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**National Air Tour Safety Standards**

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Hi, my name is Tom Harnish. I'm chief pilot for a Part 91 sightseeing operator in San Diego called Barnstorming Adventures Ltd. We also do business as Biplane, Air Combat & Warbird Adventures because, well, that's more descriptive and people, we've sadly discovered, don't know what 'barnstorming' means. Our society has already forgotten the pioneers of aviation. I wish you could see, as we do day in and day out, the delight in their eyes--the excitement and joy--when they discover what real flying is all about. Frankly, that's the largest compensation of this business.

I'd like to start by briefly giving you some background on who we are and what we do,

then tell you a short fable to illustrate my thoughts on this topic, and finally I want to pose a couple of rhetorical questions.

**BACKGROUND**

- Business
  - Computers/Info Systems
  - Consultant
  - Senior Scientist
  - CEO of start-ups/hi-tech companies
- Aviation
  - 38 Years and ~10,000 Hours
  - CFII, MEI, SES, Glider
  - Former Navy Flyer
  - FAI World Speed Record Holder
- Government
  - DoD Computer Institute
  - Congress, FBI, NSA, FAA

I've never been accused of being overly modest, but please believe me when I tell you this next bit isn't bragging. I just want to provide you with a little background so you know that I'm not stupid, naive, or unfamiliar with business, aviation, or government.

I learned to fly when I was in college--I was frustrated working so hard and getting such bad grades, so I went out to the local airport and started to learn to fly. I had to hold down three jobs and go to school; but I earned my license, hit the Dean's List, and graduated with a degree in Aerospace Psychology. Learning to fly, I think, helped me learn to learn.

My senior year I started a computer services company and borrowed their equipment while on leave after joining the Navy to develop some of the first computerized airborne electronic warfare planning programs. I qualified in the A-6 Intruder and the EA-6B Prowler and deployed to Vietnam in 1973 as part of Air Wing 9 aboard the USS Constellation. (I also had the bizarre experience of being on board the Connie again 30 years later in mid-Pacific on 9/11. But that's another story.)

When I got back from Vietnam, I finagled a choice assignment in Washington at the DoD Computer Institute where I taught Admirals and Generals about Information Management. I taught every FBI Senior Agent in Charge from around the US at the FBI Academy in Quantico VA about computer security, and tutored several Generals, members of Congress, and even some FAA officials from OK City and Atlantic City about telecommunications and computer systems requirements definition.

Anyway, after leaving the Navy I worked as consulting scientist for Booz, Allen & Hamilton on a number of government contracts and was part of the Bell System's anti-trust defense litigation team. (We lost, you might remember, and they spit up the Bell System--so now we have. "Can you hear me now? Can you hear me now?")

Later I took a job with a company that had the world's largest on-line terminal network and eventually became Senior Scientist there. Among other things, we pioneered the first use of the TV for home information and banking (PCs didn't exist yet), but later we were also part of pioneering efforts to use personal computers for online communication.

Summer evenings and weekends I taught flying at Ohio State before I was hired away from my day job and Columbus to lead several successful and not so successful start-up high tech companies. I even managed to set--make that establish--a world speed record in my 1958 Beech Bonanza, largely because no one had ever done it before.

But the problem with success is it makes you think you can do anything so I started an electronic publishing company of my own to buy and index FAA data, as a matter of fact, and put it on CD-ROM.

But it wasn't much fun or very lucrative trying to sell CDs to people that didn't know what a CD-ROM drive was. However, in the process I had the good fortune to hire someone (now my wife and business partner) that understood how to run a business far better than I did. About a year after we started working together I took her for a ride in a biplane, and she signed up for flying lessons the next day. Little did I know how all that would change my life.

Sitting on a cliff near San Francisco we talked about what we wanted to do when we grew up. Fighting dragons in the form of bankers, battling vulture capitalists, and being forced to watch her kiss a lot of frogs in the search for money to survive just wasn't the way we wanted to spend the rest of our lives together.

How 'bout biplane rides we wondered? As a scientist you can guess I don't believe in fate, but just as we talked about a sightseeing business a biplane flew up the beach below us over the surf. We took it to be a sign--conveniently disregarding the more import fact that I'd just sold my biplane because the struggling business needed the money. In the end we started the sightseeing business, as someone observed, 'on a wing without a prayer'

We found another biplane and flew it across the country from San Francisco to Philadelphia without benefit of radios, navigating equipment, or even an intercom. After two years dueling with thunderstorms in the summer and snowstorms in the winter, however, we decided we needed to move...and San Diego was the answer.

