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Tuesday, June 14, 2011

Mr. Clay Foushee,  
c/o FAA Headquarters, Office of Audit and Evaluation  
...via email...

Dear Mr. Foushee,

I am sending you this letter to summarize some concerns about a whistleblower case brought to my attention by Mr. Don Hiebert, employed as a controller at the Camarillo Tower (CMA ATCT). I understand that, a few months ago, Mr. Hiebert had a series of emails with you regarding a 7/25/10 Operational Error (OE) that his management had repeatedly failed to investigate.

Just as a bit of background, I know Mr. Hiebert as a previous co-worker. Years ago, Don and I worked together for two years, handling moderately busy traffic at a small airport along the eastern edge of San Jose. Today, both Don and I are in our early fifties, and we both share the difficult trait that your office focuses on: a tendency to speak up about issues. Yes, we are whistleblowers.

My guess is Don did not share with you the non-fatal mid-air between a helicopter and a Cessna that was covered up when we worked together at Reid-Hillview. At that time, Don was the NATCA representative, and I was the controller asking the hard questions...and annoying the supervisor. Not that I wanted to annoy the supervisor, but when I arrived at the tower and became the afternoon shift CIC, I had to take over the Facility Log, so I had to question and make subsequent Log entries. And, after all, it was the supervisor who had been working the two aircraft when they collided. So, I asked hard questions and got no answers. To my knowledge, no paperwork was created and nothing was reported to the NTSB. How bad was it? Well, the impact was caused when the Cessna climbed up from below and behind the helicopter (the high wing created a blind-spot above). The Cessna prop was q-tipped from where it had struck and left a series of marks on the skid of the helicopter. In other words, if they had closed another half-inch or so, the Cessna's prop would have disintegrated or become so mangled that it would have been forced down into the crowded residential neighborhoods surrounding RHV. The story was hushed, but a year later it was substantiated in a San Jose Mercury news article. And get this: the supervisor was promoted, and then given a double-dip income with a post-retirement FAA contract job.

Contrast that with my whistleblowing, which cost me my career. I was fired in November 2008, 6-months prior to retirement eligibility, and had to "settle" with a retirement effective

the day I turned age-50.<sup>1</sup> In the two years since, I have spent more than \$2,000 on FOIA requests that have produced hundreds of pages of key Agency records which had been concealed prior to that bogus settlement...and for good reason, as they revealed a disturbing and indisputable history of slanders and general retaliation, especially by officials at FAA's Western Pacific Region (AWP). In a nutshell, my case is a classic presentation of the gamut of dirty tricks<sup>2</sup> your office uncovers when you handle the ugliest whistleblower cases that, well, Congress and the Public want to believe do not and cannot happen in our FAA.

But, I digress. This letter is not about my case (though, I wish your office would look at that, too!), but about the case at CMA. This letter is about the integrity of our Agency, and what I hope your office will do to help rebuild the Public perception of FAA's integrity. The CMA case, as presented by Mr. Hiebert, is a very straightforward Operational Error (OE) by a controller. It was a simple error, one of the most common errors at smaller GA towers, in which two aircraft were using the runway at the same time. As so often happens in ATC, this error went undetected for a while and, because of the astute handling by a pilot who questioned a poorly timed clearance cancellation, it was not made worse. Eventually, though, the case was made much worse, by efforts expended to conceal the simple error. Not just once, but repeatedly; not just by the CMA management, but by officials at the District level, too.

All of the paperwork and processing of this OE should have been completed by early August 2010. Instead, the witnessing supervisor simply ignored the OE and elected to not do any mandatory paperwork. A desk review at the District, in September 2010, and a pair of follow-up interviews earlier this year, were merely tepid efforts to whitewash Mr. Hiebert's concerns. But, with his dedication to aviation safety, Mr. Hiebert did not go away. A few weeks ago, he went beyond his "Air Traffic" line-of-business and past your Office of Audit and Evaluation to share his concerns with the AOV Safety Oversight people. They flew in an investigator and I understand that, yesterday, the third witness to the 7/25/10 OE was finally interviewed...nearly eleven months after the incident. Maybe, hopefully, this matter will now be cleaned up.

I was recently reading an article that discussed FAA's new Office of Audit and Evaluation, entitled, "*An FAAMA Conversation with David Grizzle.*" Mr. Grizzle made many laudable comments and the article presented our Agency as professional and proactive. Mr. Grizzle's positive attitude is a welcome improvement, but the integrity of the Air Traffic organization remains in doubt.

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<sup>1</sup> FAA/AWP Counsel Naomi Tsuda repeatedly offered a "disability retirement", but I refused to join that fraud, as my ATC medical file lacked documentation to support a disability, and I held a valid ATC medical clearance.

<sup>2</sup> If you want to informally inquire, if you ask the right questions, and if they answer candidly, I believe Andy Richards (SFO District Manager), Richard Giles (AWP Security) and Teri Bristol (VP-Tech Ops) would be able to shed light on the many irregularities of my case...so that you can justify starting the full investigation it deserves.

Within the FAAMA article, which was published in Spring 2010, are numerous quotes by Mr. Grizzle, which I present below. I am adding some comments, based on my own ATC experiences, and based on what I have heard about the present CMA OE non-report.

