STATEMENT OF E. TAZEWELL ELLETT, CHIEF COUNSEL OF THE FEDERAL AVIATION ADMINISTRATION, BEFORE THE HOUSE COMMITTEE ON JUDICIARY, SUBCOMMITTEE ON CRIMINAL JUSTICE, CONCERNING H.R. 4403. MAY 22, 1986.

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to appear before the Subcommittee today to testify in behalf of H.R. 4403, which would assist the FAA in its efforts to promote aviation safety.

Briefly stated, H.R. 4403 would do two significant things. First, it would increase the criminal sanctions for falsification of aviation records. Second, the bill would increase the maximum civil penalty to which an individual engaged in commercial aviation activities may be subject for a safety violation. We strongly support both aspects of the bill.

The Members of this Subcommittee are familiar, I am sure, with the FAA's general safety functions, and are aware that we have a comprehensive surveillance program which is intended to foster compliance with our very comprehensive aviation safety regulations. At the very heart of this surveillance program is the system of records which must be maintained by airlines, pilots, manufacturers, and repair stations. FAA inspectors cannot ride on every flight, nor can they watch every repair procedure performed on an airplane. Even if it were physically possible to do so, the cost of such a surveillance program would be

prohibitive. Therefore, one very important measure used by our safety inspectors to determine compliance with the FAA's regulatory requirements is the spotcheck and review of an operator's records. From such a review, we can determine, for example, if a pilot's experience meets our currency requirements; if a flight attendant has completed the appropriate training; or if required maintenance has been performed on a given aircraft. In short, we can randomly check to verify that our regulations are being given full force and effect by a regulated party. This is a major element of our overall surveillance program. If we cannot rely generally on the accuracy of records maintained within the industry, we are at a significant disadvantage in terms of promoting compliance with our safety regulations.

Recently, we have encountered cases in which records have been altered or fraudulently kept. This kind of activity begins to tear at the fabric of the aviation safety infrastructure, and cannot be tolerated. Failure to firmly combat such violations will only precipitate future violations by others. For our part, we have taken firm action against violators when we have encountered fraud. For example, we have moved promptly to revoke the certificates held by a number of airmen found to have falsified FAA records, thus precluding those individuals from continuing to serve as pilots in our air transportation system, and sending out a clear signal to others who may be similarly disposed toward falsifying documents. It is a stiff sanction, but

one which we have found to be fully warranted by the seriousness of the offense.

We welcome the additional tools that would be provided by Section 1 of H.R. 4430, which would elevate from a misdemeanor to a felony, with significant financial penalties as called for in title 18, violations contemplated in section 902(e) of the Federal Aviation Act of 1958, as amended. Section 902(e) covers not only the knowing and willful falsification, mutilation or alteration of reports, accounts, records, and memoranda, but the knowing and willful failure to keep or preserve accounts, records, and memoranda in the form and manner prescribed by the Administrator. Consequently, the strengthening of the sanctions in this provision would directly respond to the threat posed by unscrupulous persons who would distort their record of safety compliance, hoping to evade compliance with the very regulations intended to promote the public safety.

The increase of sanctions would provide renewed emphasis to the aviation community that records and other related materials required by the FAA must be kept, and must be kept accurately. Falsification of such important records cannot be tolerated, and Congressional action in this area will supplement our message that it will not be tolerated.

The increased civil penalty authority called for in Section 2 of H.R. 4403 tracks legislation proposed by the Secretary of Transportation last September. Specifically, it would increase the current fine of $1,000 per safety violation that was established in 1938 to a maximum of $10,000 per violation for a safety infraction by a person who operates aircraft for the carriage of persons or property for compensation or hire. Thus, the bill recognizes, in the form of higher potential economic sanctions, the generally greater safety threat posed by an individual violator engaged in commercial aviation activities.

I am sure that all of you have heard recently of the exceptionally large civil penalties sought by the FAA from several major airlines for violations of our regulations. Given the size of these fines, you may ask "why is it necessary then to seek a further increase in the FAA's civil penalty authority?" The answer is twofold.

The first reason is that the proposed civil penalty authority is not particularly intended for the kinds of cases we have found where the substantial number of violations encountered has resulted in an exceptionally large fine. Instead, the primary reason we are seeking such increased authority is to combat the situation in which an operator may decide to accept a $1,000 penalty as a "cost of doing business." In other words, there are

cases where a company may commit a single, serious safety violation, yet be subject to only a $1,000 penalty. In those cases, a company official may conclude that a $1,000 civil penalty would be less costly than cancelling a flight filled with passengers. A potential penalty of $10,000 drastically changes the economics of such an illfounded decision.

Second, the strengthened civil penalty authority included in H.R. 4403 should provide substantial additional deterrence to safety violations by all operators engaged in commercial aviation. We expect that it would cause additional focus within airlines on assuring that adequate safety systems are fully in place, and help ensure that careful attention is being placed on following the FAA's safety rules. There is no question in my mind that a potential penalty of $10,000 per violation would be a healthy inducement to all in the aviation community to comply strictly with safety regulations. To that end, we may be able to avoid circumstances in which multi-million dollar penalties occur in the future. From an aviation safety perspective, that is far preferable to the FAA. We seek compliance with our regulations, not large penalties. On the other hand, one means of obtaining such compliance is through the clear possibility of being assessed a stiff penalty. Thus, the enhanced civil penalty authority would, in my view, go a long way toward helping improve the compliance posture of those in the aviation community who might choose to violate a Federal Aviation Regulation if the only risk were the possibility of a $1000 civil penalty.

We appreciate the willingness of the Subcommittee to hold this hearing on H.R. 4403. Its enactment would represent a positive step toward strengthened aviation safety enforcement. We welcome the opportunity to work with you and your staff on this important legislation, and urge its timely enactment.

That completes my prepared statement, Mr. Chairman. I would be pleased to respond to questions you may have at this time.