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August 2, 2010

The Honorable William E. Reukauf  
Associate Special Counsel  
U.S. Office of Special Counsel  
1730 M. Street, NW, Suite 218  
Washington, DC 20036

SUBJECT: Whistleblower's response to supplemental information received from the Department of Transportation on July 6, 2010

Dear Mr. Reukauf,

It has been nearly 3.5 years since I observed a SF34 Turboprop (Mesaba 3057) pass *underneath* a DC9 Turbojet (Northwest 1593) during a go-around incident at the Memphis International Airport (MEM). This February 18, 2007 incident was very disturbing, as the Federal Aviation Administration (FAA) had created the procedures that placed these aircraft (and the flying public) at risk.

After witnessing this event, I contacted the National Transportation Safety Board (NTSB); submitted an anonymous report via the NASA Aviation Safety Reporting System (ASRS); filed a Department of Transportation Office of Inspector General (DOT/OIG) Hotline complaint; and contacted my Congressman and Senators.

The NTSB forwarded my concerns to the FAA, and the FAA's response was swift and decisive: the unsafe operation was halted after an FAA Oversight (AOV) investigation found that Memphis FAA Management did not have a waiver for the operation, and then Memphis FAA Management launched a campaign of retaliation against me in an effort to discredit me and ruin my career.

I submitted a Prohibited Personnel Practice (PPP) complaint to the United States Office of Special Counsel (OSC) in order to seek whistleblower protection from the FAA Managers at Memphis Tower/TRACON where I worked as an Air Traffic Controller. The OSC reviewed my allegations, and I then submitted a Safety Disclosure complaint to the OSC regarding the numerous safety concerns that I believed to exist at MEM.

The OSC Investigator assigned to ascertain the veracity of my PPP allegations was suddenly removed from my case, and the retaliation by Memphis FAA Management continued virtually unchecked. The OSC office in Detroit was able to intervene during several key moments, but for the vast majority of the investigation -- I was left to defend myself without assistance from your office. The FAA discredited, decertified, and

attempted to destroy my career during the investigative process. My attorney and members of the recently formed *FAA Whistleblowers Alliance* were my only source of support and refuge during these difficult times.

I submitted numerous examples where the flying public was placed at risk when Memphis FAA Management allowed separation to diminish to less than the applicable standards; countless examples of instances when Air Traffic Control procedures were violated; and an inordinate number of examples where Memphis FAA Managers simply refused to log, report, or investigate Operational Errors, Operational Deviations, or Pilot Deviations.

Your predecessor referred my Safety Disclosures to DOT Secretary Mary Peters for investigation, as he believed that the FAA may have violated laws, rules, and regulations that would have constituted a danger to public safety.

If I *willfully* or *intentionally* place the flying public in danger, I will be *immediately* removed from my position as an Air Traffic Controller, and my employment with the FAA will be terminated. When Memphis FAA Management *willfully* and *intentionally* violated laws, rules, and regulation designed to protect the employee -- they were not punished. When these same Managers violated FAA Notices, Orders, and Regulations designed to protect the flying public -- they were either promoted, allowed to quietly retire, or retain their positions.

The disparity of discipline and treatment between Air Traffic Controllers and Memphis FAA Managers was vast, and often harsh. I spent nearly two years documenting the willful and intentional actions by Memphis FAA Managers to increase airport capacity and place the flying public at risk -- yet the evidence was not enough.

The manner and respect in which my allegations (and Geoff Weiss's) were handled by the FAA and DOT Investigators was unconscionable. As FAA Whistleblowers, we sacrificed our careers in an effort to expose the safety risks that existed at MEM, and this investigative process allowed witness memories to fade; critical digital data to vanish; and allowed the FAA to have the final word with regards to each individual allegation.

## **DESTRUCTION OF EVIDENCE IN SUPPORT OF MY ALLEGATIONS**

An OSC Attorney and a DOT/OIG Investigator informed me that MEM digital voice and radar data would be preserved. I expressed doubt and concern that the FAA would actually retain data which would substantiate my allegations, and I predicted that the FAA would intentionally destroy this data -- or allow the digital radar and voice data to "rotate" through and be overwritten as is the current (and allowed) practice. I was informed that there was a "freeze" on all data relevant to my case, and that the data would be retained for DOT/OIG Investigators to review at a later date.

