

From: **Jeff Lewis** <reformfaanow@gmail.com>  
Date: Wed, Aug 31, 2011 at 3:07 PM  
Subject: Fwd: an email sent to AWP-16 Ros Marable regarding a retaliation case she witnessed  
To: Clay Foushee <Clay.Foushee@faa.gov>

Mr. Foushee,

The following is a fairly concise synopsis of what I have endured, a whistleblower reprisal carried out over many years. It started out as just an annoyance, but became especially serious in May 2008, when a documented prohibited personnel practice occurred: I had filed a grievance, at the invitation of an AWP-16 specialist, to be made whole for some sick leave enforced the year before and, in retaliation, a removal draft was initiated and carried out, six-months prior to my age-50 retirement eligibility. The principle malfeasances were sourced in AWP-10 as well as Tony DiBernardo and Jason Ralph (the two key Air Traffic officials). Would you please read this and also take a quick look at the attached PDF's? I believe that, if you do, you will quickly agree that many of the most despicable strategies deployed against ATC whistleblowers were used to damage me, and to try to manipulate me into accepting a disability retirement...which I steadfastly refused, as it would have been joining their fraud.. I also believe that, if your office used just a fraction of the 8,000 pages Agency has provided me these past few years, you would reveal a solid case history that would preempt recurrences by other rogue "old-school" managers in Air Traffic and in various Regional HR offices.

Please understand, too, these documents reflect only a fraction of the ordeal I was subjected to from late 2006 onward. One of the worst examples is an email wherein the Regional Flight Surgeon advises he is leaving my confidential medical file out on his desk while away for a week ...and invites an LR Specialist to come look any time; ...and, then, another email in which this LR Specialist forwards this invitation on to three ATO managers. I have lots of documentation showing the improper concealment of records from FOIA and from MSPB. I have an email wherein AWP Counsel Tsuda is advising all the HR and AT people getting ready for my MSPB Hearing (which never happened) that she is pressing the MSPB judge for metal detectors and armed guards at my Hearing. (...now, this would be appropriate if I had any history of violence or even a police record, like the sleeping Knoxville controller who came back and worked a year after his armed weapon issue, before he made the news again last Spring. But, I have no history. Nada. Just a plain old quiet guy...)

As some background, I am also attaching a 5Mb document with color pictures that outlines part of the whistleblower aspects of my FAA ATC career; this does not include actions I took around 1999-2000, after an actual mid-air at RHV ATCT that was covered up by management (this one was incredible: a training cessna climbing into the pattern put a series of nicks into the skid of a training helicopter, and both came back for immediate landings. The controller working it, Roberto Aranda, was the supervisor and has since retired, yet works as a contract training specialist at OAK ATCT...ostensibly for his mastery of absolute minimal separation?? (I have located a copy of the local newspaper report created a year later, via a FOIA request; occurred 5/9/99, between N2011A and N9568G; look this one up in NTSB and you will find nothing...as it was ever reported to them see <http://www.nts.gov/aviationquery/index.aspx>).

My apologies for the excess of attachments, but I think it is worthy of consideration by your staff. I think the case reflected in this forwarded email to Ros Marable is appropriately handled by your office, in accordance with FAA Order 1100.167. Although I am forwarding this to you now only as information, I will gladly follow-up with a formal filing and any and all records you need to ensure an efficient and thorough investigation by your staff. Please advise the records you wish or need to see.

Should you want to discuss this, my cellphone is 971-295-7669. Thanks.

Jeff Lewis

----- Forwarded message -----

From: **Jeff Lewis** <[reformfaanow@gmail.com](mailto:reformfaanow@gmail.com)>

Date: Wed, Aug 31, 2011 at 12:55 PM

Subject: Re: A few questions you can answer...

To: [Clemortee.R.Marable@faa.gov](mailto:Clemortee.R.Marable@faa.gov)

Cc: [Andy.Richards@faa.gov](mailto:Andy.Richards@faa.gov), [Tony.DiBernardo@faa.gov](mailto:Tony.DiBernardo@faa.gov)

Hi Ros,

I assisted you a few months ago by providing documents your office had lost, related to a grievance you and Andy and Jason and Tony discussed on 9/15/08. You will note that, consistent with the ideal of open communications, I did not redirect your inquiry through FOIA or some other diversion and/or narrowing process; you called me, and I immediately delivered the record you needed. (please see attached: 20110301...).

