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Re: OSC File No. DI-09-2147

CERTIFIED MAIL

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Subject: Supplemental Comments / Response to FAA Office of Safety Report –
Onsite Investigation of Pilot Deviations & ELDEE Four Arrival Procedures at
Potomac TRACON

Mr. Reukauf:

On April 8, 2010, the Federal Aviation Administration's Office of Safety published an internal report on its investigation of numerous pilot deviations by aircraft flying the ELDEE Arrival Procedure. I became aware of the FAA's investigation and made it known to the OSC Disclosure Unit on or about March 15, 2010. The report was obtained by the OSC and sent to me for review and comment.

Generally, I would not be inclined to comment on an internal agency memorandum. But since the document will be an addendum to the DOTOIG report into my safety disclosure, and likely included in the OSC Public File, I cannot let the misquotes and misleading information go unchecked.

The ATO-Safety investigation didn't begin until after the DOTOIG received the investigative referral from the OSC on June 18, 2009—18 months since the rash of pilot deviations began. Even then, the first visit to Potomac TRACON by anyone from the ATO Office of Safety didn't happen until meeting with me on July 27, 2009. It's a stretch to believe that the ATO Office of Safety was doing anything other than damage control with its mock investigation.

The FAA investigating itself while the DOTOIG is investigating the FAA and then each office cherry-picking the results of each others reports to use in their own lends to perpetuating the broken system where serious matters are overlooked. A system where a whistleblower who reports wrongdoing that affects safety in the

skies is up against his own employer who is more adept at killing the messenger than just fixing the problem.

The author of the ATO-Safety report, Barbara Fisher, must have only read the February 2, 2009, response from Administrator Babbitt and followed his lead when she wrote, *“Of the three allegations, the OIG found that one had been satisfactorily addressed by the ATO and that the remaining two were unsubstantiated.”* This statement is a mischaracterization of the facts.

The DOTOIG investigation found that numerous pilot deviations occurred on the ELDEE Arrival Procedure since December of 2007 and that since August of 2009 the number of occurrences has decreased significantly. Not stopped, but decreased; and still happening.

This is an acceptable safety risk if you're sitting behind a desk. It should not be acceptable to an air traffic controller sitting in front of a radar scope. And it would not be acceptable to the flying public that the FAA and DOT designed, published, and required air carriers to fly a procedure that resulted in no less than 50 pilot deviations in 18 months—waiting until a whistleblower complaint was made before doing anything about it.

Of the other two allegations, the DOTOIG was “unable to conclude” that air traffic controllers and FAA management were not reporting pilot deviations. ‘Unable to conclude’ is a big difference from ‘unsubstantiated.’ The only reason the DOTOIG found my third allegation—FAA management was coercing and intimidating air traffic controllers to not report pilot deviations—as ‘unsubstantiated’ was because they only interviewed the accused (FAA management.)

The 31 pages of supporting documents I presented to the DOTOIG provide a chronology of how FAA management tried—and failed—to intimidate me into not reporting pilot deviations on the ELDEE Arrival Procedure by excessively scrutinizing my work. My fellow air traffic controllers did not want to be counseled by their supervisors when they were just trying to do their job. They got the message and stopped reporting pilot deviations. What the DOTOIG and ATO-Safety call “unsubstantiated” is defined as success to FAA management at Potomac TRACON.

FAA management knew within days after the ELDEE Arrival Procedure was implemented that there was a problem. Rather than stop the use of the procedure and redesign it so that air carriers would be less prone to deviate from the published altitude restrictions the FAA sat on their hands for a year and a half. And when notified of the pending DOTOIG investigation the FAA called in the Office of Safety to cover its tracks.

The ATO-Safety report takes my allegation that pilot deviations on the ELDEE Arrival Procedure are being underreported but instead of looking into the time period covered by my disclosure to the OSC—December 27, 2007, (ELDEE Arrival Procedure began) through April 20, 2009, (OSC received my disclosure)—the FAA investigators looked at data from August, 2009, through January, 2010. By this time FAA management figured it would be a good idea to process the paperwork when a pilot deviation was reported by an air traffic controller.