In a November 23, 2009 letter from the DOT Inspector General, Calvin L. Scovell III informed DOT Secretary of Transportation Ray LaHood that "*digital audio tapes and RAPTOR (Radar Audio Playback Terminal Operations Recordings) tapes for only 75 of the events were available for our review.*" Neither the FAA, the DOT/OIG, nor the OSC have been able to justify or explain the *destruction* or *withholding* of data pertinent the allegations relating to my Safety Disclosure.

I provided the OSC and the DOT/OIG with *hundreds* of examples of Operational Errors, Operational Deviations, Pilot Deviations, Airspace Violations, and practices which I believed placed the flying public at risk. I also informed the OSC and the DOT/OIG that I had additional information to share, but no one ever asked me for this information. At one point I was told to stop sending information, as the amount of information was too voluminous to absorb and comprehend.

DOT Investigator Erika Vincent was removed from my case, and I was informed that Barbara Barnet and Jim Crumpacker would assume responsibility for investigating my allegations. Mr. Crumpacker and Ms. Barnet *never* spoke to me; *never* asked me for any additional information; and *never* asked me any clarifying questions about the unsafe practices and procedures in use at MEM.

I find it unbelievable that the DOT/OIG would remove Ms. Vincent from my case, and shuffle investigators in the middle of my investigation. The new investigators never spoke to me about my allegations, and the DOT/OIG simply accepted FAA's response that digital data was simply not available for their review.

The OSC Referral process and subsequent investigation by the DOT/OIG did not ensure the preservation of critical data which would have substantiated my allegations.

## **THE DISCLOSURE AND INVESTIGATIVE PROCESS**

The PPP complaint that I submitted to the OSC on July 8, 2007 contained examples of acts of retaliation against me by Memphis FAA Management. I believed that these acts of retaliation resulted from the Safety Disclosures that I made to FAA Safety, FAA Oversight, the NTSB, the NASA ASRS, my elected officials, the DOT/OIG, and ultimately to the OSC.

I provided the OSC and the DOT/OIG with numerous examples of unsafe practices and procedures in use at MEM. It was my belief that these examples would reinforce, document, and substantiate my allegations. These examples included: 1) date and time of specific events and incidents, 2) call-signs of specific aircraft involved, 3) position, altitude, and distance of specific aircraft involved, 4) the names of individuals who witnessed specific events and incidents, 5) the names of Memphis FAA Managers who allowed these events and incidents to go unreported, and 6) FAA digital and data repositories where the events and incidents would be documented for a period of time.

I informed the OSC and the DOT/OIG that digital voice and radar data would substantiate my allegations; that specific individuals were willing to substantiate my allegations, that specific individuals should be interviewed; that I observed unsafe practices and procedures on a daily basis -- and that the flying public was at risk.

Memphis FAA Management utilized an illegal and unsafe procedure that placed the flying public at risk for many years. Memphis FAA Management lied to Air Traffic Controllers, and they misled airline operators and FAA investigators about the existence of a waiver for the RWY 27 operation -- a waiver for the RWY 27 operation *never* existed.

The Converging Runway Display Aid (CRDA) was implemented at MEM shortly after FAA Oversight issued a *Warning Notice for Noncompliance with FAA Order 7110.65* relating to the illegal and unsafe RWY 27 operation. The training associated with the use of CRDA was rushed and inadequate -- approximately 1 - 2 hours of classroom instruction, and 3 simulator problems.

When CRDA was implemented to increase airport capacity and appease Federal Express (FDX), Northwest Airlines (NWA), and the Memphis Shelby County Airport Authority (MSCAA) -- the response by Memphis FAA Management was to look the other way when Operational or Procedural Errors occurred. I documented these errors and sent them to the OSC and to the DOT/OIG via email.

To the best of my knowledge, Herb Brown was the only Memphis FAA Manager to receive any discipline for his inappropriate actions while assigned to MEM. Mr. Brown was thrown underneath the wheels of the bus, as the Air Traffic Manager was allowed to work until his retirement; the Assistant Air Traffic Manager was recently promoted to Air Traffic Manager; the two Operations Managers retained their positions; the Training Manager remained in his position; and my Front Line Manager was promoted and allowed to transfer to the Southern California TRACON (SoCal).

The investigative process takes far too long, and there was virtually no accountability for the unsafe practices that were allowed, condoned, and mandated by Memphis FAA Management. Digital radar and voice data went missing; witnesses were not interviewed; and it is my opinion that the DOT/OIG Investigators who handled my case were misled by the FAA.

