

9/11 Commission files

Team 8/ Box 6

FAA HQ Mtg. With FAA General Counsel, 12/3/03

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MEMORANDUM FOR THE RECORD

Event: Meeting with FAA Chief Counsel, Andrew Steinberg

Type of event: Meeting

Date: December 12, 2003

Special Access Issues: None

Prepared by: Kevin Shaeffer

Team Number: 8

Participants - Non-Commission: Andrew Steinberg (FAA Chief Counsel), J.S. Dillman (FAA Assistant Chief Counsel), David Wiegand (FAA AGC-410), Anthony Ferrante (FAA Air Traffic), Shirley Miller (FAA Senior Advisor), Thomas Davidson (FAA Air Traffic)

Participants - Commission: Steve Dunne, John Farmer, Dana Hyde, Miles Kara, Kevin Shaeffer

Location: FAA HQ

- Team 8 staff requested a meeting with FAA Chief Counsel Andrew Steinberg to discuss the following issues:
 1. NC Staff interviews at Washington Center (ZDC) December 3-4, 2003
 2. Clarification of FAA facilities' tapes requested by the NC
 3. Understanding of future interview guidelines
- Mr. Steinberg opened the meeting by underscoring that the FAA has been fully cooperative with the National Commission. He reported that he had received "feedback" of accusations directed against his Counsel staff from the NC staff. He conceded that there may have been misunderstandings and miscommunication within the FAA on the NC-Administration interview guidelines. He stated that the FAA resents inferences that they are not being "above board" and that they understand the important mission of the NC. He further noted that he didn't think the FAA subpoena was warranted, and stressed that he does not want to be accused of not cooperating with the NC.
- Mr. Steinberg mentioned that the NC staff has turned down "many offers of FAA technical assistance" and offers of help to better understand FAA air traffic matters. This point was addressed by Dana as not true, that she and Miles had indeed accepted several offers of FAA assistance.

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- Mr. Steinberg brought up the fact that they had a “number of discussions” with the NC regarding the acceptance of the FAA using some judgment on what materials they provide to the NC (to help reduce the amount of irrelevant materials produced). He stated, “If you want us to dump a truckload of documents onto you – you’ll get them.” As an example, he presented four audio cassettes, “that are totally blank, yet you have demanded we provide them.”
- John Farmer explained the NC’s deadline concerns to Mr. Steinberg.
- Dana then addressed Mr. Steinberg’s points. A discussion proceeded on the interview guidelines agreed upon with the Administration, and how the FAA seemed to take a different stance towards the interviews conducted at ZDC. In sum, the issues at ZDC were 1) pre-meetings with interviewees and FAA counsel; 2) the presence of a Union “minder” in addition to the FAA Counsel minder; and 3) recording the interviews (just prior to the very first interview at ZDC, FAA Counsel Mr. Wiegand told NC staff, in the presence of the interviewee, that they did not want the interview recorded). The general theme was that the NC accepts document and interview guidelines, yet when the NC staff visits the Air Traffic Control facilities we discover a different “story on the ground.” Dana concluded with the point that ZDC was the NC staff’s fifth facility visit, the first visit post-subpoena, and that “things were clearly different” at ZDC in comparison to the other sites.
- Mr. Steinberg replied to Dana, “We’re not in a new ballgame post-subpoena.”
- Dana addressed the specific issue over the tapes from the TMU and OMIC stations at ZDC. She noted that the NC has received a letter from the FAA that the ZDC TMU admin phones are not recorded. However, when walking the floor during the ZDC visit the QA representative said “yes we do tape the TMU/OMIC lines, but we were told that you didn’t want them.” (The QA rep mentioned Tony Ferrante’s name as the individual who communicated that to them). Dana stressed that we wanted to clarify these issues. Specifically, that we want now (and have always wanted) “all” TMU/OMIC/MOS recordings from ZDC between the hours of 8 am – 12 noon on 9/11/01. FAA countered that most of those lines are “blank” and Tom Davidson stated that he directed the facility to “not waste the NC’s time” by turning in mostly blank tapes. Mr. Davidson stated he directed the facility to provide only “pertinent” information. Dana noted, however, that ZDC didn’t produce any of the recordings from those positions. Mr. Davidson stated, “we see it as assistance, not

resistance. We have a good story to tell. I directed them to provide any calls pertinent to the hijackings and the attacks.”

- Dana pointed out that she distinctly recalled conversations with Mr. Davidson and Mrs. Miller “about efforts to take judgment and discretion out of it, by limiting the request to specific phones, positions, and times.” Mrs. Miller acknowledged that there could have been an internal-FAA “miscommunication” regarding ZDC and their efforts to utilize judgment as to what would be most helpful and responsive to the NC request. Mr. Davidson stated, “they (TMU/OMIC) had communications with the Command Center, but since we thought you already had those, the recorded lines from ZDC were not provided.”
- Mr. Steinberg noted that he saw a need to “document agreement on interview guidelines.” Steve noted that there are detailed interview guidelines that have been worked out between the NC and DOJ. We agreed to fax copies of the exchange of letters (a total of 3) between the NC and DOJ.
- Mr. Wiegand stated that he “was appointed to liaison with the NC post-subpoena.” And, that there was “increased sensitivity to the NC since the subpoena, that’s why I was assigned.” As for the interview guidelines, he stated, “I had no knowledge of the pre-existing agreements.” “I was told that the NC was a fact-finding effort, and I met with each interviewee for five minutes to explain what the purpose was.” Mr. Wiegand then recounted that when he saw that the interviews were going to be recorded, he asked the Union representative at ZDC if he knew about the recordings – which he did not.
- Mr. Wiegand stated that Dan Marcus told him that if the interviewee wanted the Union representative present along with Mr. Wiegand, that was “ok.”
- Mr. Wiegand stated that “I at no point advised the interviewee to object to the recording of the interview.” “I got hot when you (Dana) implied that I was coaching the witnesses. I apologize. You (Dana) said there was an agreement that there would be no pre-meetings. I was unaware of it and wanted to see it. I called Dan Marcus and he said that if I wasn’t advising the witnesses, he’d “take my word.”
- Dana responded that she assumed that Mr. Wiegand had knowledge of the interview guidelines that exist between the NC and the administration. She added that the ZDC visit was the fifth site visit and this was the first instance of misunderstanding. Dana highlighted the fact that most of the heated disagreement at ZDC came after Mr. Wiegand mentioned there were “post-subpoena sensitivities.”

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- Mr. Steinberg stated that he assumed that preparation for the interview is covered by the written agreement between the NC and DOJ. Steve replied that while there are detailed interview guidelines, not all were put to writing because the NC takes the view that this is not an adversarial litigation-type of investigation. Mr. Steinberg replied, "you have to understand that we don't know how the FAA will be handled in the NC's report. So we have to, and should, approach this as more of a litigation matter." As such, he concluded "I'd much rather have an explicit understanding of the agreement." The NC agreed to send Mr. Steinberg a letter on some of the specific issues raised during this meeting.