PDARS—Performance Data Analysis and Reporting System—was used by the FAA investigators to see how many air carriers descended lower than the ELDEE Arrival Procedure permits. They looked at flight track recordings generated by PDARS from August 18 through 20, 2009, and October 1 through December 2, 2009, and listened to air traffic controller radio recordings. A tabulation of the PDARS/audio data is attached to the report.

With data in hand the FAA set out to distract from the core issue: **FAA management designed, published, and required air carriers to fly a procedure that resulted in no less than 50 pilot deviations in 18 months and did nothing to correct it until a whistleblower complaint was made.**

The ATO-Safety report concentrates solely on air traffic controllers performance—did they say the correct words when issuing the “descend via” clearance to pilots using the ELDEE Arrival Procedure—and through mystical calculative analysis arrive at a finding that my allegation is “unsubstantiated.” The methodology employed by the FAA investigators—checking controller phraseology after August, 2009—has no relevance to my allegation that pilot deviations were being underreported at Potomac TRACON between December, 2007, and April, 2009.

If the FAA investigators wanted to validate my allegation they would have retrieved PDARS data from December, 2007, through April, 2009, and checked the suspected altitude violations against the number of pilot deviation reports filed by FAA management. (Something the DOTOIG also did not do.) No one can be so naïve not to think the FAA isn't trying to distract from my allegations with reports such as this one written by Ms. Fisher.

The ATO-Safety reports states “*Appropriate ELDEE Four phraseology is either, “cross MORTY/REVUE at one five thousand, then descend via the ELDEE Four Arrival” or “after passing MORTY/REVUE descend via the ELDEE Four Arrival.”* In a typical inattention by FAA management to detail, this is not the *appropriate* phraseology. The required phraseology contained in the FAA's air traffic control directive (Order 7110.65, Paragraph 4-5-7 h) is “*Descend via the ELDEE Four Arrival.*” However, on August 27, 2009, TRACON management instructed air traffic controllers to use the non-standard phraseology as their fix to the problem.

This phraseology fix put all of the responsibility for pilot compliance with the ELDEE Arrival Procedure onto air traffic controllers and got FAA management off the hook for what they did and what they refused to repair. If the non-standard phraseology was not used verbatim and a pilot deviation occurred it would be the controller's fault. If the controller was not absolutely 100 percent certain he or she said the non-standard phraseology correctly then, and when (not if), a pilot deviation occurred it would not be reported to a supervisor. (It's no wonder the number of pilot deviations have been reduced since August 27, 2009.)

The two pilot deviations that FAA management couldn't sweep under the rug—UAL600 on November 5, 2009, and AAL1442 on November 30, 2009—(and were included in the ATO-Safety report) is what has been occurring since December, 2007. Pilots are confused by the design of the ELDEE Arrival Procedure with its duplicate altitude restrictions. And no matter which phraseology air traffic controllers use (national directive or non-standard local notice) pilot deviations are still occurring.

What is it going to take for FAA management to get off their collective asses and fix this procedure? The time has long passed for an acknowledgement by FAA management that the ELDEE Arrival Procedure is flawed. The sheer number of pilot deviations should be enough to justify the design of a replacement to the ELDEE Arrival Procedure. The two pilot deviations in November, 2009, are no different than the other 50 that occurred in the time frame of my disclosure to the OSC. Changing phraseology is obviously not a solution to the problem.

According to the ATO-Safety report, *"the Office of Safety recommended that TRACON management continue the verbal briefings to all facility personnel reemphasizing the requirement to report and investigate all possible pilot deviations."* Why?