Regarding the process of investigating whistleblower complaints, Mr. Grizzle made the following two statements:

*“...in the past, handling these problems was collateral duty for managers who on the job, probably didn't really have time to do the investigations and write the full reports...”*

*“...the role of the Office of Audit and Evaluation is to make sure that the investigation is done very thoroughly. One of the challenges we have now is that one of the FAA's lines of business will do an investigation, but they won't do it thoroughly enough. The reason is not because they are negligent, but because they are thinking that my real job is inspecting airplanes or running a control tower – my job is not doing document searches, etc. So, they can get a bit slipshod in how they do it, and that ends up hurting the investigation...”*

These statements imply a saturated work condition in which an Air Traffic manager may fail to fully investigate an OE. Mr. Grizzle is not excusing these failures, but he is making them look more excusable, more understandable, as inadvertent and trivial failures due to a lack of time. His kindness is overly generous, as is the negligence of the managers he protects. Any thorough investigation of Agency records will show clearly that OE non-reports are far more frequently attributable to two factors: an aversion to doing paperwork, and a tendency to avoid drawing attention to operational deficiencies that reflect poorly on the manager. With very few exceptions, every FAA ATC facility dedicates dozens of hours into the processing of each OE. Consider the record at CMA, for example. The 7/25/10 un-reported OE was the third 2010 OE at this small GA facility. A similar same-runway error, in which a 1/11/10 readback was promptly corrected by the controller, was processed into a 38-page OE package. And again, on 6/26/10, two aircraft on the same runway yielded a 26-page OE package. Clearly, there is nothing “*slipshod*” about the two extensively documented OE's investigated at CMA in January and June of 2010. However, when the CMA management was presented with a real and substantial OE on 7/25/10, when they really had a chance to do their job “*running the control tower*”, they instead chose to be derelict in their duties.

The dereliction of duty did not end that week; it continued for nearly a year. There were three FAA witnesses to the 7/25/10 incident at CMA. The local controller, who transmitted the clearance cancellation after allowing a departure while an arrival was still rolling out on the same runway, had an interest in concealing details. The Supervisor managing the tower cab at the time, and who failed to process the OE on that same day, also had an interest in concealing the details. The third witness, a seasoned veteran controller working the GC position, had no vested interest in concealment...and yet, he was not interviewed until nearly eleven months later, and then only after the incident was shared with AOV.

Regarding the threefold purpose of the Office of Audit and Evaluation, Mr. Grizzle stated the following:

*“...the final thing we are going to do is become very involved proactively in training and intervention, trying to assist managers in identifying situations that are likely to lead to whistleblower situations. Partly, we will be looking at organizations that are rigid but also there is a part of it that is teaching managers how to identify when one of their employees is beginning to feel left out. We will try to teach them how to find a way to bring employees back into the fold...”*

In a pure and innocent world, this quote sounds great, but in the reality reflected by the history of our Agency, our FAA, it is troubling. Are we seeing whistleblowers as just “left out” employees, while failing to recognize they serve an essential role to keep us centered and upright when other system elements fail through negligence, complacency or laziness? When we speak of bringing them back into the fold, what is this “fold”? Do we seek conformity to the status quo standard of the local work culture (which may be grossly corrupted, as it was at Knoxville last February), or do we seek conformity to higher ethical and safety standards (which Mr. Hiebert has pressed for at CMA since last September)?

I do not know them personally, but from my own FAA experiences, I feel I share the safety concerns that you have previously heard from Peter Nesbitt, Anne Whiteman, and other ATC whistleblowers. I trust that you agree: it would be a gross mistake for anyone in our Agency to judge these individuals as “disgruntled” or “left out” when they have repeatedly proven their superior commitment to safety and justice...and, have done so at great personal sacrifice.

Lastly, in a general statement early in the interview, Mr. Grizzle said the following:

*“...the greatest cultural strength of the FAA is its commitment to professionalism...”*

Regrettably, this statement does not conform with the FAA as presented in frequent news stories. And, not just recent news stories. Back in 1997, when the KAL B747 crashed into the mountain at Guam, it was soon revealed that the MSAW parameters had been set to disable the “nuisance” alarms that would have alerted the controller of the need to intervene. At Lexington, in August 2006, the controller was fatigued from an overnight shift, but not busy, and simply failed to conduct the most fundamental tower task: watch the aircraft, to ensure it takes off from the correct runway. Both cases reminded me of the first near-midair I experienced, two years into my FAA career, when a coworker watching the NCAA basketball playoffs *in the tower cab* failed to notice an arrival who overflowed and attempted to land at PDX...nearly hitting a Horizon Dash-8. For both Guam and Lexington, the NTSB reports show a disturbing potential for the concealment of facts that might explain the inattention. There was not much of a “commitment to professionalism” on display at the Atlanta meeting of Air Traffic managers covered on the news at around the same time that Mr. Grizzle was being interviewed for the FAAMA article. And, today, after the string of stories exposing the ATC fatigue problem and just starting to crack light on the same coordinated timecard fraud I complained about at my first tower...well, where is this “commitment to professionalism” that we are not seeing?

When I watch the FAA-related news stories, and when I field questions from neighbors and friends trying to understand and trust my former employer and the system we are entrusted to manage, I have to say: a “commitment to professionalism” is our goal, not our reality. This

*“commitment to professionalism”* can only become a reality when we start to hold all FAA employees fully accountable. I am hopeful – and I tell my neighbors this all the time! – that actions by Mr. Grizzle and Mr. Babbitt in recent months show a true commitment to restoring accountability. Please show that this is true...

In closing, Mr. Foushee, I ask that you please ensure your office will fully investigate the 7/25/10 incident at CMA, and process it as the OE it clearly was. Please give Mr. Hiebert the positive recognition he deserves, for his whistleblowing contributions, to aid our Agency in stepping into a cleaner and safer future. And, as for my whistleblower case, I would greatly appreciate hearing from someone in your office, so we can discuss what copies I need to share, to help your office restore accountability to Air Traffic and AWP.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Lewis', with a stylized flourish at the end.

Jeff Lewis