you are going to know about it earlier instead of later.

Mr. POTTS. We feel this would not be necessary because there are many structures and many proposals that are of lesser height than objects around them. Therefore, if we did this on a blanket basis, we still would not accomplish this.

Mr. RANDALL. The point we are trying to develop, and I think it is plain old "horse sense," is who is going to be hurt if there is widespread notice instead of lesser notice?

What you are saying is that you go into a community and you do not know whether it is a manager-type of county government or a county council or county legislature. And they are called by all different names. But you have some regional staff here who could find out who should be given notice, do you not?

Mr. POTTS. Yes, sir, we could find out. It would be a tremendous job.

Mr. RANDALL. Just by a little bit of work.

Mr. POTTS. Again, we are seeking information to assist us in making our determination. We cannot always anticipate the widespread area that may have consideration.

I guess I would say that a large-scale notice would be something like publishing it in the Register. We do not believe that really gets to the people who are interested in it.

Mr. RANDALL. You are talking about the Federal Register?

Mr. POTTS. Yes, sir.

Mr. RANDALL. My goodness, no. That is as we learned in law school: The difference between actual notice and legal or constructive notice.

What we are talking about is some actual notice. Some people being given handbills or posters—some actual notice—right down to where they are going to know something about the matter.

I wanted to ask you whether you really look at the large picture.

You seem to say that part 77 results in just an advisory opinion. That it is nothing more than that, and that you are just not able to predict at the time you go into this whether there is going to be any environmental impact or whether you are really going to have any authority to do anything about this construction.

Don't you have a responsibility under your general duties—your wider duties for air safety—to look at the broad picture and the whole picture?

Mr. POTTS. Yes, certainly.

Mr. RANDALL. Certainly more than just an advisory opinion?

Mr. POTTS. When we speak to advisory opinion in the context that we have here, we are speaking to the advisory status.

Let me rephrase that. We are speaking to our actions as they apply to ground structures.

Certainly it is more than advisory on the aeronautical side of the issue. Therein lies our responsibility. Certainly we agree 100 percent.

Our alternative is to adjust the aeronautical procedure, if necessary, if the structure is built.

Mr. RANDALL. Mr. Potts, I will have some more questions but right now Mr. Horton has a few he would like to ask.

I must say to you most respectfully that you spent much time saying you do not have anything to do with the environment, and then you say you have a good suggestion about it, in which you really reverse yourself.

Mr. Horton has some questions at this time.

Mr. HORTON. Thank you, Mr. Chairman.

Mr. Potts, do you think the law should be changed with regard to the FAA being able to issue just advisory opinions, especially if there is a hazard?

Mr. POTTS. With FAA policy at this time, we do not believe that would be appropriate. That would involve Federal zoning, the taking of property, paying compensation, and that sort of thing. We do not believe that is appropriate.

Mr. HORTON. Don't you feel that if there is a hazard to aviation, and you make such a ruling, that there ought to be some enforcement or some way for you to prevent that from occurring?

Mr. POTTS. We do. And your responsibility is to adjust the aeronautical procedure.

Mr. HORTON. Well, you said you didn't in the statement which you made.

Mr. POTTS. We were speaking to the ground structure, sir.

Mr. HORTON. That is what I am talking about.

Mr. POTTS. We adjust the aeronautical procedure. We cannot, as we said in the statement—we have to eliminate the hazard if the structure is built.

Mr. HORTON. Let us get it straight now. We are not talking about the aeronautical adjustments. We are talking about ground structures.

Suppose someone is going to build a 21-story building right in the flight path. Do you mean to say you do not have any way to stop it if you make a finding that that is hazardous?

Mr. POTTS. That is correct.

Mr. HORTON. All you can do is change the aeronautical approaches or the flight patterns?

Mr. POTTS. That is correct.

Mr. HORTON. And you do not think you ought to have authority to prevent that from occurring?

Mr. POTTS. We believe that is a function of the local government. That is for the citizens to decide whether they want the construction or the aeronautical use of the airspace. We do not believe we can enter into that.

What we do is to tell them what the consequences of that structure might be.

Mr. HORTON. You just went through a discussion with the chairman about not giving anybody notice but aeronautical interests. Here you are telling us that you do not feel that you ought to have any more authority, but you do not feel you ought to have to give any more notice than to just aeronautical interests.

It seems to me you have an obligation. That information is very easy to find. There are agencies in the Federal Government that can give you the towns and villages or whatever other municipalities are located within the vicinity of that airport.

Then you could give them specific written notice. Don't you think that that is the minimum the FAA ought to do?

Mr. POTTS. Again, we go back to our basic purpose which is to evaluate the structure.

We believe firmly that the land use considerations are a local matter. It is a function of zoning, as opposed to the aeronautical issue.

Mr. HORTON. Mr. Potts, I am asking you about the question of your giving notice to municipalities which would have an interest in that particular structure being constructed near the airport.

Don't you think the FAA, when it is going through these informal meetings, ought to be in a position of notifying specifically those municipalities which could conceivably be involved?

Mr. POTTS. Yes. I misunderstood your question.

We have proposed guidelines to put out to our regions, which we are working on now, which would specifically provide for that.

Mr. HORTON. But prior to that time you did not have this? This is something of recent origin?

Mr. POTTS. Yes, that is correct.

There is a statement in the part itself that refers to that particular process, and we have considered that quite adequate up until recently. Now we have prepared some proposed guidelines on it.

Mr. HORTON. I read your statement and listened to your statement.

I am still not quite sure about some of the procedures you have outlined here.

When you spoke earlier about the specialists, apparently that specialist does not even have to go to the airport. He is the one who will make the determination as to whether or not there should be this so-called informal airspace meeting. Is that correct?

Mr. POTTS. No, he does not make that decision himself. He does the screening process which is provided for in the part. Then he must coordinate with other elements within the FAA in the regional office, as well as the field facilities, which would be the local air traffic control tower, if there is one.

Mr. HORTON. I am not trying to make the point here as to whether this tower should or should not have been constructed, but I am concerned about the procedures of the FAA when there is a request for a structure within an area of an airport.

First of all, what are the areas around an airport which come under your jurisdiction for this type of application? In other words, if someone wants to build a structure, how close does it have to be to an airport before you have jurisdiction of it?

Mr. POTTS. The notice requirement of subpart B says anything more than 200 feet above the ground at its side or which would exceed a certain slope that radiates from the runway up to that point.

Mr. HORTON. What does that mean? How many miles from the airport does it go?

Mr. POTTS. That is 20,000 feet.

Mr. HORTON. That is going up. I am talking about out. How many miles out, or what is the distance out from an airport that someone has to apply to the FAA?

If I want to build a 21-story building in Rochester, do I have to check with the FAA with the airport being where it is?

Mr. POTTS. If it is more than 200 feet above the ground; yes.

Mr. HORTON. That is all? Any place?

Mr. POTTS. Yes. Everywhere.

Mr. HORTON. In Syracuse, even though the airport is in Rochester?

Mr. POTTS. Right.

Mr. HORTON. If I am going to go up to that level, then I have to petition as far as the airport in Rochester is concerned.

Mr. POTTS. No; the consideration would be to the airports in the area where the structure is proposed. I am not familiar with the airports that you made reference to.

Mr. HORTON. What you are saying is that if it goes up to a certain level, or it is under a certain level, they do not have to give you notice and go through this procedure that you have outlined?

Mr. POTTS. That is correct.

Mr. HORTON. Please give me that again so that I understand it.

Mr. POTTS. That would be any structure that would be less than 200 feet above the ground unless it is within 20,000 feet of any public use airport—then it would be of a lower height the closer to the airport you get. Right off to the end of the runway, it would be the elevation of the runway.

Mr. HORTON. 20,000 feet—are you talking up or out?

Mr. POTTS. Lateral distance—the radius of the airport.

Mr. HORTON. I see. I misunderstood you.

So within 20,000 feet of the airport, any structure would require this notice?

Mr. POTTS. Yes; it would be of a height that would exceed something less than 200 feet.

In other words, beyond 20,000 feet from the airport, anything that exceeds 200 feet above the ground at a site requires notice to us. Within that 20,000-foot distance of the airport, lesser heights may require notice.

Mr. HORTON. All right.

Now, then, the specialist gets that notice. He does not have to go to the airport to even look at it, does he?

Mr. POTTS. No. That is the purpose of the circular, if the structure exceeds the obstruction standards in subpart C.

In other words, through the rule we have told the general public that they can reasonably expect to build to certain heights without

any objection or any action on the FAA's part if they stay below those standards.

So if it does not exceed those standards, then he would not process it further.

Mr. HORTON. What is the basis on which you have this so-called informal airspace meeting?

Mr. POTTS. We would hold the informal airspace meeting on the basis of a structure that would be of a height greater than the surfaces in subpart C of part 77.

If there is an indication of significant—

Mr. HORTON. I cannot follow that, and I am sure others cannot. Could you just tell us in layman's language what you are talking about without referring to subsections and parts and that sort of thing. Please tell me just in general language what you are talking about.

Mr. POTTS. Any object that we would suspect of having a significant impact on any aeronautical operation—if it would impact any aeronautical operation—then we feel it would be significant and we may hold the informal meeting.

Mr. HORTON. Why was it determined to hold an informal airspace meeting in connection with this tower?

Mr. POTTS. There were some questions from an aeronautical viewpoint that our region felt needed to be answered. For instance, there was a runway which was subsequently decommissioned which was involved. There was a question as to whether or not there really was a plan to decommission that runway or not. They had to make that determination and find out whether, in fact, that was a valid proposal at that time.

Mr. HORTON. At that informal airspace meeting you notified the people you referred to. Did you or did you not notify the county of Monroe and the city of Rochester?

Mr. POTTS. To my knowledge we did not notify the city of Rochester. We did notify the county of Monroe through the airport management which is a part of the county.

Mr. HORTON. How was that hearing conducted?

Mr. POTTS. It is a very informal atmosphere. They just meet in a room and sit around a table with our FAA representative acting as a chairman, so to speak.

Each person who attends is given the opportunity to present his views and his considerations are considered.

Mr. HORTON. Who was in attendance? There were two airspace meetings in connection with this Malrite tower, were there not? Who was in attendance at those meetings? Do you have a record of that?

Mr. POTTS. Yes, we have a record.

Mr. HORTON. Can you supply that for the record?

Mr. POTTS. Yes. We have a record of the second meeting. We do not have a record of the first meeting.

[The list of names referred to is in the subcommittee files.]

Mr. HORTON. Why do you not have a record of the first meeting?

Mr. POTTS. I can't explain that. It is missing from the file, and I can't say that it was ever even put in the file. So I do not know. We asked the region, and they thought there was a record in the file. However, it is an extensive file and it is simply not there. I cannot explain it.

[Subsequent to the hearing, FAA discovered a record of those who attended the first meeting and provided same for the record. The first list is in the subcommittee files.]

Mr. HORTON. To sum up very quickly without going into a great amount of detail, what was the result of those two meetings?

Mr. POTTS. The result of those two meetings was that our region determined that the proposal to decommission the runway that was in question was, in fact, a valid proposal.

Mr. HORTON. Was that runway decommissioned in order for this structure to be constructed?

Mr. POTTS. No, sir.

Mr. HORTON. What does that have to do with the structure?

Mr. POTTS. Because the proposed structure affected that runway differently than it did the runways that are in existence now.

Mr. HORTON. That was just something that was coincidental.

Mr. POTTS. Yes, sir. That was done by the airport authorities.

Mr. HORTON. But was that coincidental or was it related to that request for the structure to be built?

Mr. POTTS. I cannot speak for the county and the operators of the airport. I do not know that.

But as far as the FAA is concerned, no. That proposal to decommission the runway, I believe, was preceded by the construction proposal of that tower by a long time. And I am not sure what the time frame was.

Mr. HORTON. As a result of those two meetings, there was a determination that that runway could be decommissioned?

Mr. POTTS. Yes.

Mr. HORTON. How is that related to this structure that was proposed to be built?

Mr. POTTS. I have to correct my answer for the record. I said yes. That was incorrect.

They did not decide to close that runway at that meeting. That was not the subject. The purpose of the meeting was to ask the airport authority and those interested if, in fact, they did plan to close it.

It was determined that there was a plan to close the runway. In fact, it was closed prior to the actual formal decommissioning.

Mr. HORTON. What effect does that have on this tower? What was the result of the meeting with regard to the tower?

Mr. POTTS. The tower had a lesser impact on the total operation of the airport with that particular runway decommissioned.

Mr. HORTON. Was there a determination at some time that there was no hazard so far as the tower was concerned?

Mr. POTTS. Yes, we issued a determination of no hazard.