In the larger picture, Ros, you had a front-row seat to a wrongful discharge of a 22-year employee with no material conduct history, in a clear-cut retaliation for the filing of a grievance. When all of this happened, Kathryn Vernon was the new WSA-AT-Terminal Director, replacing Teri Bristol. The mess that had evolved out of Jason Ralph's locking me out from CCR ATCT on 2/16/07 was still there, and your office needed to quietly clean this up. You reasonably did not want to drag Kathryn into this; let's just say it would be unsavory for Teri Bristol to leave such an unfinished mess as she departed to her promotion in DC. To be fair, though, this was not even Teri Bristol's mess; after all, she was only on a one-year detail to WSA, and she was relying on Tony for guidance, and on Barry Davis and Monique France to do the actual work in her office, and they were all relying on your office and on Jason Ralph for the "facts" that had been repeatedly distorted and concealed. So, here's what you saw and did:

- On 4/17/08, you checked out ROI AWP-20070078, drafted a 14-day suspension proposal, and sent that proposal to SFO District Manager Andy Richards.
- Also on 4/17/08, your coworker, Glen Rotella, who had invited me to file grievance #08-79364 to be made whole for Jason Ralph's illegal Constructive Suspension from April through August 2007 (as part of our settlement of a ULP I filed in late 2007), ...well, Glen emailed Andy Richards and asked that he send me a short note confirming my paid leave status (which, except for the Constructive Suspension, had been ongoing for 14-months at that point!). Andy promptly sent a note, in which he added that a return to work plan would soon

be discussed. So, the apparent plan at the time (though I did not learn of this plan for many years) was to issue me a 14-day suspension and get me back to work.

- On 4/28/08, you sent the draft 14-day suspension to Andy again (he claimed trouble opening the first copy).
- On 5/1/08, responding to Glen's invitation, and having received Andy's letter that said we would soon discuss a return to work plan, I signed a settlement withdrawing that older ULP, and I filed my grievance, which became #08-79364.
- On 5/7/08, Glen forwarded copies to Andy et al ...and a week later, you emailed Andy Richards with copies of the same 14-day suspension you had drafted, but now amended...with "new" 15-month-old charges added, and an upgrade to a removal proposal. Andy Richards never completed any Douglas Factors, in a case where your office was driving a retaliatory removal. This is a key point: the removal was not being driven by Air Traffic, but by your office ..some might say, the cart before the horse. For the next month, Andy repeatedly expressed reservations about the removal proposal...and his concerns were shared by Glen Rotella.
- On 6/11/08, Andy was away and Jason was filling in for him, so you gave Jason your removal proposal draft...into which you had added an "insubordination" charge for the first time (...16-months after the alleged incident, 14-months after the ROI was completed, and 12-months after Andrew Robinson had closed the Accountability Board (AB) case!).
- On 6/20/08, while still "in charge" and after making numerous edits, Jason returned the draft removal letter to you.
- On 6/24/08, you forwarded this revised draft to Monique France, soliciting concurrence from WSA-AT-Terminal.
- Also on 6/24/08, you emailed your coworker (Harris) and asked him to deliver the banded-up ROI and this latest draft to AWP-7, for legal concurrence.
- On 6/30/08, Monique sent you a concurrence. FOr the record, this comes as no surprise; after all, your office had been reporting me to her in biweekly Terminal Reports for the past eight-months, declaring that I was AWOL (never was in my entire FAA career) pending a medical decision (I had been fully medically recertified by your Regional Flight Surgeon on 1/10/08). This was clearly slanderous and incorrect. There is no evidence that Monique's concurrence was considered by her boss, Kathryn Vernon...who likely knew nothing about the case your office was trying to bury.
- On 7/4/08, AWP-7's Lierre Green emailed you at 12:47PM, with her progress on review of the ROI. There is a bitter irony (it seems) that FAA has legal-types working on cases like this ... on Independence Day, no less.
- On 7/7/08 you obtained Legal concurrence from Don Bobertz, though he did not know the true facts of this case (...such as, that he was approving a removal based on a stale ROI compiled for an AB Case that had been closed a year earlier).