I will *never* recommend that an FAA employee contact the OSC or the DOT/OIG to submit a Safety Disclosure or Prohibited Personnel Practice complaints. The risks are far too high; it's a career ending move; and I have lost many friends and co-workers as a result of doing what I believed to be the "right thing".

## **COVER-UP OF OPERATIONAL ERRORS AND DEVIATIONS**

Unreported Operational Errors and Deviations were a routine occurrence at MEM, and this was especially true when CRDA procedures were being utilized. Memphis FAA

Management placed great pressure upon the Controllers to run minimum spacing to all runways. This *diminished* the margin for error; did *nothing* to enhance safety; and ultimately set the stage for numerous go-around incidents. Many aircraft on approach to land on RWY 18L and 18C *overflowed* aircraft that were landing on RWY 27 -- in direct violation of FAA Order 7110.65 and local procedures regarding the use of CRDA.

Even when it was obviously clear that a CRDA sequence was not going to work, Memphis Controllers were pressured to wait until the very last moment to issue go-around instructions. Controllers were often *ordered* by Memphis FAA Managers to issue *s-turns* and *speed reductions* to aircraft that were inside the Final Approach Fix (FAF); were *ordered* to instruct aircraft to land and hold short of specific points on RWY 27 when there were no *Land And Hold Short Operations (LAHSO)* in place at MEM; and they were ordered to allow both aircraft to land in violation of FAA Order 7110.65 and local procedures regarding the use of CRDA.

Memphis FAA Management was under the spotlight due to the increase of Operational Errors and the fact that *airport capacity* had been reduced due to the restrictions placed on the use of RWY 27. MEM participated in a competition with other *at-risk* ATC facilities that had high error rates. No one wanted to be responsible for losing the competition. At one point, Memphis FAA Management threatened to remove the next Controller that had an Operational Error while working on one of the Final Sectors.

The pressure to *not* have an Operational Error, combined with the fear of discipline or removal by Memphis FAA Management created an environment where Memphis Air Traffic Controllers and FLM's did not report Operational Errors or Deviations. Add to this an *increased* Airport Acceptance Rate (AAR) and aircraft assigned "*maximum forward speed*" at the airspace boundary, and you have airspace that is filled to capacity with very no room for error.

Memphis Air Traffic Controllers were some of the best that I ever worked with. Their ability to work an FAA Management Team that was threatening, hostile, and hell-bent on increasing airport capacity -- was commendable. It is unfortunate that they were tasked with carrying-out the FAA's unwritten policy of *profit over safety*. This policy served to benefit Federal Express (FDX) and Northwest Airlines (NWA), but placed the flying public at risk.

I documented and disclosed numerous unsafe incidents, practices, procedures, and Operational Errors/Deviations. I observed these incidents with my own eyes; I was trained to use the illegal and unsafe procedures associated with RWY 27 and CRDA operations; and I used the *Standard Terminal Automation Replacement System (STARS)* altitude readout and distance measuring tool to measure losses of separation.

Where did the digital radar and voice data go, and why were the DOT/OIG Investigators not able to examine data associated with all of the disclosure examples that I submitted?

## **AIR TRAFFIC SAFETY ACTION PLAN (ATSAP)**

The DOT/OIG wrote that ATSAP has been implemented at MEM. I have some concerns with this program, but only time will tell if it will be successful or not. It is my personal belief that the ATSAP program will only serve to help the FAA bury and hide Operational Errors, matters of safety, and systemic issues within the National Airspace System (NAS).

ATSAP was implemented at Austin Tower (AUS) shortly after my reassignment from MEM to AUS. Strangely enough, I was asked to attend ATSAP training in San Antonio, TX, and to then to assist with training AUS Controllers about this *confidential* reporting program that was designed to enhance safety, collect data, and protect individuals who disclosed safety or systemic problems within the NAS.

Austin FAA Management embraced the ATSAP program completely. It was my impression that they felt relieved to be able to identify and address some of the safety issues that existed within this ATC facility. AUS Controllers were somewhat skeptical, but it soon became evident that something was wrong, as AUS was leading the *Lonestar Hub* in Operational Errors and Deviations. I had mixed thoughts about the ATSAP program, but ultimately embraced the program by submitting numerous *incident* and *systemic* reports.