Mr. HORTON. When was that issued? At the conclusion of those meetings?

Mr. POTTS. No, it was subsequent to it.

The last meeting was held June 20, 1974, and the determination was issued September 16, 1974.

Mr. HORTON. That was based on those two meetings—that determination?

Mr. POTTS. It was based on those two meetings plus the written record and the comments that had been received from the persons who had responded to the aeronautical study. There were several

letters which were sent in. I am not sure if everyone who sent a letter came to the informal meeting or not. I do not believe so. I think some of them just let their letters stand.

It was a compilation of the information received in writing and also information received at the informal meetings as well as a detailed internal FAA study of applicable procedures.

Mr. HORTON. You said in your statement:

As they note, the number of these meetings conducted annually would make the expense of transcription prohibitively high. Apart from the significant expense of obtaining such records, it is the FAA's view that detailed, official records of such informal meetings are not necessary.

Are you familiar, or is your counsel familiar, with the new law that Congress has passed? I was just called today and invited to the White House on Monday to witness the signing of the new government in sunshine bill. This law requires meetings of this type to be recorded in many Federal agencies.

Are you familiar with that?

Mr. POTTS. No; I am not familiar with that.

Mr. HORTON. There will be changes because of the government in the sunshine bill in the future. You may be required to make records of similar meetings in the future. Maybe you should consider that now.

Apparently, it is not your procedure to have those meetings transcribed or have minutes taken of the informal meetings? Is that correct?

Mr. POTTS. Prior to our proposed change, we did have some instructions in one of our orders which said that if the meeting resulted in withdrawal of the proposal, a written record would be made of that. Or if there was a negotiation in reduction of height or relocation to some other area of the structure, that would be documented.

In other words, if there was anything that significantly changed the proposal, that would be made a record.

However, if everyone just maintained the position that they had submitted in their letters which they had filed with us in response to our study, they did not make any written notes.

Mr. HORTON. In connection with the two meetings that were held, were they held in Rochester?

Mr. POTTS. Yes.

Mr. HORTON. Do you know how many people were at the meeting?

Mr. POTTS. I have an actual list of signatures of the persons who participated in the second one.

Mr. HORTON. What I am trying to find out is whether this was a secret meeting where you just gathered without any type of notification—perhaps notifying just one or two people—or was it a general, open meeting in which anyone could participate and the public was invited? Again, under the government in the sunshine bill these types of meetings are required to be held in the open.

Mr. POTTS. It was not a secret meeting. There was a notice of the meeting sent to the same mailing list, or distribution list, which was used in the circularization of the aeronautical study and the supplemental list which was with it. Everyone received the notice of the meeting who received the original study.

Mr. HORTON. I have just two other areas, and I will be very short.

One, I am interested in the technical aspects of making changes in the flight patterns and this sort of thing.

One, I am interested in the technical aspects of making changes in the flight patterns and this sort of thing.

Suppose you determine that there is a hazard or that there is a question as to whether or not there is a hazard, what does the FAA do?

Mr. POTTS. The rule provides for supplemental notice of that proposed construction at the time that we find out that the proposal is, in fact, going to be constructed. Many proposals that we act on are never constructed.

As soon as we find out that it is a reality, and the structure is going to be built, and we receive the notice, then we again review all aeronautical procedures that are affected by that proposal. We take the appropriate action by adjusting them.

It makes no difference whether it is a hazard or no hazard. In either case when the structure goes up, if there is a procedure which is affected, it must be adjusted.

Mr. HORTON. Was there a procedure affected when this tower was constructed or was about to be constructed?

Did you hold a meeting?

Mr. POTTS. On the change? No.

Mr. HORTON. Why not?

Mr. POTTS. The procedure, as we view it, was changed so minutely that there was no reason for it.

Actually, the change in procedure was a mere formalization of a procedure which already existed.

Mr. HORTON. The other area I want to question you quickly about is, and you have indicated that you do not get into the matters of zoning, esthetics, and so forth, but I am concerned about the environmental impact statement. When you change a flight pattern or a flight plan and have airplanes flying over a different area, it seems to me that you are getting involved in environmental considerations.

If you are going to be changing those flight patterns and you are the ones that do that, why do you feel it is not necessary for FAA to get involved in environmental impact statements?

Mr. POTTS. At that point in time we do not. We actually do make an environmental assessment of the change in procedure.

Mr. HORTON. You do now?

Mr. POTTS. Yes; we do.

Mr. HORTON. Did you in this case?

Mr. POTTS. Yes.

Mr. HORTON. Did you make it after this tower was constructed?

Mr. POTTS. We made it at the time we found out that construction was imminent; yes. And we identified the procedure which was to be changed.

Mr. HORTON. Did that determine any environmental change?

Mr. POTTS. It was actually a negative declaration. It was negative because there was no real change in the flight path over the ground and there was no change in the procedure that was already being followed as a matter of good operating practice by pilots.

Mr. HORTON. Thank you, Mr. Chairman.

Mr. RANDALL. I want to try to nail down some things here. I am disturbed about the situation in that you refer to this as being on a case-by-case basis and then you say that you cannot get

into the environmental aspects at all. Then you turn around and say that you have a good suggestion.

The FCC was involved in this particular case on a case-by-case basis. You say you are willing to provide information to the FCC and to defer to them on their reviewing the environmental problems, but that you believe you should identify for the FCC "prospective alternative operational changes" that would have an environmental impact.

Is it not true that you are saying there, in effect, that after all is said and done this situation did create an environmental difference?

You say that you do not object to mentioning it to the FCC simply because the FCC is another Federal agency. Is that correct?

Mr. POTTS. I am not sure I understand the question.

Mr. RANDALL. You spent a great deal of time in your statement saying that you could not get involved in environmental matters and you are simply trying to see whether it is a hazard to air navigation.

Yet you turn around and say that you have a possible suggestion:

The FCC reviews environmental considerations * * *. We should identify for the FCC prospective alternative operational changes that might be called for * * * and assess their environmental impact.

Is this simply because it is the FCC?

Mr. POTTS. No; it is because they have the authority.

Mr. RANDALL. Why do you not do that for others?

Mr. POTTS. We would if we knew who they are.

Mr. RANDALL. If you knew who they are?

Mr. POTTS. Yes; I can find out who they are. I did not mean that.

I am saying that in this particular case we are talking about a tower that comes under the FCC purview, and they are the ones that have the authority to enforce the environmental assessment. We do not. So we should lend our technical expertise to them.

Mr. RANDALL. All right. You are pulling back a little bit from the standpoint that you should not have any concern for the environment then?

Mr. POTTS. No; we are vitally concerned with it. Where we change the procedures under which we have jurisdiction we do make environmental assessments, and we are very interested in the environment.

Mr. RANDALL. Let us get down to the jurisdictional matter.

Mr. Horton made reference a moment ago, and this subcommittee does have some legislative responsibility as a subcommittee of this full committee, but would you address yourself to the matter of your advisory role?

You have downgraded yourselves when you say you have only an advisory role on the hazard business. Is it not true, and don't you believe—or do you believe, because I am not trying to put words in your mouth—that your role on air traffic safety should be more than an advisory role?

This subcommittee has been fighting the battle of midair collisions. We had a very serious tragedy happen this morning in Europe. The name of the game is air traffic safety.

Don't you think that in the interest of air traffic safety you should have more than simply an advisory role? Do you think the law should be amended so that you would have a veto power of some kind?

Mr. POTTS. Not over the ground structure. We do have control and authority—

Mr. RANDALL. Does not the ground structure affect air traffic safety?

Mr. POTTS. Yes, and we would adjust any procedure necessary to insure that safety. That is wherein we feel our authority lies.

Mr. RANDALL. You just said to us that part 77 does not give you much authority. Maybe we need to amend the law to give you some authority—more than this advisory opinion you keep talking about.

What are your views on that?

Mr. POTTS. Again, our present belief is that that is a local zoning matter. We would make sure that we have—

Mr. RANDALL. You cannot say it is a local zoning matter when air traffic safety is involved.

Mr. POTTS. I believe that we have ample authority to insure aeronautical safety, because we may go to the—

Mr. RANDALL. You just said it was an advisory opinion.

Mr. POTTS. No; on aeronautical procedures it is not.

Mr. RANDALL. Then you are going to have to turn around and re-route your planes.

Mr. POTTS. That is correct.

Mr. RANDALL. It is discretionary with the subcommittee that our colleagues who are not members of the subcommittee be permitted to interrogate. We have always felt that the other Members of Congress are our equals. So although you are not a member of this subcommittee, the Chair is going to give you the privilege, Mr. Conable, of asking questions.

Mr. CONABLE. I very much appreciate your condescension in this case, Mr. Chairman. [Laughter.]

The only questions I would like to ask would be in the category of trying to pin down the facts a little.

I am grateful for the chance to ask a few questions. Unfortunately, I cannot stay very long. As an observer, I have other things which I have to observe also this afternoon and evening.

But I am interested in what you have described here, as the chairman has pointed out, in great detail, the "narrowly defined role" of the FAA. But you have not told us to what extent that results from statute and to what extent it results simply from administrative determination of the limits of what you can and cannot do.

If you are not prepared to tell us to what extent this narrowly defined role is circumscribed by statute, I would appreciate your putting it in the record. Are you in a position to tell us specifically what your authority is and how that circumscribes your narrowly defined role?

Mr. POTTS. Yes, I am.

In the area of ground structures, our statutory responsibility is contained in its entirety as section 1101 of the Federal Aviation Act of 1958 as amended.

This simply says that we are empowered to require notice of proposed construction or alteration where such notice would promote safety in air commerce.

Based on that alone we developed part 77 to implement that notice requirement.

As far as our latitude after that in determining the effect of that proposed construction on air commerce, I think we have very wide latitude. We believe that it works very well.

Mr. CONABLE. Do you keep a record of to whom you give notice as interested persons? You have described classes of interested persons, and you say all others.

I am wondering if you could give us some idea as to how many people you gave notice in this case. I have no picture in my mind at this point as to whether you send out 1,000 notices, 10 notices, or notices only to people who wrote you letters complaining about something they thought might happen, or whether you send out notices to a number of different governmental authorities. Can you give us some idea of the dimension of what is involved here?

We are not trying to impose on you intolerable burdens, but I would like to know just what we are talking about here.

You must keep some record of to whom you send notices.

Mr. POTTS. Yes, we do keep a complete record in the regional file. Our orders require the specialist to record exactly who he sent copies of the aeronautical study to.

We do have a list of that. I have not counted it, but I have it here.

Mr. CONABLE. Are we talking about 10 or 100 or 1,000 people?

Mr. POTTS. By just a rough count, I would say there are at least 100.

Mr. CONABLE. Is this your routine list? Or is this the notice list for this particular informal hearing?

Mr. POTTS. That was the notice list for this particular hearing.

The permanent list is a little less. There are about 50 on the supplemental.

Mr. CONABLE. One last thing. You mentioned the fact that you found that no alteration of flight pattern had resulted from the building of the tower. Is it possible that an alteration of flight pattern resulted from the decommissioning of the runway, and that you determined that that was the reason why it was not necessary to look further with respect to the building of the tower?

Mr. POTTS. No. Both of those considerations were made.

Mr. CONABLE. Both were made?

Mr. POTTS. Independently.

Mr. CONABLE. And you still say that despite the decommissioning of a runway there was no alteration of the flight pattern?

Mr. POTTS. There would have been with regard to aircraft leaving that particular runway, yes. That would be a consideration.

That would not be because of the construction.

I thought you asked me about the runway that is in existence now.

Mr. CONABLE. I am asking you if there was a change in the flight pattern following the construction of this tower which might have been, in your view, attributable to the decommissioning of the runway instead of to the building of the tower; and, therefore, you ignored any implication of the flight pattern change resulting from the tower?

Mr. POTTS. No, we did not do that. We considered the total impact of the structure on the total operation, which did give consideration to the decommissioning of the runway which was decommissioned as well as the runways which would be left in operation.

The total picture was considered.

Mr. CONABLE. The total picture was considered.

Well, was there any change in flight pattern at this time as a result of other things than the building of the tower?

Mr. POTTS. Other than the building of the tower?

Mr. CONABLE. Yes.

Mr. POTTS. I am not aware of any. But because of the tower, the answer would be no. There was no change because of the construction.

Mr. CONABLE. There has been a lot of public interest in this, and there has been a strong feeling by the people most affected by the noise that there has been a very decided change in the flight pattern.

I am asking you if that could possibly have resulted from other causes and, if so, would you know about them? Did you assess other causes and decide that they may have been a primary cause of the problem and thus ignored any possible changes resulting from the construction of the tower?