- 12 Years as Part 91 Operator
  - *LA Times* 'Favorite Getaway'
  - Travel Channel 'Best Of' Series #1
  - Discovery Channel '101 Things To Do'
  - America West 'Top 10 in California'
  - San Diego 'Above and Beyond' Award
  - 1 of 6 Expedia San Diego attractions
- Biplane, Air Combat & Warbirds
  - Part 91.111 waiver
- Perfect Safety Record
  - "Safety is no accident"
  - 38 no-shows because of auto accidents
  - Excellent rapport with FSDO

IOW, we're not naïve about the realities of business, aviation, and Government




Now, 12 years later, we've managed to support ourselves, a full time mechanic (a former Army Warrant Officer and helo test pilot), an operations manager (a retired Marine full bird Colonel), and 20 part time pilots including such ner-do-wells as the former #2 in command of Navy Test Pilot School, an Air Force pilot with more time in a U-2 than anyone else, a 747-400 Captain, several F/A-18 pilots, an Navy LSO, and two FAA safety counselors. Most of our pilots are CFIs and all of them must have more than 1000 hours or we won't hire them; indeed, several have over 10,000. If you look at our SOP you'll find most of our pilot qualifications and operating standards exceed FAA requirements and the FARs by a wide margin.

Besides two 1920's biplanes, we fly non-aerobatic air combat under a part 91.111 waiver thanks to that SOP which we developed with the advice of the FSDO. We offer aerobatic flights in an SNJ, and a luxury fly/dine experience in a C-45 in cooperation with the Four Seasons Resort--all under part 91, within 25 miles, in good weather (what's the point of going sightseeing if you can't see the sights?), over the same beautiful Southern California landscape and beaches.

We thought about other locations, but after watching a promotional tape from a company for sale in Hawaii with only lava, 12 foot sugar cane thrashing in the trade winds, and an awful lot of water including thumping surf we opted for San Diego with wide beaches, calm winds, and a temperate climate because we knew that "safety is no accident."

Oh, we pushed a Cub into the hangar door, and prop blast from a careless transient aircraft blew one of our biplanes into another aircraft once, but other than that we have a spotless record.

It's interesting to note, by the way, that during the 12 years we've been flying without incident, 38 people no-showed for their flight and we discovered it was because they'd had an accident on the way to the airport. (We have no idea how many had problems getting home, of course.)

Okay, I hope all that proves that we know a thing or two about running a business, about flying and commercial operations, and about working with government.

In fact, I should be specific and say that without exception, *with out exception*, we've never had a bad experience with the folks from the FSDO in Philadelphia or San Diego. That doesn't mean they haven't been on top of what we do and it doesn't mean they haven't been tough if we screw up in spite of our desire to not only comply with but also exceed your requirements. It does mean they have been honest, smart, and, yes...they really were there to help.

One brief story to illustrate: Not long after we moved to San Diego I was in the cockpit preparing to takeoff and an FAA inspector asked to see my licenses and medical. I reached for them and realized I had changed into shorts just before leaving the house and left my wallet behind--the first time ever. His response was, "Look we're all adults here, and you didn't actually fly without your papers. Go get them and don't do let this happen again." I did, and it hasn't.

A few days later he stopped by to follow up, but I wasn't there. He asked Kate if I had my license on me, and she said, "It doesn't really matter; I grounded him for a week. What's good for the goose is good for the gander."

Since then we've worked closely with them, with a great deal of mutual respect, obtained our Air Combat waiver, and last fall when this NPRM came out we started working on single pilot 135 certification for our C-45 strictly as a matter of business risk management (neither of us are interested in "real" jobs if you put us out of business)--but, take note, *nothing* has happened--I found out Wednesday that nothing *will* happen until next month because (and I quote from his email) "we're so short handed struggling to keep up with existing operators"--and because we haven't been able to secure 135 insurance for the aircraft in spite of our spotless record.

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So...you received over 2000 negative comments on the docket that were mostly reasoned and polite, but this process continued. You received huge number of more pointed online public meeting posts, but still you've persisted. Even members of congress have told you in no uncertain terms to get off it. But here I stand.

Let me tell you about a weird experience I had recently that maybe will get the message across in a different way.

I was flying along the coast one day when lightning flashed out of a clear blue sky and I encountered a sudden violent wind shear. I was momentarily stunned, and when I regained my senses there was an FAA inspector standing on the beach with a big sign that said DANGER - WATCH OUT FOR THE EDGE - LAND IMMEDIATELY. Well, I *know* the Earth isn't flat, and I could *see* there was no edge, but I decided I'd better find out what was going on.