To date, I am not aware of many changes at AUS as a result of ATSAP reports submitted by AUS Controllers. There has been much talk and discussion, but very little in the form of substantive change. Several AUS Controllers became frustrated with the lack of progress with the ATSAP program, and these Controllers took their concerns to the FAA Hotline and the DOT/OIG Hotline.

Based on my previous experience at MEM, I doubt that anything will change at AUS as a result of complaints filed by AUS Controllers through the FAA or DOT/OIG Hotlines.

## **TRAFFIC ANALYSIS AND REVIEW PROGRAM (TARP)**

This program has been in existence for some time now, and it is my understanding that TARP was created as a result of previous DOT/OIG investigations and the systemic cover-up of Operational Errors at DFW. If the FAA really wanted to know what was happening at Terminal facilities, TARP would be up and running 24 hours a day, 7 days a week -- and the DOT/OIG would *demand* it.

The FAA can not afford to activate TARP on a full-time basis, as the FAA does not have the manpower or resources to investigate the *thousands* of potential Operational Errors that would be identified throughout the nation.

Due to the recent exodus of retiring veteran Controllers, the FAA is struggling to rebuild the workforce by hiring many new employees. These new employees are *trainees*, and their training times have skyrocketed. It is taking *years* for these trainees to complete

the certification process, and it will take another 3 - 5 years before these employees gain true and meaningful *experience* as Air Traffic Controllers.

TARP *would* have identified the Operational Errors that occurred as a result of *losing* so many experienced Controllers; and it *will* identify Operational Errors as a result of Controller inexperience, human factors -- or cover-up by FAA Managers.

## CONCLUSIONS

I never intended to become an FAA Whistleblower. It was only after witnessing an incident where two aircraft nearly collided that I disclosed the illegal and unsafe procedures surrounding the RWY 27 operation. FAA Oversight (AOV) investigated and ordered Memphis FAA Management to put an end to the use of Simultaneous Independent Operations to RWY 18L, 18C and 27. Federal Express (FDX) voiced their discontent with this ruling, and claimed that the loss of RWY 27 would impact their bottom line. The FAA responded by implementing Converging Runway Display Aid (CRDA) procedures, and then Memphis FAA Management allowed these procedures to be violated in an effort to once again increase airport capacity.

When Memphis FAA Management retaliated against me for making these safety disclosures, I had no choice but to defend myself through continual and repetitive disclosures of unsafe incidents, events, and practices -- Memphis FAA Management had a pattern and practice of violating laws, rules, and regulations that constituted a danger to public safety.

The FAA is all about *damage control*, and it is a rare instance when FAA Management will admit that they made a mistake, mistreated an employee, or endangered the flying public. It is unfortunate that Geoff Weiss and I sacrificed our careers for the safety of the flying public. We will never see another promotion, transfer, or any type of upward mobility within the FAA. In fact, Weiss incurred a \$20,000 pay-cut when the FAA demoted and transferred him to a lower level facility.

Whistleblowers have been repeatedly ridiculed, discredited, and harassed by the FAA. Ray Adams, Bruce Bessette, Bobby Boutris, Kevin Campbell, Donald Craig, Gabe Bruno, Ricky Chitwood, Mike Cole, Mary Rose Diefenderfer, Bogdan Dzakovic, Kim Farrington, Rand Foster, Charles Lund, Mark Lund, Robert MacLean, Chris Monteleon, Spencer Pickard, Douglas Peters, Vinnie Sugent, and Anne Whiteman -- just to name a few.

*All* of these individuals sought to disclose what they believed to be unsafe practices that existed within the National Airspace System or within the aviation industry, and *all* have paid a significant price for their contributions of making the sky above our nation safe for the flying public.

The pattern and practice of discrediting, destroying, or killing the messenger within the FAA must stop. A new message must be immediately drafted and delivered, and this

message must come from the President of the United States. That message must be delivered through the House and Senate; through the Department of Transportation; through each FAA Regional Office; to each Air Traffic Control facility; and ultimately to each FAA Manager empowered to enhance safety within the National Airspace System.

FAA Whistleblowers must be afforded a safe mechanism in which safety disclosures may be made without fear of retaliation. We are *not* the problem, but we can be a part of the *solution*.

Sincerely,

A handwritten signature in black ink, appearing to read "P. D. Nesbitt", with a long horizontal line extending to the right.

Peter D. Nesbitt  
Air Traffic Controller  
Austin, TX