Mr. POTTS. The answer to your total question is no. There may have been some changes in the flight path of which I am not aware for other reasons, but we did not do it for the reason which you stated.

Mr. CONABLE. You did not do what?

Mr. POTTS. We did not find the "no hazard" because of changed flight patterns but because of other considerations.

Mr. CONABLE. Thank you very much, Mr. Chairman. I appreciate the opportunity to ask a few questions.

Mr. RANDALL. Thank you, Mr. Conable.

We have been talking about part 77.

We have here volume 14 of the Code of Federal Regulations, Aeronautics and Space, as published January 1, 1976. Part 77 is entitled "Objects Affecting Navigable Airspace."

After all the subparagraphs, there is one entitled "Source."

It says: "The provisions of this part 77 contained in dockets 1882," and so forth, "FEDERAL REGISTER, dated February 10, 1965, unless otherwise noted."

We understand there have been some amendments. But most of your information goes back to 1965.

If we needed any additional proof, on page 95 of this same document, under part 77, it says: "Only in exceptional cases, where the Agency concludes. * * *"

It is no longer called the "Federal Aviation Agency." It is called the "Federal Aviation Administration."

So it cries out for revision. All the way around; not simply the matter of whether or not you are going to continue to occupy only an advisory role when air traffic safety is concerned or whether you are going to revise all your regulations.

Does staff have any questions?

Mr. Romney?

Mr. ROMNEY. Thank you, Mr. Chairman.

Mr. Potts, you have referred to some proposed guidelines for determining "interested persons" with respect to these aeronautical studies.

I would like to know whether these proposed guidelines have now been finalized and issued.

Mr. POTTS. They have not been issued. We have them in draft now and are coordinating them internally. They have not been issued.

Mr. ROMNEY. Can you give us an idea of when they might be promulgated?

Mr. POTTS. No; not at this time. I am not sure just where the draft is in the organization.

Mr. ROMNEY. So it has been 2½ years since they were first distributed to the regional offices?

Mr. POTTS. The proposed guidelines which we put out in January of 1974 have been refined and added to in the proposal I just spoke of. Those guidelines which we sent out to the regions in 1974, from the response we got from the regions, indicated that they were already acting in accordance with those guidelines. So we saw no reason to put anything out. Now we believe we have a reason to expand and refine them, and that is the proposal I am talking about which is now in draft form.

Mr. ROMNEY. In response to a question by the chairman when he referred to the Malrite tower, I did not hear your answer. Did you say you had done something this week or last week?

Mr. POTTS. As far as reminding the regions of their responsibility? Is that what you have reference to?

Mr. ROMNEY. Perhaps. I did not hear whether you said this week or last week.

Mr. POTTS. Referring to my prepared statement, I said the Director of Air Traffic Service has reminded the regional officials. That was done this week—the instant week.

However, I have personally talked to my counterparts on several occasions prior to that and informed them of it at the operating level.

Mr. ROMNEY. Are you familiar, Mr. Potts, with a memorandum to the FAA regions dated January 14, 1976, regarding the notice of informal airspace meetings?

Mr. POTTS. In 1976, no.

Is that the correct date?

Mr. ROMNEY. I am referring to a document which says that the FAA definition of "interested persons" for an informal airspace meeting held under FAR 77 has been defined by a January 14, 1976, FAA memo to the regions as those with "valid aeronautical interests."

Then the memo states specifically, and there are three paragraphs in this document from which I am reading that are quoted from the January 14 memo.

Are you familiar with that memo?

Mr. POTTS. You are saying 1976. Are you sure it is 1976? I am familiar with a January 14, 1974, memo.

Mr. ROMNEY. I have not seen the memo. That is why I am asking if you are familiar with it. I only have excerpts from the memo.

Mr. POTTS. Excuse me.

Yes; I am familiar with a January 14, 1974, document on that subject. I do not know of a 1976 one.

Mr. ROMNEY. This, then, is a typographical error. I am grateful to have that clarified.

But there is such a memo?

Mr. Chairman, I would like to suggest that a copy of this be introduced into the record.

Mr. RANDALL. You have heard the request of the staff counsel that the memorandum in which notice of the meetings, as shown in the document of staff, be inserted in the record. Is there objection?

Hearing none, it is so ordered. It shall be included in the record at this point.

[The memorandum follows:]

[Memorandum]

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Washington, D.C., January 14, 1974.

Subject: FAR, part 77, section 77.35 (b)(1), "Interested Persons."
From: Acting Chief, Airspace and Air Traffic Rules Division, AAT-200.
To: Regional Air Traffic Division Chiefs (except AEU).

Indications are that some inconsistency exists in applying FAR, part 77, section 77.35(b)(1). This concerns who is considered an "interested person" and should be included on the OE mailing list for circularizing notices of aeronautical study.

Many construction proponents and aeronautically interested persons must deal with more than one region on a routine basis. Therefore, consistency in policy concerning circularization of construction proposals is important.

Accordingly, the following guidelines are proposed. Please review and forward your comments and recommendations to AAT-240 by February 15, 1974.

Since, in conducting an aeronautical study under part 77, comments of a non-aeronautical nature are not considered, care should be taken to limit circularization to governmental agencies outside of the FAA and those organizations or individuals with valid aeronautical interests.

Governmental agencies outside of the FAA include State, city, and local aviation authorities, airport authorities and the various military organizations of the Department of Defense.

Organizations or individuals with valid aeronautical interests include private owners of public use airports, aviation organizations such as the Air Transport Association (ATA), Aircraft Owners and Pilots Association (AOPA), Air Line Pilots Association (ALPA), National Business Aircraft Association (NBAA), and other similar groups at both the national, State, and local level. This group should also include any interested aircraft operator, the construction proponent, and/or his representative.

Many organizations and individuals request to be placed on mailing lists for reasons of their own with no intention of participating regularly in aeronautical studies. Unless this type of addressee demonstrates a specific aeronautical interest, such as owning or operating an aircraft or representing a construction sponsor, they should not be routinely placed on the mailing list. Examples of organizations and individuals who do not have a germane aeronautical interest are radio tower and equipment firms, paint firms, electronic equipment firms, TV tower and antenna firms, lighting equipment firms, engineering consultants, aeronautical consultants, and civic groups organized for other than aeronautical purposes.

Civic groups, organizations and individuals who appear to be involved in specific controversial cases should be included in circularization and given notice of actions and proceedings. This should be on a case-by-case basis and those involved should clearly understand that the purpose of circularizing construction proposals is to solicit aeronautical comments concerning the physical effect of the proposal on the safe use of airspace by aircraft.

CHARLES H. NEWBOL.

Mr. ROMNEY. This represents an interpretation of your regulations under part 77? Is that correct?

Mr. POTTS. An interpretation?

Mr. RANDALL. A procedure.

Mr. ROMNEY. Is it an elaboration or an interpretation of the regulation under part 77?

Mr. ALBERT RANDALL. Mr. Romney, I would like to respond to that.

I am Albert B. Randall with the FAA's Office of the Chief Counsel. I do not think we could call this a regulatory interpretation. It was an issuance that went out to the regions to request their views on these proposed guidelines. But I do not believe it was cleared with counsel. I think they were going to solicit regional views prior to checking with counsel's office.

Mr. ROMNEY. Is this a part of the proposed guidelines you referred to in your statement as issued to the regional offices in January 1974?

Mr. POTTS. Yes, in part. It has been expanded upon. It is much broader and more complete than it was there.

Mr. ROMNEY. Thank you.

Mr. RANDALL. Do you have any questions, Mr. Tempero?

Mr. TEMPERO. I have no questions. I would like to make just one clarification.

Is not the material which Mr. Romney was quoting from the proposed material which went to the regions in 1974? Is that not one and the same document?

Mr. POTTS. Yes, it is. I believe you already have a copy of it, but we will furnish it for the record.

Mr. TEMPERO. Thank you.

Mr. RANDALL. Mr. Horton?

Mr. HORTON. Mr. Chairman, I have just one other question.

Why do we need these FAA meetings and all the other activity if, when you get through with it, you cannot do anything other than issue an advisory opinion? Why should we go through all the paperwork and all the notifications and all the other requirements you have if you are going to end up with nothing more than an advisory opinion?

Mr. POTTS. We wind up, as far as the aeronautical considerations, with far more than an advisory opinion. We then exercise our regulatory authority to change the aeronautical procedure.

Insofar as an advisory opinion, we mean only with regard to the tower.

Mr. HORTON. What is the aeronautical procedure? What are you talking about?

Mr. POTTS. We are talking about any established minimum flight altitude, any path over the ground, any electronically developed procedure that assists aircraft in landing at airports, or—

Mr. HORTON. You said that even if you determine it is a hazard, you are not going to do anything except change the flight patterns. Correct?

Mr. POTTS. We said that we cannot prohibit construction, so if the structure is built we must adjust the—

Mr. HORTON. So if I do not like an airport in my area, why shouldn't I just provide the zoning and then build 21-story buildings all around it? That would close up the airport. How are you going to get into it? What can the FAA do about that?

Mr. POTTS. The FAA cannot do anything about the situation that you just described, because we have no statutory authority to base such a regulation on.

Mr. HORTON. So why do you go through all this procedure and spend all this money, all this time, and have all this paperwork?

I am Chairman of the Paperwork Commission. We are trying to eliminate paperwork. I can see much paperwork here which does not mean anything.

Mr. POTTS. We believe it is very important, because one of the considerations that we must consider is the plans that the local community has for the use of the airspace from an aeronautical viewpoint that we may not be aware of when we receive that proposal.

Mr. HORTON. You do not even notify the local communities. You just told us that earlier. Now you are changing it.

Mr. POTTS. No.

Mr. HORTON. But in this case you did not. Now you tell me that that is part of it.

I find that what you are telling me is very contradictory. Maybe I just do not follow you, but everything you told me at least is very contradictory.

I do not understand why the FAA even needs to get involved in this if all it does is issue an advisory opinion.

Then it says that we will change the flight patterns to accommodate the obstacle, whatever it might happen to be.

Mr. CONABLE. I think, Mr. Horton, you have stumbled on a good blueprint for the 19th ward. They know what to do now.

[Laughter.]

Mr. HORTON. What is your answer to that?

Mr. POTTS. My answer is that we believe that the aeronautical study process is vital to the preservation of the navigable airspace and insures that it is safe.

Mr. HORTON. Those are just words, Mr. Potts.

You are the Chief of the Airspace Obstruction and Airports Branch of the FAA, and all you have told me here today is that you can have all this procedure, have the investigation; and ultimately, have proceedings and meetings, and so forth, and then you end up with nothing.

All you end up with is if there is a determination of a hazard or not. And then nothing happens.

Then you change the flight patterns, and then they build something else, and you change another flight pattern.

So what effect does that have? I say why even get involved in it. We are trying to get rid of the noose around our necks with all the regulatory agencies.

Tell me what good it does to have the FAA there?

Mr. POTTS. Again, we feel that it is very important so that we know what procedures may need adjustment if the structure is built.

That is the primary reason we go through the process—to identify—

Mr. HORTON. Can't you do that after the structure is up? The structure is there, and then you have to change your flight patterns after it is there. You can't do anything about it before that anyway, so why go through all these procedures?

Mr. POTTS. We must adjust the procedure before the structure is erected to insure that aircraft do not collide with it.

Mr. HORTON. Well, that would be helpful.

But you do not notify people about it. You are changing it now and, hopefully, you are going to notify more people so they will know about it. But you just notify the aeronautical interests. Those are the people who presumably fly, and they are going to be interested in making sure that the flight patterns are such that they are going to be able to get in and out safely. But if they do not fly into that area, they are not going to be concerned.

I am trying to get to the basic thing and find out what does the FAA do and why is it so important to have the FAA. All you tell me is that if the structure is built, you change the flight patterns. If they build another one in that flight pattern, then you change the flight pattern again. I do not know why FAA even has to get involved with this.

Mr. ALBERT RANDALL. Mr. Horton, may I attempt to respond to that?

Mr. HORTON. I wish you would.

Mr. ALBERT RANDALL. The notice procedures, as Mr. Potts has spoken to, perform a very important function in our control of navigable airspace.

Without having prior notice of the potential construction of a structure, we would not be advised prior to the construction, in many cases, that we might have to change flight procedures.

Obviously, the potential for aircraft crashing into that structure would be horrible. So we are directed to seek notice of construction.

In determining whether or not there would be a hazard or no hazard, we issue the determination. We do not have statutory authority to prohibit somebody from constructing, but I think it is helpful to advise the subcommittee that the FAA does in many cases attempt to negotiate with construction proponents.