- The DOTOIG was *"unable to conclude that controllers and managers are failing to report and investigate pilot deviations."*
- The FAA Administrator was *"pleased"* and reasoned after reading the DOTOIG report that the *"investigation found no evidence to substantiate"* my allegations.
- The FAA Office of Safety stated—in the first sentence of its report 'Conclusions'—it *"was unable to substantiate the complainant's allegations that employees of PCT have failed to properly report and investigate pilot deviations."*

If my claim that pilot deviations were being underreported was investigated and determined to be unfounded, unsubstantiated, and inconclusive, why would there be a need to emphasize—not just *re-emphasize*—the requirement to report and investigate pilot deviations? Probably because I was right and no one within the

ranks of FAA management can come out and admit it without 'beating around the bush.'

The ATO-Safety report goes on to mislead with a reference to "*a copy of the verbal briefing (supplemental training) given to all facility personnel on the subject. The briefings were conducted July 14 – September 24, 2009 and specifically addressed the reporting of Proximity Events, Operational Deviations, Operational Errors, and Pilot Deviations.*" These briefings had absolutely nothing to do with the subject of my claim that employees were not reporting pilot deviations.

On Saturday, May 29, 2010, I took time to review my training folder to see what items I was briefed or trained on from July through September, 2009. Just as I remembered, the aforementioned verbal briefings were about the release of change 2 to FAA Order 7210.56C¹. This change announced the FAA's move toward a 'just culture' and a 'safety culture' which would, among other things, omit from operational error reports the name of the involved air traffic controller and extending the time parameters for official notifications after an operational error.

Here's an excerpt from the FAA's Air Traffic Quality Assurance Order 7210.56C:

Explanation of Policy Changes. In order to better assess risk in the National Airspace System, it is imperative that the ATO fully participate in full and open reporting and analyses of all appropriate safety data. As we continue to make improvements to our safety culture, we must ensure that we move toward a just culture in which blame is not associated with reporting of safety information and there is a significant focus on determining why events occur.

I can attest that this policy is not worth the paper it was printed on.

Nothing in the change to FAA Order 7210.56C dealt with the reporting and investigating of pilot deviations (or failure to do so) as I have claimed in my disclosure to the OSC. The ATO-Safety implies that TRACON management has verbally briefed controllers and managers about the requirement to report pilot deviations. It is simply not true.

Again, why would TRACON management brief over a three month period the requirement to report pilot deviations (which I claim were underreported) when both the DOTOIG and FAA Office of Safety found my claim to be false?

After calling my allegation that pilot deviations were being underreported 'unsubstantiated'—but recommending that TRACON management brief employees on the requirement to report and investigate pilot deviations—the ATO-Safety report moved on to the next topic of concern: Standard Operating Procedures.

¹ <http://www.faa.gov/documentLibrary/media/Order/CHG2ATQ7-20-09.pdf>

With the hope of lending some credence to their ELDEE Arrival Procedure phraseology fix the ATO-Safety report took a statement from TRACON management: *"This change was developed collaboratively between PCT management and the NATCA Principal Facility Representative."* Sorry, but again, a misstatement.

The Notice to implement non-standard phraseology for "descend via" clearances on the ELDEE Arrival Procedure was a management-made product from front to back. The only collaboration between the FAA and NATCA was when the facility representative was given a copy of the memo by management.

My safety disclosure about the ELDEE Arrival Procedure was categorized by the OSC as a substantial and specific danger to public health and safety. By law, it was the responsibility of the DOTOIG to investigate my allegations. But it was the investigators from the FAA Office of Safety who made the point I've been trying to make for over two years. A subtle, single sentence in an internal FAA memorandum: ***"The change was intended to ensure that flight crews do not inadvertently descend into crossing traffic."***

...as JIA472 did on December 23, 2008, when it descended into UAL115 near the Linden VOR at 14,000 feet triggering the Traffic Collision Avoidance System on UAL115.

...as AWE49 did on May 25, 2009, when it descended in front of FRL245 near the Linden VOR at 14,000 feet setting off the Operational Error Detection Program ("snitch patch") at Washington ARTCC.