You were also a clear witness to manipulations by Jason Ralph, who repeatedly was selective in the distribution of key records, in a manner that denied other Agency officials from recognizing the fraud and slander being perpetrated. In fact, after your 9/11/08 conference with Tony, Andy and Jason, you had a series of emails with your boss, Dan Castellon, who was in DC at the time. You were researching grievance #08-79364, and sent to Jason a letter that he claimed he could never find...which I had just submitted

with a new Hotline complaint. You were starting to realize there was something amiss in how Jason had handled this case. These concerns were amplified on 9/19/08 when Gwen Marshall forwarded to you a 9/18 email from Jason in which he declared the timecard amendments (a key element of Grievance #08-789364) were done; Gwen shared with you the oddity that Jason sent this to everyone but you (...to Dan, Andy, Glen, and Gwen, as well as to Patricia Hardy and Acting SFO District Manager Mark Deplasco). You reviewed what Gwen had forwarded to you. You then emailed Dan on 9/22/08 and told him, point-blank, that you did not see the alleged amendments, and you asked him "...tell me what I am missing?..." Despite your correct read of the documents and your concern shared with Dan, he nonetheless sent a Step-3 denial letter to Ham Ghaffari on 9/25/08, falsely declaring the pay had been amended For the record: it had not, and this pay amendment did not happen until April-09, with the final 8-hrs of the PP-0710 amendment finished in May-09). And here is what happened next:

- On 10/6/08, Jason confirmed that my pay on the day he had locked me out (2/16/07) had been retroactively changed from sickleave to paid administrative; this was a 600-day-old pay amendment needed to correct the pay record to conform with false statements Jason had submitted for the ROI (he had repeatedly charged I had been ordered to leave on both 2/13/07 and 2/16/07, when, in fact, I was never ordered to leave, and the original/true pay record shows I departed on sickleave on 2/16/07...exactly as I testified).
- Also on 10/6/08, Deplasco sent you the unsigned Douglas Factors for my 20-month-old case; within this, he falsely declared that a removal was necessary and no lesser sanctions were considered because, and this is his incredible phrasing: ... "**Mr. Lewis was asked to consider a medical retirement but he refused**". You immediately saw how wrong this was and advised Mark. For the record, the full list of lesser sanctions considered include a written admonishment (see Gwen's 6/14/07@1609 email, as well as Dick Fossier's 7/14/07@1218 email), then a reassignment to STS ATCT (see Barry Davis' 12/3/07 email to Teri Bristol), then a return to work (see Andy Richards' 4/17/08 letter) coupled with a 14-day suspension (see your own 4/17/08@1439 email). So, Mark's statement was not just factually incorrect, it was also ethically unconscionable...
- On 10/8/08, Mark sent you the amended Douglas Factors checklist needed to start the decision letter; it was again unsigned (thus, un-certified). But, you used it anyway, and proceeded to draft the removal decision.
- Also on 10/8/08, Mr. Castrellon finished drafting the specious denial for another grievance (#08-8772, I filed this on 8/23/08) in which he declared the removal decision had not yet been finalized.
- On 10/9/08, you complied with orders from Mr. Castrellon to commence drafting the removal decision letter.
- On 10/21/08, you forwarded your draft removal letter to Deplasco, along with a copy of the Randy Newman lyrics that included the one line for the one-time non-disparaging use of the n-word that kicked off this storm, which had been gestating for nearly 21-months. Mark forwarded this to Jason, and told him to review the package and plan to discuss the next day.
- On 10/22/08, you sent the final draft to Deplasco and noted you were sharing it with legal and AT-LOB for their concurrence. To date, there remains no proof of who in AT-LOB was accountable for that concurrence...or even if anyone actually did concur.