Obviously, we cannot prevent these individuals from constructing. But our people in the regions are very active in working with these construction proponents on a day-to-day basis to advise them of the potential problems that it would cause.

Mr. HORTON. Let me tell you what I am trying to get at.

It seems to me that we have the cart before the horse.

You apparently, the FAA, are in charge of this procedure. It is your procedure. You are the ones doing the investigating and the inspections and the ones who ultimately call for these meetings, and so forth. And then you end up, as I said, with nothing.

Why would it not be better, in the event that there is to be some construction in such an area of cities, towns, villages, counties, or whatever the municipality is or State, that they have to have some kind of hearing.

They give public hearings and public notice. Why would it not be better to change the statute and require that they notify the FAA, so the FAA could come in and give their opinion and views in those hearings and then just be a party to that rather than to run the thing.

It would seem to me it would save a lot of time and money and a lot of paperwork because you would not be involved in the conduct of these hearings which do not mean anything. A lot of them as you have indicated never end up being built.

Mr. ALBERT RANDALL. If I understand your question, you are cutting into a very basic, Federal responsibility for the safe and efficient use of the navigable airspace by delegating this responsibility to the State governments to determine if something would be a hazard on the airspace.

I think this cuts into a Federal responsibility.

Mr. HORTON. That would be a good argument if you had the authority to stop any construction. But that is not what you have. All you have is an advisory opinion. When that is all you have, it does not mean anything.

Mr. ALBERT RANDALL. We still control the navigable airspace.

Mr. HORTON. Not really. If a building is built in the navigable airspace and you determine it to be a hazard, all you have is an advisory opinion. That is all. It does not mean anything.

You cannot stop it. All you can do is change the flight pattern.

Mr. ALBERT RANDALL. Yes, sir, which is exercising our control over the navigable airspace by changing the flight pattern.

Mr. HORTON. Do you think that the law ought to be changed so that you would have more teeth in that type of procedure?

Mr. ALBERT RANDALL. My personal view would be no, because I think, as Mr. Potts points out, you would end up with Federal zoning in a sense.

We feel that by providing the determination of hazard or no hazard——

Mr. HORTON. Federal zoning is not what we are talking about.

You just said a few moments ago you protect the traffic and provide safety and protection for people who are on aircraft. But you do not have that protection if you do not have any authority. All you have is an advisory opinion that it is hazardous.

Mr. ALBERT RANDALL. I think you have to distinguish between the ground structure which goes up and the control and movement of air traffic in the navigable airspace.

Obviously, as we pointed out, we cannot control the erection of the structure; but we certainly can and will control the movement of the aircraft in the navigable airspace.

Mr. HORTON. That can follow as a result of the hearing of the county or city or whatever it happens to be.

If they determine it is OK to go ahead with that building, then you can still determine whether or not it is safe for an airplane.

I am just saying that if you want to do it the proper way, it seems to me you ought to have more authority if you are going to adequately protect the safety of the public. But if you are going to do it your way and follow the procedures you have already outlined to me, it seems to me it is a meaningless exercise, and you are not accomplishing anything.

That is all, Mr. Chairman.

Mr. RANDALL. Thank you, Mr. Horton.

We are getting into some constitutional matters here possibly.

Is counsel familiar with navigable waters? You know how we handle that. We have an easement.

I suppose we would have to, by Federal law, seek some sort of Federal easement over all surrounding airports. Then you run into the constitutional question of having to pay for that easement. It may have to come to that, as air traffic accidents continue to mount. The toll has been admirably low.

But we may have to get those easements. That is what it might come to.

Thank you very much gentlemen.

We are ready now to hear from some more witnesses. We have spent much of our time on our principal witness, but we are going to do our best to hear from the Rochester City Council and the county legislature and others.

Mr. Charles Schiano, of the Rochester City Council, is our next witness.

STATEMENT OF CHARLES A. SCHIANO, ROCHESTER CITY COUNCIL

Mr. SCHIANO. Thank you.

My name is Charles A. Schiano. I am a member of the Rochester City Council elected from the northwest district of the city, which is where the tower resides.

I appear before you today to express my continuing concern for the threat to the safety of the public and to the property of our city's residents, which is posed by the location of the Malrite Broadcasting Co.'s transmitting tower within flight patterns of the Monroe County Airport.

Rather than attempt to trace the tower's history in detail, I will proceed directly to the areas of my concern.

The most compelling area of my concern is safety—both that of the traveling public and of the citizens of the city of Rochester.

In the view of the professionals who fly into and out of the Monroe County Airport on a daily basis, the tower presents a serious safety hazard, both to users of the airport and to persons on the ground whose homes lie in the airline flight paths.

The safety issue has been explicitly set out by Capt. John E. Baldwin of the National Air Safety Coordinators Committee, a committee of the Air Line Pilots Association. Excerpts of his statement of February 13, 1976, I will quote as follows:

The construction of such a tower would most adversely affect the ability of the pilot to safely land the aircraft on this runway during instrument conditions—adverse weather.

And this year we have had much adverse weather.

In addition to this, when taking off to the northeast, a pilot normally would make a turn to the northwest in order to reduce the sound over the most populated areas. Even with this tower only partially constructed, we must now—in order to give safe clearance—make a turn towards the east, flying over the residential areas and eventually over the city itself.

In speaking for the Air Line Pilots Association, I must inform all interested parties that the association is adamantly opposed to this proposed radio tower construction.

In addition to the obvious safety factor, the question of noise pollution and the harassment that accompanies it is of great concern to me.

As just one example, I have been made aware of a tremendous inconvenience which occurs each time a jet airplane passes over our local elementary schools. Classes must be halted until the jet has passed, because the teachers cannot be heard over the noise.

In view of the fact that the tower's construction has resulted in a dramatic increase in the number and duration of flights over our city's residential districts, the noise problem cannot be understated.

Aside from their health and safety implications, the increased overflights pose a threat to property values of homeowners who must endure them.

I understand the purpose of this hearing today is to try to determine if the procedures now established are proper and adequate to safeguard the lives and property of the community at large. My concerns are much wider in scope. I believe that the Federal Government should consider implementing the following steps to protect all of the public's interest by doing the following:

One: A part 77 proceeding ought to encompass the question of noise levels and their environmental impact on the community as well as safety considerations. Noise level concerns are valid and should be part of the determination made during a part 77 hearing.

Two: Present procedures should be amended to provide for personal service of notice and determinations on all interested parties, including municipalities, private airline associations, and citizen groups which are affected by the decisions.

Three: Informal space hearings should be made formal, providing for a written record and appropriate notice so that concerned citizens may not again be faced with a situation in which a potential safety hazard is erected before their eyes without any prior consultation, consideration, or information.

If I may digress, I did not include this in my prepared statement, but as I thought on this and as I listened to Mr. Potts testify and give his position, I was really quite shocked.

If we go back to a hearing which was convened by the city council of Rochester, in which Councilman Lindley was the chairperson, we had an opportunity to examine a Mr. Hennessey from the regional office of the FAA.

I questioned him concerning certain items. One of those items was the different flight patterns which were established because of the tower.

I understood from Mr. Hennessey that those new flight patterns were not being taken over residential areas, but they were being taken over industrial areas.

I indicated to Mr. Hennessey that, in fact, those flights were now going over residential areas—heavily populated residential areas in the 19th ward—because of the construction of the tower.

He said that could not be true. And I asked him what he did to check, or what the FAA or the regional office did, to determine that those flights were not going over residential areas.

And he said to me and I quote: "We looked at the coastal geodetic maps."

Gentlemen, I submit to you that coastal geodetic maps do not show you population districts or population areas. I pointed that out to the gentleman from the FAA, and he could not explain it to me. He said: "We looked at the map, and I saw a railroad and therefore inferred that this was an industrial area rather than a residential area, and we based our determination on that."

That is a pretty hairy situation and a pretty sick situation when an administrative agency gives you that type of answer to a question which we are vitally and deeply concerned about.

I will not comment about the unavailability or the fact that Mr. Hennessey did not know about the so-called Stedman report. I am sure Councilman Lindley will have more to say very pertinent to that point.

But I could perhaps excuse the misrepresentation by Mr. Hennessey, but I cannot excuse idiocy.

In sum, the Malrite tower situation demonstrates, in frightening clarity, the total inadequacy of the presently existing investigation and hearing procedures.

The history of this matter is one of unrelenting bureaucratic and corporate irresponsibility and insensitivity to the needs and concerns of the people.

Throughout, we have been treated to episode after episode of bureaucratic buckpassing and avoidance of responsibility.

Incredible as it appears, the tower—which constitutes a daily threat to the lives and property of our citizens—was erected in their midst without any consultation or even notice to those over whom it now hangs as the sword of Damocles.

Regardless of where the blame is ultimately laid, the fact remains that somehow the tower got built.

The fact also remains that the tower got built because what inadequate investigatory and hearing procedures do exist are placed in the hands of a bureaucracy too big, too detached, and too unfeeling to consider the personal needs and concerns of individual citizens.

I would like to say that I was very concerned—and I do not like to take shots at Mr. Potts—but he said he is trying to improve the public understanding of the FAA. I think he ought to place more concern on the public safety question.

I do not accept his buckpassing. If a proper hearing had been conducted, if the Air Line Pilots Association had been made a part of the proceeding, if they had a chance to attend those informal space hearings, there is no way in my opinion that a hearing of no hazard could have resulted; especially when four pilots associations appeared and gave statements that that tower is a hazard—not only to air safety but to ground safety.

It seems to me that the FAA draws a strange dichotomy. They say the airspace is all they are concerned about. The ground safety is somebody else's problem. That is patently ridiculous.

I had to sit here and shake my head throughout Mr. Potts' testimony, because had they issued a determination of a hazard rather than no hazard, in my humble opinion, there is no way that the city of Rochester would have issued a permit for that construction of the Malrite tower.

I would like to take an opportunity here to take a couple of shots at Malrite, but the hour is late.

I would like to be positive here and emphasize the fact, Mr. Chairman and gentlemen, that the procedure itself is faulty and is in need of serious and immediate revision.

I thank you very much for giving me this opportunity to present my views on this, which I think is a very critical issue to our region.

Mr. RANDALL. Mr. Schiano, you have given us a helpful and significant contribution.

You said that, had you been given an opportunity to know about the change of flight patterns, and that you had been led to believe that it would not be over residential but over an industrial area. You said that, had there been an open hearing where all interested parties had had an opportunity to be heard, the city would not have issued a permit.

Mr. SCHIANO. That is my belief, Mr. Chairman. I happen to be in a minority position on the council, but I believe that given a finding of a hazard that the building commissioner's office would not have issued a permit.

They would have had something to rely upon if taken to court on an article 78 proceeding, which is our administrative review statewide, to base their opinion on not issuing the building permit.

It was zoned, and perhaps erroneously, for that type of construction.

I want to point out, Mr. Chairman, in case there is a misunderstanding, that the hearing which was held in our city council chambers with the special committee was after the tower had been constructed. That was when Mr. Hennessey was telling us that in his opinion the new flights were going over industrial rather than residential areas.

Mr. RANDALL. I think the principal point and the thrust of your statement is that, if there had been a hearing to which all parties had been invited, even though the property was zoned, the permit would probably never have been issued.

Mr. SCHIANO. That is my opinion.

Mr. RANDALL. Do you have any questions, Mr. Horton?

Mr. HORTON. Thank you, Mr. Chairman. I have no questions. I would like to thank Mr. Schiano, however, for his interest in this problem. He and Councilman Lindley brought it to my attention, along with John Hoff, a county legislator.

As a result of that, we have already made some inquiries through the subcommittee staff which have resulted in some changes in the FAA procedures, which I think will inure to the benefit of other communities. It probably will not help in this one, but it certainly will help in connection with others.

I certainly agree with the gentleman that it is important to notify more than just aeronautical interests in these types of proceedings.

I think that is an excellent point. And perhaps as a result of this hearing we can include in our recommendations something along those lines.

Mr. SCHIANO. There are two problems that I have. One is that the aeronautical community was not fully notified. Four pilots associations, had they known about the so-called informal hearings, indicated to us they would have attended and voiced their stiff opposition.

The local pilots associations were opposed to it.

I do not even know how the determination was reached, and that bothers me.

The other thing—

Mr. HORTON. The point you are making is that even though they say that they give notice to the aeronautical community, they are not including the entire community.

Mr. SCHIANO. It is not an adequate notice, and that is the problem.

You never know if they receive the notice, and I could quote you the statements but I won't bother.

But I appreciate this opportunity to appear. Thank you very much.

Mr. RANDALL. Thank you.

Our next witness is Mr. Christopher Lindley. He is also of the Rochester City Council.