...as EGF4779 did on August 26, 2009, when it descended into UAL229 near the Linden VOR at 14,000 feet causing the air traffic controller to issue commands to the pilots of both aircraft in order to avoid a loss of separation.

Flight crews have 'inadvertently' descended into crossing traffic 50 times during the past two years and the best the FAA can do is 'change' the phraseology used by air traffic controllers. Even with the phraseology 'change' there have been four more (reported) pilot deviations of the ELDEE Arrival Procedure.

It should not take a whistleblower's complaint and two separate investigations to realize that the FAA is taking an unnecessary risk by continuing the use of the ELDEE Arrival Procedure. The only definitive change that the FAA can make to stop air carriers from descending into each other is to stop air traffic controllers from issuing the "descend via" clearance on the ELDEE Arrival Procedure.

An RNAV procedure, such as the ELDEE Arrival, is supposed to provide benefits to the users—not compromise safety by allowing air carriers to ‘inadvertently’ descend into each other. Here’s what the FAA promotes in RNAV²:

RNAV procedures can provide benefit in all phases of flight, including departure, en route, arrival, approach, and transitioning airspace. For example, Standard Terminal Arrivals (STARs) can:

- Increase predictability of operations
- Reduce controller/aircraft communications
- Reduce fuel burn with more continuous vertical descents
- Reduce miles flown in Terminal Radar Approach Control (TRACON) airspace
- Reduce interaction between dependent flows in multiplex airspace

The new—and now—standard operating practice at Potomac TRACON is for air traffic controllers to vector aircraft off of the ELDEE Arrival Procedure upon entry into our airspace. The controller will vector the aircraft to a point of his or her choosing some 20 miles off the route while issuing step-down altitudes to keep the aircraft clear of crossing departure traffic.

- Predictability for air carrier pilots is eliminated. They have no idea what to expect- one controller will give them instructions in a way another controller may not. It’s a crap shoot for the pilot when checking on with Potomac Approach from the west: Fly the arrival, descend via, turn right, proceed direct, maintain 15000—take your pick- one, two, some, all, or none of the above.
- Communications between pilots and controllers is increased when aircraft are vectored off the ELDEE Arrival Procedure. What used to be:

CONTROLLER: “Descend via the ELDEE Four Arrival”

PILOT: “Roger, Descend via the ELDEE Four Arrival”

Is now:

CONTROLLER: “Proceed direct POOCH, that’s P O O C H, maintain one five thousand, I’ll call your descent.”

PILOT: “Roger, direct POOCH, maintain one five thousand.”

Followed in a minute or two with:

CONTROLLER: “Cross POOCH at or above one one thousand then descend via the ELDEE Four Arrival”

² http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=8768

PILOT: "POOCH at or above one one thousand, descend via the ELDEE Four Arrival."

- Reduced fuel burn afforded by the ELDEE Arrival Procedure's continuous vertical descent is gone. There is no continuous vertical descent when aircraft are vectored off the procedure and air traffic controllers issue clearances to descend incrementally in consideration of crossing traffic and airspace constraints.
- Without the predictability of a route to be flown there is no way to determine how many miles are flown in TRACON airspace. Could be more, could be less.

The FAA's phraseology fix saddled with the now-standard operating practices applied by air traffic controllers make the ELDEE Arrival Procedure everything that an RNAV procedure is **NOT** supposed to be. And, right from the ATO-Safety report's own words, flight crews STILL inadvertently descend into crossing traffic.

The ATO-Safety report says that TRACON management "*produced evidence of verbal briefings that described the use of 'descend via' clearances.*" (As if it was a major fact-finding inquiry into the inner workings of the Potomac TRACON.) This so-called evidence is a sheet of paper from the controller Read and Initial Binder (we read something management puts in a binder, and then we write our initials next to our pre-printed name on a sheet of paper.)