- On 10/29/08, you emailed Mark Deplasco (with a CC to Andy Richards) attaching a final copy and instructions to sign and mail out. I received the FedEx overnight copy on Halloween.
- On 11/6/08, I was fired, 6-months prior to becoming eligible for an age-50 retirement. Of course, with three children and good health, my plan had been to do as all my ATC coworkers are allowed to do: work until at least age-56, maybe even stay a few more years, doing non-ATC work. These plans were all destroyed in a process you witnessed...a process you can speak up about, to help clean up.

But wait, that's not all. Your witnessing continued with some interesting manipulations a month later...

- On 12/4/08, a draft letter listing 13-items in my alleged "disciplinary file" was NOT signed nor sent by Andy Richards. This letter had a Lawndale letterhead, and a certified mail number, but, again, it was never signed nor sent (...yet it was provided as evidence in MSPB Discovery). One key item, #7 on the list of 13-items, was "*Email from Monique France - Line of Business - grid-off of review of letter*". Please note, this grid-off, a critical record in an adverse action file, has never been provided despite my requests.
- Also on 12/4/08, this same certified mail number was on a letter YOU sent to me, which no longer listed France's grid-off copy. I received this certified letter from you, on 12/8/08. So, it appears Ros, you created a true document then, abruptly, amended it to conceal a key Agency record that has since been destroyed or remains improperly concealed.

For the record, most of the details outlined above were learned via roughly \$2,000 worth of FOIA requests I have received since Spring 2010. Nearly every detail here was concealed from me during the removal, and during the subsequent MSPB filing. Also, for the record, although this case was filed with MSPB, the case was never actually heard (...and, if it had been, it would not matter, as Agency Counsel had concealed all these material facts, thus obstructing MSPB from their duty to render a fair and full decision).

Like I have said so many times in the past, this is one big, ugly mess...and an embarrassment to our Agency. I suspect, in your heart, you agree.

In closing, Ros, I CC'd you yesterday with a copy of my email to Andy Richards, in the same spirit as the quote you regularly post onto your emails: "*The single biggest problem with communication is the illusion that it has taken place.*" I am hoping that we can finally communicate.

Frankly, we need to communicate, to clean up what happened in our Agency. You know it was wrong; Andy knows it was wrong; and, Tony, in his capacity now as an HQ Technical Labor Liaison Specialist who guided my case at key points from the 2/16/07 lockout and 3/23/07 ROI interview, through his input to coordinate with Dr. Goodman to attempt a medical retirement, to the 9/15/08 conference with you, Andy and Jason..., well, Tony not only knows this was wrong, but he has the authority to fix it. To clean it up...

The bottom line is this. I am going to be obtaining Congressional assistance soon, to produce accountability within our Agency. I will be seeking answers to a few questions, and copies of a few records still being concealed by officials within our Agency. My CC to you was submitted in an effort to bypass Congressional involvement, or to at least reduce the scope of the assistance I will need from Congressional representatives. So, again, would you please respond to the email I CC'd to you yesterday?

I await your response. Thank you.

Jeff Lewis

On Wed, Aug 31, 2011 at 6:34 AM, <[Clemortee.R.Marable@faa.gov](mailto:Clemortee.R.Marable@faa.gov)> wrote:

Mr. Lewis,

As a reminder, you must submit all of your requests for information regarding your prior employment under the established guidelines of the Freedom of Information Act (FOIA).

Thank you,

**C. Rosslyn Marable**

Starting From YES!

Labor / Employee Relations

AWP – 16 / Western Pacific Region

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***“The single biggest problem with communication is the illusion that it has taken place.”***

5 attachments — [Download all attachments](#)

- 20110301.. to Marable, two copies of 5-30-08 grievance elevation letter to Rotella (2p).pdf  
126K [View](#) [Download](#)
- 20080507.. 1442 email, Rotella to Richards (12p).pdf  
1151K [View](#) [Download](#)
- 20110831.. attachments to email to Marable (15p).pdf  
990K [View](#) [Download](#)
- 20091231.. My History as an FAA Whistleblower.doc  
4893K [View](#) [Download](#)
- 20000124.. SJC Mercury News Article, RHV midair collision May-99.doc  
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