**STATEMENT OF CHRISTOPHER LINDLEY, ROCHESTER CITY
COUNCIL; ACCOMPANIED BY LARRY A. STUMPF, COUNSEL**

Mr. LINDLEY. Thank you, Mr. Chairman.

With me is Mr. Larry Stumpf, who has been reviewing the file with me.

I will be referring to a decision which was handed down this week by the Federal Court of Appeals, indirectly relating to this matter, which Congressman Horton may have seen in this afternoon's paper, which I think has direct implications in terms of this—at least on a public policy level. I would not necessarily comment on it on a legal level.

On behalf of the city I would like to thank the subcommittee and its staff and Congressman Conable for their interest in this matter.

The Malrite tower is a serious threat to the peace and safety of a major section of our community.

The assertion by FAA officials, and I am having a hard time pinning it down as to whether there is a minor change or no change or whether it is a major change that we are responsible for, that the flight pattern adjustments are minor and inconsequential changes is belied by the daily experience of thousands of westside residents, the expert testimony of airline pilot representatives, and the daily observations of county airport officials.

My understanding, Mr. Chairman, is that prior to that time there was no minimal level which a plane had to reach before they began their noise abatement turn. And now there is a minimum of 600 feet. The magnitude of the change is not a matter even the FAA appears to be able to agree upon.

Central to this whole tragedy is the FAA's no hazard determination and the methods used by the FAA in making this judgment.

We recognize the subcommittee cannot give us the ultimate relief we seek, and we intend to pursue such remedies in Federal court.

But I do hope the subcommittee's investigation of this and other matters will spur the kind of legislative and administrative changes—and within the FAA changes in officials' attitudes toward legitimate public interests—which will spare other communities the injury and hardship the FAA has inflicted upon us.

What are our specific grievances?

First, the FAA systematically excluded the city of Rochester from the entire procedure leading up to the no hazard determination and gave the city no direct notice of its final decision.

To say that only those who own or operate airplanes or airports are interested parties to FAA no hazard determinations is intolerably restrictive and dismisses as irrelevant the broad range of interests seriously affected by these decisions.

I am a little astonished to hear how respectful the FAA is of local community options with respect to land use and zoning—and you were pursuing this question, Congressman Horton. They are saying: We are so respectful of your prerogatives we do not want to have that decisionmaking authority. But it is hard to be respectful of our prerogatives when they do not even tell us what is going on. And we find out about it after the fact.

If we want to consider these matters in a coordinated, intergovernmental matter, on the local level we at least need to know what is happening. That was not the case with the city in this particular instance.

Second, when we cut through all the empty rhetoric—and I hope, Mr. Chairman, that your subcommittee has, and I know Congressman Horton has a copy of the transcript of the meeting the city council

subcommittee held wherein the FAA officials told us how concerned they are about noise—it does not make any difference how much noise it made.

Under the part 77 proceedings, that is not grounds in the FAA's mind for withholding a no hazard determination.

In the case of the Malrite tower, the FAA apparently would have reached the same conclusions even if those excluded from the process of decisionmaking had been able conclusively to demonstrate the terrible eventual consequences of the change in flight patterns.

Third, no record of the informal airspace hearings were maintained, nor were specific findings or facts contained in the FAA determination.

Congressman Conable sent me a copy of a letter he received some 2 weeks ago from J. W. Cochran, the Acting Administrator of the FAA.

This is the attitude we are dealing with:

There was no lack of opportunity for county officers to advise all interested local governmental bodies, including city government, within the county.

The city of Rochester is as much a part of the United States as it is of the county. And we have our differences with the county.

But it really is an incredible act to hear a Federal official lecturing the county on its obligations to the city, when the Federal Government does not feel it has any obligation to notify us at all.

Fourth, once the tower was constructed, the city was repeatedly misled by FAA officials concerning how the decision was made, what information was considered by FAA officials, who participated in the informal airspace meetings, and what the actual consequences of the decisions were.

The FAA could not even demonstrate that notice was actually given to even all those interests the FAA currently defines as representative of the aeronautical community.

It is indicative of the kind of difficulties we have had in dealing with this.

Let me go back to Mr. Potts' statement.

What kind of assurances should we derive from a statement that reads as follows, and I would ask you to help interpret this:

The Director of Air Traffic Safety has now reminded regional offices to insure that notification lists are actually being augmented as necessary on a case-by-case basis.

Now I do not have the faintest idea what that means. I don't think anybody can tell me what it means.

Does it mean that we are going to get notice in the future? Well I hope we are, because we have requested we be put on the list. But does it mean that other communities in other circumstances—controversial cases to widen the scope of participation, and frequently you do not know it is controversial until you get all the parties who might possibly be affected by it—it is quite clear, if I may jump to a conclusion, that the narrow construction of the aeronautical community is one way in which the scope of controversy can be eliminated or reduced, by not bringing in other interests that may raise questions other than questions raised by those who own and operate airports and/or airplanes.

It is a sad fact that at the very time the city, in partnership with the Federal Government, is investing millions of dollars of Federal

and local funds in attempting to preserve and rehabilitate our city residential neighborhoods, a decision is inflicted on us, by a Federal agency without notification to us or consultation with us which seriously damages these efforts.

The ultimate issue, therefore, is not the conduct of the FAA alone but the capability to formulate and implement coherent national policy and to eliminate contradictory actions and decisions by agencies which are supposedly meant to be not isolated bureaucratic baronies, but coordinated instruments of a coherent national policy.

The Federal Court of Appeals decision relating to the Federal Post Office, which was handed down this week, speaks directly to this point.

Again, on behalf of the city of Rochester, I want to thank Chairman Randall, Congressman Horton, Congressman Conable, and the subcommittee staff for their thoughtful consideration of these matters.

I would be glad to answer any questions you might have.

Mr. RANDALL. You have made a very hard-hitting statement and one which contains a lot of merit.

You are saying that you are determined to get some relief wherever you have to go. You are to be admired and respected for that.

You say with regard to the lack of coordinated activity by the Federal Government that on the one hand, millions of dollars have been spent on urban renewal and so forth, and then they turn around and undermine these efforts through another agency without any notice at all.

That is a very excellent point and one that we have experienced elsewhere.

Your statement is a good one. It refers to assurances about notice with such slugging comments as empty rhetoric, when in truth and in fact you never know whether anything is going to be controversial until the people are given notice to let them know.

I think that is what this hearing is all about.

I congratulate you on a clear, forthright, and analytical analysis of exactly what happened at the Malrite hearings. Indeed, it appears there was a lack of an adequate hearing.

You also came back on the question of why there was no record kept at the so-called informal meeting. I think it is important to keep records of proceedings when meetings are held. In the case of certain Federal agencies, Congress has just done something about that with the government in the sunshine bill, which will probably be signed soon. At any Federal agency meeting covered by the bill—whether in Washington or wherever it is—if it involves a decision or a decision-making process, there must be a record kept.

Mr. Horton?

Mr. LINDLEY. Mr. Chairman, may I just respond to one point in my comment about the empty rhetoric related to the assurances we had from the regional FAA official about how desperately concerned they were about noise. It was not a gratuitous comment.

When you get right down to it, the FAA part 77 proceeding has nothing to do with noise. That is the point I was making.

Mr. HORTON. I would just like to say that I am happy you brought the matter to my attention and that the subcommittee could come here and have this hearing.

I think the points you have made are well taken. The concerns I have are the same concerns you have expressed; that is, that in these types of meetings or hearings there certainly ought to be a better notification system by the FAA.

I was concerned, as you could tell from my questions of the FAA representative, Mr. Potts, about the effect of their no hazard/hazard decisions—what effect that has.

This certainly would have some effect on the local communities, but when you do not have an opportunity to be heard, it does create some problems for the local community which has to hold the hearings on whether or not to permit the structure to be built.

Would you agree with what Councilman Schiano said earlier with regard to the city's reaction if there had been full and adequate hearings and whether or not the city would have gone ahead with the permit?

Mr. LINDLEY. I wish I could predict what would have happened under the circumstances.

But if you will bear with me for a second, let's briefly follow the train of events.

There is a hearing, which no city official knows about. There is a no hazard determination, which no one knows about. The applicant receives the clearance from the FCC and FAA, goes in to a fourth-level administrator in the zoning department and has a big impressive document—and I read it and had a hard time understanding it and reread and reread it—which says no hazard, tells them they have met all the requirements, and so forth.

It is just not the same thing as saying that there is a requirement that the responsible officials in the city of Rochester or any municipality be notified that a Federal agency has a matter under consideration that is vital to the peace and safety of that community.

Mr. HORTON. And that is an important matter.

Mr. LINDLEY. Yes.

Frankly, Congressman Horton, I knew nothing about it. Councilman Schiano knew nothing about it. The mayor knew nothing about it. The city manager knew nothing about it.

Mr. HORTON. Congressman Horton knew nothing about it. I read about it in the paper.

Mr. LINDLEY. And you know, as a lawyer, the issuing of a zoning certificate involves two matters.

First, it is gratuitous in this case because it is owned by UDC, which ultimately is exempt from local zoning and building code regulations. But that is part of our continuing quarrel with authorities.

Second, it is a ministerial act on the part of the person. You meet the requirements of the law, and you get it.

We were asked to deal with the consequences, but we were not asked to be there for the taking—

Mr. HORTON. As I said earlier, I am not sure we can solve the problem of this one, but we can certainly make certain that in the future this type of thing does not happen again.

Mr. LINDLEY. I think your questions and Chairman Randall's questions of trying to find out what the FAA's position was and is, gives you a glimpse of the frustration we have had in dealing with them on this. It is enormously frustrating.

Mr. HORTON. This is only one instance in which the chairman and I have had these frustrations. We go through them all the time. It is a real problem.

Mr. LINDLEY. Thank you very much.

Mr. RANDALL. Before we call the next witness, Mr. Lindley, I want to be certain that I understand this thing.

We gathered material from some of the staff inquiries back in July that there may have been some notice given to some city or county employees but there was never any notice given to the elected officials themselves. Is that correct?

Mr. LINDLEY. Mr. Chairman, to the best of our record—and I have tried to track this down—the first notice to a city official, indirectly, came as a result of the decision of the county public works commissioner to appeal the no hazard determination.

It came to the former director of the buildings department as a carbon copy.

Subsequent to that, on January 14, 1975, he wrote a letter to the then-head of the building bureau saying: I assume you have been copying it on previous correspondence.

But at no time was there ever any notification from the FAA itself to the city, even that the determination had been made.

Mr. RANDALL. Mr. Tempero?

Mr. TEMPERO. Mr. Chairman, as I understand from all that I have seen—and I may not have seen everything—that is basically correct.

There may have been a little earlier notification at the time the public works department objected to, as you typified, in the fourth level of the building department from the point of view that they objected to their going ahead and issuing the permit.

Mr. LINDLEY. That was after the two informal airspace meetings had been held, after the no hazard determination had been made. I think it was, at the earliest, after that.

Mr. TEMPERO. That is correct.

Mr. LINDLEY. He was going to appeal it to the FAA in Washington—the regional office decision.

But there was no notice to the city in any significant way.

Mr. TEMPERO. It did at least put the city on notice that there was some objection to the permit being issued.

Mr. LINDLEY. I do not know if that really constitutes notice to the city of Rochester. Then spare us further notice requirements.

Mr. RANDALL. Thank you very much, Mr. Lindley.

Mr. LINDLEY. Thank you, Mr. Chairman.

Mr. RANDALL. Mr. John Hoff, a member of the Monroe County Legislature, is our next witness.

Please proceed, Mr. Hoff.

**STATEMENT OF JOHN R. HOFF, MAJORITY LEADER,
MONROE COUNTY LEGISLATURE**

Mr. HOFF. Thank you.

I appear before your subcommittee to transmit a few remarks and opinions concerning the Malrite Broadcasting Corp.'s radio tower.

This 600-foot facility, situated within the normal control zone of the Monroe County Airport, is a hazard and should be relocated before the tragedy we all pray will not transpire does, in fact, occur.

Although the finger of blame for construction of this tower will point in several directions, depending upon who points it, I feel the Federal Aviation Administration is the entity entitled to that heat.

It was the Rochester FAA office which, after thoroughly reviewing construction plans, recommended that the tower presented a hazard and should not be constructed.

However, the regional FAA office disagreed and supported construction.

Clearly, those FAA officials remote from the scene acted conversely to the recommendation of Rochester FAA officials who were closest to the situation and realized the impact of tower construction.

Why then was their recommendation denied? Why is there even a Rochester FAA office if the decisions are to be made elsewhere? This is indeed an ironic and conflicting move on the part of a Federal agency delegated the responsibility of assuring the safety of air traffic.