What air traffic controllers read was the April, 2009, edition of the 'Air Traffic Bulletin'—a periodic publication from FAA headquarters sent to air traffic field facilities. According to the FAA³, the 'Air Traffic Bulletin' is not a directive, nor is it to implement new procedures. Its intent is to transmit "reminders" concerning proper application of procedures and other instructions.

This edition⁴ of the 'Air Traffic Bulletin' contained an article titled "Use of Descend via Clearances on RNAV STAR procedures." In part, here's what we (air traffic controllers) were reminded of:

USE OF "DESCEND VIA" CLEARANCES. "Descend via" clearances take advantage of modern flight management system (FMS) automation capabilities to fly precise lateral and vertical paths, and manage aircraft speed when flying STAR procedures. **Using "descend via" reduces phraseology and pilot/controller workload by providing one clearance to authorize aircraft to fly a STAR pre-coded with a vertical path (crossing altitudes) and speeds.**

³ FAA Order 7210.3W, Facility Operations and Administration, Paragraph 2-2-9

⁴ http://www.faa.gov/air_traffic/publications/bulletins/media/atb_apr_09.pdf

The ATO-Safety report, according to TRACON management, states air traffic controllers were briefed on the use of 'descend via' clearances but fails to note that since August 27, 2009, we were told not to do what was in the briefing. Giving attention to detail is not one of the finer points of the ATO-Safety report writer.

Wouldn't it have made more sense—and taken far less time and energy—to listen to what an air traffic controller with 21 years of experience had to say rather than go through the exercise of blame and denial that FAA management has done for the past two years?

The FAA still cannot certify the ELDEE Arrival Procedure as safe or efficient.

Although, the FAA can say, for now, that they won against a whistleblower. Won based upon the investigations by the DOTOIG and FAA that looked as far as they could until the truth was revealed then stopped and resorted to smoke, mirrors, numbers, percentages, mistruths, and false facts to seal their victory.

It would have been nice for FAA management to put as much work into investigating why air carrier pilots were violating the altitude restrictions on the ELDEE Arrival Procedure as they did into determining if air traffic controllers omitted the word 'passing' when issuing the new non-standard phraseology.

Two plus months of checking the tapes, reviewing PDARS data, all to catch a controller not saying 'after' or 'passing.' How pathetic is that? How much time over the past two plus months (or two years) did FAA management allot to coming up with a replacement to the ELDEE Arrival Procedure? Or was this phraseology fix an all-or-nothing strategy?

Air traffic controllers are expected to adhere to the requirements of the Air Traffic Control handbook, but it was okay with FAA management when we didn't follow the rules to work-around their flawed procedure. Defeating the entire purpose and premise of an RNAV procedure all in the name of saving our managers at Potomac TRACON—that got us to where we are today—from getting egg on their faces.

Then on the other hand, now that FAA management has come up with a phraseology fix (that still hasn't stopped the pilot deviation problem) air traffic controllers are held to the letter of law (only applicable to one sector at Potomac TRACON) and even when there is no pilot deviation we should be counseled for "performance deficiencies." With this logic there is no latitude for the air traffic controller to act on their own to avoid two planes coming together and not have to worry about being counseled by their supervisor.

Browbeating air traffic controllers because of phraseology deficiencies doesn't correct the problem of pilot deviations on the ELDEE Arrival Procedure. It only masks the incompetence displayed by FAA managers over the past two years who instead of fixing what they created blame air traffic controllers that are just doing their jobs. And it doesn't bode well for the future if the FAA intends to implement NextGen—or any other new procedure or technological change—as they've mastered the implementation of the ELDEE Arrival Procedure.

The proper remedy to the ELDEE Arrival Procedure is as simple as eliminating the 15000 foot restriction at Linden VOR and at REVUE WP, and changing the altitude restriction at MORTY WP to 14000 feet.

Thank you for allowing me the opportunity to provide these comments to the FAA's report of pilot deviations at Potomac TRACON.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randall Buxton".

Randall Buxton
Air Traffic Controller and Whistleblower