As soon as the Monroe County Legislature became aware of this potentially dangerous situation, it acted rapidly and affirmatively in seeking mechanisms to remove the tower, even though it had no direct jurisdiction.

The legislature's public works committee, which I chair, unanimously recommended to the full legislature that it direct the administration to pursue all legal avenues to accomplish the removal of this hazardous facility. That same date—February 24, 1976—a resolution to this effect met with legislative approval.

That resolution, in concert with community pressure, forced city of Rochester officials who had approved the project to modify their defensive posture against removal of the tower. City hall did an about-face and joined with the county and citizenry in the fight for removal.

That fight continues today, and the city deserves credit for carrying it to this congressional subcommittee—the only course available to hopefully influence an otherwise untouchable Federal bureaucracy.

The radio tower is a menace to this community because it is a safety and environmental hazard and should be removed. But who will pay for its removal?

It is ridiculous to expect that the county should finance its removal, for it does not have jurisdiction and was opposed to its construction at the outset.

It is ridiculous to expect Malrite Broadcasting to absorb the expense, for it obtained all the necessary construction permits.

It is also absurd to expect the city of Rochester to pay the cost, for it was told by the Federal Aviation Administration that the tower would not present a hazard.

Therefore, it is the FAA which should finance the relocation of this hazardous facility, and I would suggest that this subcommittee recommend congressional action, if that is what it takes, for the FAA to pay for the tower's relocation. Anything less is a disservice to this community.

Thank you. I would be happy to answer any questions you or the subcommittee might have.

Mr. RANDALL. I have only been in the city a few hours, but we are convinced—let me just say, for the record, that the Chair did have an opportunity to observe the situation from the air from all directions.

Without attempting to answer your rhetorical questions as to who is going to pay for the cost of removing this tower, I just have a feeling that somewhere along the line there will be some adjustments made some place other than in some flight patterns.

I came back convinced that this tower is rather close to the airport and is something, which depending upon the wind direction and where you are flying, does constitute an air hazard.

Regardless of the deficiencies in the law about the advisory opinions, there has certainly been a miscarriage here.

I commend you on your appearance here and suggest that you have pretty much duplicated the testimony of the previous witness and pinpointed in a little more detail where the finger of blame should be pointed.

I think we would not be far afield to say that the Malrite Corp. was invited to testify, and they apparently preferred not to appear today.

Mr. Horton?

Mr. HORTON. I have no questions of Mr. Hoff.

I do understand his concern and the concern of the Monroe County Legislature.

I think you have made some excellent points in your statement.

As I understand it, the opinion on which you are basing your statement that there was a hazard is the opinion which was attached to your statement which is a memo submitted on August 28, 1973, by George Stedman of the General Aviation District Office of the Department of Transportation of the Federal Aviation Administration.

Mr. HOFF. Yes; it is that opinion and also the opinion of some testimony given at some of the hearings since and the feeling of many pilots whom I know personally and am affiliated with.

Mr. HORTON. Mr. Chairman, I think this memorandum should be included in the record.

Mr. RANDALL. Without objection, it is so ordered.

[The material follows:]

[Memorandum]

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
GENERAL AVIATION DISTRICT OFFICE,
Rochester, N.Y., August 28, 1973.

Subject: Proposed tower, Rochester, N.Y.; case No. 73-EA-529-OE.
To: Airspace and Procedures Branch, AEA-530.7.

The proposed tower construction would very definitely create a safety hazard to VFR flight. The area does not offer any existing structures or natural terrain protection. The location is in the midst of many predominant minimum weather VFR navigational assists such as Lake Ontario shoreline with a four-lane highway direct to the airport, the Erie Barge Canal and a two-track railroad passing directly through the chosen site. The close proximity to this heavy-traffic airport with many VFR flights arriving and departing would create a hazard. With heavy air traffic conditions existing, it is necessary for Air Traffic Control to extend downwind legs and require 360° turns to allow proper spacing. With a normal heavy haze condition existing, it is quite probable final turns to Runway 19 might well be made at or below the proposed height of construction. Further

consideration should also be given to noise abatement departure procedures established for Runway 04 that require a turn to 010° as soon as practical after takeoff. Under certain conditions, it is conceivable that aircraft departing from this runway would be jeopardized by this hazard. Due to the heavily built-up area surrounding this location, any thought of an aircraft striking such a tower would certainly expose untold numbers of people on the ground to an unnecessary risk.

There are other structures in this area extending upward but all are one-half or less of the proposed construction. If the structure could be constructed to remain at or lower than these other structures, we would offer no objections.

GEORGE A. STEDMAN,
Chief, AEA GAD0-17.

Mr. HORTON. We have explained the purpose of our subcommittee meeting and what we will be looking at, and I think that your testimony will be very helpful in the final determination of what the subcommittee does.

Mr. HOFF. I realize that my testimony did not really address itself to future FAA procedures, but it really addressed itself to what to do with the existing tower, because I think that is a very vital concern of the people who are adversely affected. They would like to see something done with the tower, and do not want any more built like it.

I do not think we want to overlook the existing structure and to accomplish its relocation if humanly possible.

Mr. HORTON. Thank you.

Mr. HOFF. Thank you.

Mr. RANDALL. Thank you, Mr. Hoff.

Our next witness is Mr. George Landgren of the Monroe County Department of Public Works.

**STATEMENT OF GEORGE E. LANDGREN, PRINCIPAL ENGINEER,
MONROE COUNTY DEPARTMENT OF PUBLIC WORKS**

Mr. LANDGREN. Thank you.

The county of Monroe is operator of the Rochester-Monroe County Airport, an air facility dating back to 1919 which is convenient in travel time from the central business district of the city of Rochester.

Incurring all the difficulties of an airport adjacent to existing development, also of long historical presence, the county of Monroe is deeply concerned with the construction of any facility near the airport which in any manner may affect aircraft operational minima, alter aircraft noise abatement maneuvers, or in any fashion reflect on the safety of or the very presence of the airport itself.

As might be assumed, opponents to the very presence of the airport at this location do exist, and they are extremely articulate in their opposition.

Over the years, the Federal, State, and local governments have expended funds in the tens of millions of dollars to develop this airport to the modern facility existing today so that the community may reap the benefits of air transportation in the areas of commerce and recreation.

Recognizing the value of the airport to the community, our predecessors in 1964 prepared a local plan for reviewing future development of land surrounding the airport. This plan was adopted by the county board of supervisors on March 12, 1965, by Resolution No. 90.

Since that time, the Monroe County Department of Public Works has, with considerable success, been able to convince the more local planning boards of the importance of reviewing questionable development regarding possible impact upon the airport and for the purpose of preservation of the airspace for safe and reasonable aircraft operations.

As the plan was prepared using appropriate approach, transitional and conical surfaces determined by the FAA, the plan was considered to have justifiable foundation upon which to make local judgments regarding relationships of proposed development and safety of aircraft operations.

Through the rather time-consuming process of review of the Malrite proposed tower by the FAA, the county department of public works became increasingly alarmed that the FAA was not placing sufficient emphasis on the objections by the county department of public works to the construction of the tower.

The final determination of no hazard, after appeal by the county department of public works, strained relations between the county and the FAA.

At the risk of understating the county's position, it was unthinkable that the FAA on the one hand would occasionally request the county to control vegetation, which in a minor way may encroach upon defined airspace surfaces, in which the county attempts to comply, and on the other hand refuse to support the county in a strong position in opposition to a tower which penetrates this same airspace by a considerable margin.

The purpose of these remarks is not to castigate the Federal agency or its hard-working employees. The county department of public works, through its constant contact with these people, is intimately familiar with their functions and work results.

The purpose of these comments—and it is hoped the goal of these hearings—is to explore agency policy to see if a more protective attitude toward available airspace could be adopted.

Possibly the policy of the agency might be completely changed, wherein the FAA standards would first prohibit construction of a structure which penetrates the respective airspace surfaces and exception to that policy would be made only upon exhaustive review.

The present status of assuming that the FAA standards are merely guidelines or advisory seems to promote the concept that substantial liberty can be taken with the standards, making them less effective.

When the FAA takes the attitude of making liberal exceptions to the standards and thus submits a no hazard report, there is very little basis remaining to a municipal airport operator to contest the report, as the consideration will be that all aspects of aviation operations have been carefully considered by the one and only governing agency concerned with aviation, when this indeed may not be the case.

The developer may then consider that he has an expert opinion from the one and only authority and may then discard any other concerns on aviation impact that may be expressed outside the FAA.

Public input is becoming more commonly accepted by the State and Federal governments as a requisite to making funds from these agencies available to local community projects.

An example of this is the preparation of an airport master plan in which the Federal, State, and county governments are presently involved. This program calls for public participation and vicinal land use planning, which are vital elements of the master plan.

Certainly, the credibility of our planning effort in the eyes of the local public has, most unfortunately, been seriously damaged by the lack of FAA support in maintaining their standards and supporting county attempts to preserve airspace for airport operation.

We are not proposing that public hearings be conducted on each of the tens of thousands of hazard reviews that must be made by the agency each year.

The possibility of conducting a public hearing on hazard reports where there is a substantial difference of opinion between a municipal operator and the FAA staff may be considered as an appropriate procedure.

Thank you.

Mr. RANDALL. Thank you.

Our next witness is Diane Larter.

Please proceed.

STATEMENT OF DIANE LARTER, PRESIDENT, 19TH WARD COMMUNITY ASSOCIATION; ACCOMPANIED BY GRAHAM L. COX

Mrs. LARTER. Thank you for this opportunity to tell your subcommittee of our concerns as the community most adversely affected by this noise pollution problem.

The 19th Ward Community Association represents many thousands of the people living and working on the west side of the city of Rochester whose lives have been bombarded by increased noise levels from jet aircraft flying new flight patterns over our homes. These new flight patterns have been forced on the pilots by the 600-foot high Malrite radio tower approved by the city, the FAA, and the FCC.

The concerns of this association which we believe your congressional subcommittee can best address can be put as questions. These questions are:

One: Why was the general community not told at a very early stage that this radio tower was being proposed, and an indication given to us of the probable adverse impact it would have on our lives?

The Federal Government has made great strides in recent years to include the general public in Federal affairs, both in social and environmental fields. The FAA and FCC did not do this in the Malrite radio tower case. We want to know why and have that corrected in the future.

Two: Why does the FAA not take the impact of noise pollution seriously in its no hazard determinations under part 77 of the Federal Aviation Regulations? Why be so shortsighted? Noise and safety are equally important.

Three: Why is the FAA not required to prepare an environmental impact statement under provisions of the National Environmental Policy Act on actions under part 77 of the Federal Aviation Regulations?

It is our understanding that the FAA reasoned that a no hazard determination was purely advisory to the local government and was not a significant Federal action impacting the environment.

But it is clear to us, from FAA testimony to the city council, that FAA officials agonized for 2 years over the Malrite tower no hazard determination. This, in itself, would make it a significant Federal action.

Further, the considerable noise impact on the city's west side has had a significant environmental impact.

In our judgment, the FAA's internal procedures for issuing a no hazard determination should be revised to require an environmental impact statement. If there had been one in this Malrite case, the community would certainly have known, long before the tower was built, what sorts of noise and safety problems to expect, and we could have reacted accordingly.

The Malrite radio tower has been up for some 7 months now. In our opinion, this is 7 months too long.

We have been totally frustrated in our efforts to bring peace and relative quiet back to our neighborhoods, because so many Government bureaucrats are involved. They have all, in turn, blamed each other for the problem.

In our first statement to the city council in March, we said that there was enough evidence to show that with so many agencies involved in planning and approving this radio tower there was plenty of room for poor decisions to have been made by all officials involved and plenty of blame to go around to all the bureaucracies.

So pointing fingers has not been our goal. Getting results, getting the tower down, and getting the jet planes back to their old flight patterns is our goal.

As a community organization, it is our aim to improve our neighborhoods and maintain and upgrade the quality of life in our city. All the problems which have revolved around this radio tower have had the opposite effect. They are making the city a worse—not a better—place to live, and we think this is deplorable.

I think it is important that you know what has happened to the quality of our lives since the Malrite radio tower was built.

Air traffic has certainly increased over the west side neighborhoods of our city.

The noise was bad enough from the airport before the tower came along. Jets landing over our homes were a common sight. But now we have jets taking off directly over our rooftops.

The noise of a jet taking off is twice as loud and lasts three times as long as a plane landing. We know because we have measured the noise.

Landings have also become noisier and are affecting many thousands more people, because the jets are circling wider around the radio tower to land and so revving their engines more than before. This we know from the jet pilots themselves.

In the warm summer months, it has been impossible on some days to work or sit outside our homes. Jets have taken off lower and been much louder, because the warm thin air makes it more difficult for jet planes to climb to the right altitude.

We have been lucky so far. No plane has hit the tower. Yet we know that this is a serious concern of the general aviation pilots. We are very concerned about the safety of the pilots, their passengers, and of course the people on the ground. We know that when a plane crashes, the debris from such a crash does not fall in one small spot but spreads out a half mile or more from the impact point. Thousands of people live and work within a short distance of the Malrite radio tower.

We have found that dealing with the FAA is a particularly frustrating experience, and we hope that your oversight subcommittee can help us in future dealings with them.

Our first frustration has come from the FAA's continual insistence that jets are not taking off over our homes.

The chief air traffic controller in Rochester has continued to state that jets are following very closely to their old flightpath along the west edge of the city. Yet we know they are not.

Are 47 jet takeoffs over a home at 182 Marlborough Road in one day a figment of the homeowner's imagination? That happened on March 3, 1976.

Almost as many planes have taken off over the same point on many other days since. So why doesn't the FAA acknowledge the new takeoff patterns?

Our second frustration concerning the FAA is more complicated, so bear with my explanation. This has to do with measuring noise levels in our neighborhood.

As you probably know, measuring noise levels is complicated if you do it according to part 36 of the Federal Aviation Regulations.

In February and March, this association took noise level readings, and the Monroe County Health Department also took readings. But neither the association nor the health officials have the expensive equipment to do the job according to Federal Aviation Regulations, part 36.

As you probably also know, the FAA is funding much of the cost of a new master plan for the Rochester Airport. One of the things the master plan consultant was supposed to be doing was a study of noise levels around the airport. We were led to believe some months ago that we would have an inventory of noise levels in our neighborhood and other areas around the airport. But this is not going to happen.

We have only recently been told that the FAA did not in fact fund this part of the master plan study—the study of actual noise levels.

In our opinion, this is the most important environmental consideration around the airport.

Instead, the consultant intends to apply a general computer formula for noise levels to the airport area and not take actual noise level readings. In our judgment, this is far from adequate.

So perhaps you can now understand our frustrations with the FAA.

First, we are told the jets are not taking off over our homes when they are. Then we are led to believe that actual noise level studies would be made as part of the airport master plan, only to find the FAA has taken away the funding to do onsite noise level studies.

Our frustration in these matters could have been solved long ago if the three questions I asked at the start of this presentation had been answered long ago.

The FAA should tell the public very early in the game what is being planned. They should include noise as an equal consideration in the part 77 no hazard determination. And they should do an environmental impact statement as part of the part 77 study.

At least by doing that we would have had a noise level study funded by the FAA, and we would not have been left without the information we consider vital in the present airport master plan study.

Thank you.

Mr. RANDALL. I want to extend to any other member of your Ward Community Association, who would limit the content of his statements to not exceed 5 minutes, to submit anything further for the record.

I notice an observation made in your written statement as handed to us earlier that it was unfortunate this subcommittee hearing could not be held at a time when working people could attend who were affected by the problem.

That is the reason the Chair is making this comment at this time. If anyone else has a statement he wishes to submit, the record will be held open for approximately 10 days. And then it may be included in the record.

Mrs. LARTER. We appreciate that. We have been involved in this as volunteers for a long time, as citizens trying to get some reaction, and many of the meetings we have attended locally we have been frustrated with.

Mr. RANDALL. This is during business hours, and they could not attend if they are working. So that is why we accord you that privilege.

Mrs. LARTER. Thank you.

Mr. RANDALL. Your testimony to a certain degree has been a duplication of some of the others with the exception of the very valid inquiry, as I see it, as to why—if just about everyone else in Government, wherever they are and whatever their agency and whatever their jurisdiction—from the Corps of Engineers building an impoundment to a farmer constructing a pond on his farm—have to file an environmental impact statement.

Your question is: Why wasn't the requirement made here of the FAA? I think that is a very good point and a point well made.

Certainly if we are going to have anything productive come out of these hearings, it is going to have to be from something that would improve on the procedures to let this be a lesson to see that it does not happen again.

Mr. Horton?

Mr. HORTON. Thank you, Mr. Chairman.

Mrs. Larter, I think that your statement was an excellent statement.

You certainly have outlined what the problem is. I can certainly understand the frustrations of your group to try to butt heads with the bureaucracy.

The comment was referred to me yesterday in connection with a hearing I conducted in New York City on the Paperwork Commission about bureaucracy, and the problems of trying to resolve problems, that people feel like they are pingpong balls.

That is how you probably feel also in a circumstance such as this.

I must confess that I am somewhat amazed at the FAA's attitude and their position with regard to the so-called informal meetings and

the notices that they give—inadequate notices—and then the determination that there is or is not a hazard.

You heard my question, I think, when I asked with regard to hazards if they find that there is a hazard, it does not mean anything. They have only an advisory opinion, and yet they are running the show so to speak.

And yet those advisory opinions apparently have some effect as far as the local government is concerned, and yet they have no notification of it and the citizens do not.

I assume from what you are saying that your organization did not have notice of these so-called informal meetings. Is that correct?

Mrs. LARTER. No. We knew nothing about it.

Mr. HORTON. No member of the group knew anything about it?

Mrs. LARTER. No.

Mr. HORTON. What was the first notification you or the members had?

Mrs. LARTER. From the newspaper and before the tower was constructed. It was in construction.

Mr. HORTON. You referred to the noise.

During the course of the interrogation of Mr. Potts, he indicated that there was a runway closed which he said was not related to this matter at all.

Were you notified when that runway was to be closed?

Mrs. LARTER. No. My understanding is that that has been in the planning and was peripheral to this. It did not involve the tower.

Mr. HORTON. I wonder if the closing of that runway has resulted in this additional air traffic you are talking about.

Mrs. LARTER. From what we have heard it is a shorter runway. It is not a jet runway. It really did not have anything to do with this problem. It was planned on being phased out anyway. It cannot handle that kind of aircraft.

Mr. HORTON. Is the thrust of your testimony that the increased traffic over these homes you refer to has been brought about by the change in the traffic pattern?

Mrs. LARTER. Absolutely.

Mr. HORTON. Mr. Potts told us there was little or no change.

Mrs. LARTER. I know he did.

We submit that the ones who know what is happening here are the people who live under it.

This just points up exactly what we have been up against right from the start.

We have people on the ground who really know what is happening. You can sense when things have changed, and you know very well the differences in flights and how close they are if you live there.

We have been told from the start that it is not a significant difference. We want to know: significant to whom? It may not be significant from the air, but it is from the ground. We know for a fact that things have changed.

Mr. Cox, who is sitting next to me, is a resident of this neighborhood.

Mr. Cox. My name is Graham Cox, and I live at 182 Marlborough Road in the 19th ward, directly under where many of the planes are now taking off.

Mrs. LARTER. Mr. Cox's house is more directly under where the change is most noticeable. He and his neighbors have noticed a very drastic change in what is going on. We have never been able to get anybody from the FAA, or anyplace else, to tell us officially that they know it has changed—yet we know very well that is a fact.

I think this is really one of our most immediate frustrations.

Mr. HORTON. Do they or do they not indicate that these patterns are public knowledge? Are they public knowledge?

Mrs. LARTER. If by public you mean the people in the neighborhood—

Mr. HORTON. Are they available to the public to determine, if ascertained, what the flight patterns are? Or have you asked for what the flight patterns are, and they have denied it?

Mr. Cox. The orders to the pilots from the FAA before the construction of the tower were that when they take off and are heading northeast, on what is known as runway 422, it is at the pilot's own discretion when he begins to make the noise abatement turn. That is a turn away from the city and in a northwesterly direction.

The pilots were able to do this, in many instances, before they even got to the edge of the airport boundary. They headed up what could be described as the "expressway corridor" up the western edge of the city.

The instructions they were given when the tower was built and just before it was built were to climb to a height of 600 feet, which is the same height as the tower, and then begin the noise abatement turn to the northwest.

According to the airlines' calculation, 600 feet above the ground brings pilots about one block further east before they made their turn.

When you talk to the pilots themselves, as we have done many times with representatives of the Air Line Pilots Association, they say that depending on so many conditions—the size of the plane, weight of the plane, and variables of the weather—they can climb to 600 feet under certain circumstances before they reach the airport boundary and can then make their turn up the expressway.

But under most circumstances, that 600-foot height above the ground takes them way out over the 19th ward, over my house and my neighbors' homes.

So, yes, there is a change that the pilots will publicly admit to. We are totally puzzled, for example, by the chief air traffic controller of Rochester saying he does not have time to observe them but he knows for a fact that they do not take off out over the neighborhood. They still follow the old pattern.

We are puzzled, because the pilots know where they are going and we know where they are going.

Mr. HORTON. Mr. Chairman, I would like to request that we ask the staff to obtain from the FAA the instructions which were given to pilots with regard to flight patterns prior to the construction of the tower and subsequent to the construction so that we can include it in the record. I think it would be helpful.

Based on the statement of Mr. Cox, there has been a change. I think this subcommittee is entitled to know whether or not there was and exactly what that change was.

Mr. RANDALL. The point is well taken.

I am sure the gentleman from New York would also want to compare the instructions issued by the FAA on a regional level and in their tower here in Rochester before Malrite was ever considered and after Malrite was erected.

The staff is directed to supply that for the record forthwith, because time is of the essence.

[The material is in the subcommittee files.]

Mr. RANDALL. Are there further comments?

Mr. COX. At the back of the courtroom are county officials who are very familiar with that instruction which was ordered. The airport manager and the principal engineer of the county know what that rule was. If the FAA cannot tell you offhand, they certainly can, because we have talked with them on many occasions about what the instructions are.

Mr. HORTON. Thank you.

Mr. RANDALL. Thank you, Mrs. Larter and Mr. Cox.

Mrs. LARTER. Thank you.

Mr. RANDALL. One of the witnesses alluded to the Air Line Pilots Association.

There is some question whether the Air Line Pilots Association was notified.

I have some correspondence here which says that ALPA—and ALPA, the Air Line Pilots Association, is a group limited to the flying personnel of American Airlines—but whether the big airline pilots' association has been notified, I am not certain.

In any event, they are going to submit a statement for the record. That will be made a part of the record at this time.

[Captain Baldwin's prepared statement follows:]

PREPARED STATEMENT OF CAPT. JOHN E. BALDWIN, AIR LINE PILOTS ASSOCIATION

Mr. Chairman, the Air Line Pilots Association appreciates the opportunity to submit its views to the committee on the subject of the Federal Aviation Administration's implementation of part 77 of the Federal Air Regulations.

The subject of objects affecting navigable airspace, which part 77 purports to regulate, is of grave concern to the association and its 37,000 members. Tall towers and other structures in the vicinity of airports pose a serious threat to the passengers and crews of airplanes at the two most critical stages of flight, takeoff and departure and approach to landing. It is essential, therefore, that the regulations which are promulgated to eliminate these hazards be strenuously enforced, that the persons who need to know about the proposed structures are informed, and that a record is made to permit review of the local FAA determinations of no hazard. Moreover, we believe that before a final determination is made, consideration should be given to the impact on the surrounding environment, particularly that of noise and air pollution, which might reasonably be expected to result from a change of aeronautical procedures if the structure is erected.

The matter of notice to interested persons of the proposed construction and the aeronautical study is one which requires improvement. The present system of sending notices by first-class mail to the persons listed on a mailing list distributed to all regional offices of the FAA is not an adequate means to insure that notice is given to all interested persons and is actually received. We endorse FAA's proposed plan to have the regional offices tailor the mailing list for each proposal. As to the form of the notice, we think that in the future FAA should send notices by return-receipt-requested mail, or, in the event this procedure proves too costly, provide the party with a self-addressed envelope with an enclosed form indicating receipt of the notice and a desire to participate or not in the aeronautical study process. In addition, a notice should be published in the major local newspapers.

A formal record of the aeronautical study meeting should also be required. This will insure that if the regional directors' determination of hazard/no hazard is taken to the Administrator by way of a petition for discretionary review, it will be a meaningful review based on a complete record. In view of the recently enacted Government in the Sunshine Act, it is also fitting that hearings such as these, bearing as they do on Federal decisions which will have an impact on the public, be recorded for the public and the media to examine.

Lastly, the question of environmental effects should be treated in the part 77 decisionmaking process. If the FAA can find a way to alter an aeronautical procedure, that is, a takeoff and departure pattern or approach and landing pattern, which will alleviate the danger caused by the proposed structure, they will do so. The adjustment can have a significant effect on the environment of the surrounding area. Planes formerly flying away from noise sensitive areas now may be forced to fly over those same areas. Procedures used by the pilots to reduce noise, which they considered safe and at the same time compatible with maintaining good relations with nearby communities, may have to be abandoned in order to meet the new FAA requirements imposed as a result of the structure being erected. Increased air pollution would also affect these communities over which the planes would have to fly because of the changed aeronautical procedures. It is misleading and spurious to contend, as the FAA does with regard to part 77, that determinations of no hazard are advisory and therefore not major Federal actions having a significant effect on the quality of the human environment. The adjustment of an aeronautical procedure to accommodate a structure is often the only basis for making a determination of no hazard. Thus, they are clearly intertwined and to argue otherwise is to ignore reality. It is therefore, the opinion of the association that the FAA should make an environmental assessment of the effect of altered aeronautical procedures before rendering a determination under part 77.

In conclusion, I would like to reiterate that the problem of objects affecting navigable air space is a matter of grave concern to the pilots. These encroachments must be halted if we are to maintain the high level of safety which now exists in commercial air transportation. We hope that this committee's review will continue and that further review will focus on the need for a uniform and enforceable means of protecting our navigable airspace from hazardous ground structures.

Mr. RANDALL. Our next witness is Mr. Patt.

We appreciate your patience in waiting to testify this afternoon. You may proceed, sir.

STATEMENT OF LEE PATT, COCHAIRMAN, CONCERNED CITIZENS FOR AIR SAFETY COMMITTEE

Mr. PATT. Thank you.

My name is Lee Patt. I am cochairman, along with Ruth Olson, of the Concerned Citizens for Air Safety Committee.

The matter of the Malrite radio tower has obviously caused a great deal of air safety concern among the residents of the area, or you would not be here today.

There is great concern, not only of the construction of the tower, but also of the methods used to construct it—since our material shows that there was considerable apprehension during the application stages by persons and organizations who were aware of the plans.

It is truly unfortunate that we were forced to take the necessary action in order to have someone listen to us and understand us—the residents of the area.

The members of the Concerned Citizens for Air Safety Committee have become disillusioned with Government officials placing the blame on each other.

The opinions and comments of the citizens in the affected area were not solicited prior to the construction of the tower, and we are

the people directly affected; that is, those of us who live in the flight-paths of the jet airliners.

I have in this folder [holds up a folder] more than 6 months of letters and material confirming the failure of our Government agencies to properly notify us of a project of this magnitude. In fact, there is information contained in here from previous meetings, some held without sufficient notification, that our Government officials' advice and comments relative to the construction of the tower were ignored.

Be that as it may for now, we are at long last, I hope, going to get some positive action.

At first, our committee's determination was to have the tower torn down. However, our more rational position based on the economic factors and the position of the pilots of the Monroe County Airport is to lower the tower from its present 600 feet to 300 feet. We based this position on a telephone survey of more than 300 people. We found that 80 percent of them would be willing to go along with the recommendation that we lower the tower. You might be interested to know that only 18 percent of those polled expressed no opinion at all. This gives you an idea of the seriousness of your decision on this issue and of the concern they have for their lives and property.

In addition to lowering the tower, there are several other areas of immediate concern to the people of our city and county; that is, one of communicating with the public on matters that are vital to them.

In the case of the tower, there was no communication with them. They were excluded or circumvented.

The Concerned Citizens for Air Safety Committee organized before the construction was completed, and that was the first we knew about it, because the airplanes were landing and taking off in different directions from their normal patterns.

During our research, we learned that the local General Aviation personnel protested the construction of the tower at its present location way back in 1973. Their opinions were obviously disregarded, because they were not invited to a subsequent meeting in June 1974. We found this difficult to understand since General Aviation is a frequent user of the airport.

We learned that Monroe County government officials had also expressed serious reservations and asked for a review of the construction plans. That also had no apparent effect.

Further, the local pilots association's opposition to the tower was disregarded. Now who could know better?

In order to avoid future problems of this nature, we would recommend that the FAA review its methods prior to authorizing similar construction and include a public hearing of those persons living near the area and those who would be most directly affected.

We also know that an FAA request to WNYR and WEZO radio stations to lower the tower during the design and planning stages was not enforced and a permit was granted anyway.

We question, then, the impact of the FAA's authority to get anything done.

We also recommend that the FAA insist on accurate minutes of all meetings relative to the construction or improvement of airport facilities.

Our local governments cannot escape blame for the situation we find ourselves in, particularly the city of Rochester, which we feel had the direct responsibility to inform the residents of the area.

The hundreds of people involved in this controversy, in one way or another, simply cannot understand the lack of interest shown them by government at all levels; that is, until we organize to fight it.

Gentlemen, the Malrite tower issue will not go away unless that tower is lowered to 300 feet. We have been extremely patient and have been working within the system of Government because we believe it is the most effective way, even though we were ignored from the beginning.

The Concerned Citizens Committee for Air Safety strongly urges you to take whatever action is necessary to meet our objective.

We have the airport. We suffer from the noise. And, as we read and hear about airline crashes, we risk our lives and property.

Before I conclude, I want to point out an incident which emphasizes the lack of public concern. As of last night, several tower lights were not operating on the Malrite radio tower.

Help reduce our fears. Lower the tower.

Thank you.

I would welcome any questions you might have.

Mr. RANDALL. Mr. Patt, we thank you for your contribution, particularly your last comment.

We were up today, as I said, in a plane to look at the tower. It occurred to us that while we could see the lights facing the runway, or the main part of the airport, when we were on the other side we thought at that time that some of the lights were not working.

You have apparently confirmed that, that some of the lights were not working last night.

Mr. PATT. All this week, sir.

Mr. RANDALL. We would have to have counsel brief us as to who is responsible. I suspect that is part of Malrite's responsibility.

Mr. HORTON. Mr. Chairman, I would suggest that Mr. Patt and others who have observed that ought to bring it to the attention of the airport manager as quickly as possible. Perhaps you have already done that?

Mr. PATT. It is extremely noticeable to anyone in the vicinity. I would imagine that they would also be able to observe that from the airport.

Mr. HORTON. I think it would be well to put that in writing to the airport manager and to give the FAA notification in writing so they could attempt to correct that condition immediately.

Mr. PATT. Yes.

Mr. RANDALL. The Chair particularly observed that there were no lights flashing at one point in one direction.

Are there any further questions?

Mr. HORTON. No; I have no further questions.

I want to thank Mr. Patt for his information and for the concern of his organization. I would suggest, again, that this be brought to the attention of the authorities as quickly as possible. That could certainly be a hazard if there are no lights operating on a tower that close to the airport.

The other thing I wanted to ask, and perhaps you are not the one I should ask, but somebody referred to a lawsuit. Is there a lawsuit

intended or being brought, or is this something being done by the private citizens or by one of the municipalities?

I was going to ask Mrs. Larter whether or not their organization was involved in that.

Do you know?

Mr. PATT. We do not have any lawsuits going on. We have found them too expensive to handle. There were vague suggestions by the city of Rochester at one time that they would institute proceedings, but I do not know where that lies at the moment.

Mr. HORTON. Thank you very much, Mr. Chairman.

Mr. PATT. Thank you.

Mr. RANDALL. And now for our last witness we have Mr. William Bristol.

We are delighted to have you, Mr. Bristol.

I commiserated with you a little earlier and said I had had a little experience in an administrative body many years ago when there were only three legislative districts. Then they raised it to 15, and now they have raised it to 29—which is a sizable body.

Somebody said that the Federal Government indulged in revenue sharing to put the money where the problems are.

I know as a member of the county legislature you have certainly experienced the problems of this tower, and that is why we are glad to hear from you at this time.

STATEMENT OF WILLIAM BRISTOL, COUNTY LEGISLATOR

Mr. BRISTOL. Thank you.

My name is William Bristol. I am the county legislator from the 29th legislative district, which is basically the 19th ward.

I represent nearly 25,000 people who have had to live with the noise, smell, and danger created by the airplanes using the Rochester/Monroe County Airport.

All of these problems have been magnified and intensified by the effect of the Malrite tower on flight patterns. The hazard to our neighborhood has increased; the nuisance is at times intolerable.

All of this could have been avoided had the FAA done two simple things:

First: Given adequate notice to all people whose interests were going to be affected by the proposed tower.

Second: Conducted a thorough investigation of the tower's impact on the community instead of limiting itself to whether the planes could miss the tower.

Other speakers have outlined in detail the problems and proposed solution.

Basically, it boils down to the FAA's procedures. It seems to me they do not give adequate procedural due process to the people who are really affected and interested in this matter.

I do not intend to go over what has already been said here today.

I can only add that the 19th ward is known for its activity and not its apathy. But the lack of sensitivity shown by the FAA, the bureaucratic bungling, and the intergovernmental buckpassing which has marked this sad episode is sure to increase the frustration and apathy of the citizens toward their governmental institutions.

I might add that that is a condition we cannot in any way allow to happen.

FAA reforms in procedure which recognize the rights of individual citizens and neighborhoods to have a meaningful voice in decisions which affect their daily lives must be made now.

Each governmental and private body involved in the decision to let the tower go up must act in concert to either remove and replace the tower or end the flight patterns which intrude on the peace and quiet of our neighborhood.

Your subcommittee must make a thorough study of the procedures involved so that there are no repeats of this fiasco in the future.

You have indicated, Mr. Chairman, that you have flown around and seen the tower from the air.

I would invite you on your return home to drive down Chiley Avenue and up Genessee Park Boulevard and stop at Englewood.

There will be no doubt in your mind as to whether or not those airplanes are flying over the neighborhood. They are.

With regard to whether or not there has actually been a change in that neighborhood, I have always lived in the 19th ward, and at one point lived right underneath the flight patterns at the corner of Genessee Park Boulevard and Roxborough Road.

I moved to another home in the 19th ward farther away from that area and for the first couple nights could not sleep because there was no noise.

That has all changed now. The noise is back, and those planes fly over the 19th ward.

You do not have to look at a coastal geodetic map. All you have to do is stand on the ground and look up and you will see them. You cannot hear yourself speak; you cannot think. There is a real change, and I would urge you to take that route and you will see that change.

The people in the 19th ward smell the change; they hear the change; they feel the change; and it is there.

Unfortunately, it is the people in the 19th ward who are striving to maintain their neighborhood as a stable, sound neighborhood who are going to be hurt the most by all of this. It is decreasing the value of our homes.

I intend to introduce in the Monroe County Legislature a resolution at least closing runway 422 for takeoffs. I am sure I will find a great deal of support, as indicated by the Honorable John Hoff, who is majority leader, who has indicated that that is a menace to our neighborhood. I am sure he will support me in this endeavor.

So pending some action by this subcommittee and the other appropriate governmental bodies, we can stop those takeoffs over the area which are wreaking havoc.

I appreciate your listening to me.

I am very serious in my invitation to you to drive down and listen to what goes on over there. I think that is the most graphic illustration of the problem. Then you will have looked at it from above and from below, and I think you will be impressed.

Thank you.

Mr. RANDALL. We thank you, Mr. Bristol.

We have tried to underscore and emphasize at the very beginning that the limitations on this subcommittee are directed to the Federal

agency. We have done quite a bit of directing here this afternoon, and we are going to do some more.

But somebody made the statement—and perhaps it was Thomas Jefferson or Lincoln—that you should not do things for people who have the power to do something for themselves.

And you have perhaps found a way to stop this noise with the county legislature by simply closing the runway. If the county manages the airport, that is one way to do it.

Mr. BRISTOL. I am going to do my best to see that that is done.

Mr. RANDALL. All right.

It is refreshing to indicate that there is some relief in sight for the suffering people of the 19th ward.

Mr. Horton?

Mr. HORTON. I have no questions. I just want to thank county legislator Bristol.

I am certainly aware of the problem and concerned about it. I am sorry you had to create more air noise in order to get your sleep. I hope they can change that so you can get that peace and quiet back again.

Thank you.

Mr. RANDALL. Thank you very much.

Before we leave, the Chair wants to express his and the subcommittee's appreciation to the Honorable Harold Burke of the U.S. District Court and to his secretary, who was with us earlier; to Mr. Joe Blake, the GSA manager of this fine Federal facility; to Mr. Horton for his assistance and to his district office staff. You have all been most considerate and helpful in the arrangements which are necessary for a hearing such as this.

The Chair is grateful and expresses that on behalf of the subcommittee.

Mr. HORTON. Thank you for coming, Mr. Chairman.

Mr. RANDALL. The subcommittee will stand adjourned.

[Whereupon, at 5:45 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

MAP SHOWING LOCATION OF THE MALRITE TOWER



THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 551

LECTURE NOTES

BY

ROBERT A. SERBER

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