I landed and approached the inspector. He had a portable computer and a PowerPoint presentation on it that looked something like this:

## NEW FARs REQUIRED

- Earth Found to be Flat 5 years ago
  - Edge is dangerous!
    - . Not sure where it is
    - . Need help to find it
  - New rules needed!
    - . PMA dragon repellent
    - . Only taxis allowed
    - . Many will drown, that's okay
  - Quick action required




He was adamant that immediate and dramatic action was required to keep people from falling off the edge. He wasn't sure where the edge was exactly, he admitted, and he said he needed my help figuring out how great the danger was, but it was **SERIOUS**. In fact, he said every one near the edge would have to use a taxi from now on--*that* would keep innocent passengers from getting caught by the dragon.

I looked around and still didn't see this precipice, or any dragon devouring maidens for that matter, and pointed out that FAA data showed that only 7 people in 8 years had died in an aircraft like mine (none by falling off the edge of the earth)—in fact,



more people had been killed by garage doors in the same period. Again, he said they didn't have good data, but the NTSB said it was big problem and they had to do something QUICK!

I asked why it had taken 5 years to get around to doing something if it was such an urgent matter, but he'd didn't want to talk about that. I also mentioned I'd seen a recent NTSB document that said they thought his concerns were overstated, but he didn't seem familiar with it.

I pointed out that those people that *had* been killed were no where near the edge--in fact they had been violating existing regulations, and by his own data taxi crashes were more expensive and killed more people...so how was that going to make things safer? He wandered off to check the dragon's airworthiness certificate, and I was left wondering what the furor was really all about.

**IT'S *NOT* FLAT!**

- Inaccurate Data
- Shoddy Analysis
- Bad Conclusions
- Disregard for process

So why *are* we here?




The point to this fairy tale--make that 'nightmare'-- is there's a meta problem here. We shouldn't be trying to figure out where the edge is or what regs should be changed to keep us from falling over. *We should be asking why anyone thinks the earth is flat in the first place!* We should be asking Congress to find out why so many people have been forced to expend so much time, effort and money defending their livelihood when there wasn't a real problem to begin with.

A brief look at your data shows huge flaws. It took me less than 20 minutes to find personal sightseeing flights lumped in with commercial flights and even supposedly safer Part 135 accidents that contaminated the

part 91 statistics. Unbelievably sloppy, careless work. So bad, in fact, many are suspicious that it was malfeasance not just incompetence. I don't know what the explanation is, but *please* don't tell me you didn't know about the bad data!

If bad data isn't enough, the analysis of the data looks like your consultants were given a conclusion and asked for analysis to support it. That analysis left out huge factors that would have significantly swayed the argument such as the financial multiplier effects of companies forced out of business--a basic economic concept. We can't help but wonder if they simply ignored those issues to make their case look better.

Finally, the conclusions were...I don't know what else to call them...surreal. I mean think about it: you analyze some data and conclude along the way that part 135 accidents are more expensive and involve a greater number of fatalities than part 91 flights (you use those exact words in the NPRM), and then in a stroke of genius you recommend converting part 91 operations to part 135? Huh?

Again, let me say I think there's a meta-problem here. It starts with a clear lack of understanding of the sightseeing and air tour industry (you say so yourself over and over in the NPRM) and the fact that you want to lump sightseeing and air tours together just proves it. Do you *really* think a small biplane that takes off in good weather, flies over familiar terrain within 25 miles of home, and then lands back at home base is the same as a multi-million dollar jet that takes off in the middle of the

night, in pouring rain, headed for someplace half way across the country. Do you really think they're in the same business, that their flying risk is the same?

Finally, this whole thing was announced in the Federal Register and the NPRM was released without any industry involvement. What's with that? You've had a working relationship with AOPA, EAA, NATA, GAMA and others for years that could have saved you this embarrassment if you hadn't decided to unilaterally move forward for the first time since when...the '30s?

Then, in spite of requests for public hearings to begin with, and with literally thousands of comments against the proposed changes on the docket, you decided an electronic town meeting is the answer. But it was clear from the beginning you didn't understand that either--the technology or how to use it. There was no give and take (that's what town meeting are all about, after all) and the amazing statement, "Why do we want to regulate you? Because you look like an airline" set the low water mark for this whole process.

Frankly, that was like a girl yelling "Fire" in a crowded theatre. When we challenged the statement, the response was, "I was just trying to encourage participation." That's like the kid in the theatre saying, "I was only trying to liven things up a little."

Actually, things would have been a lot livelier if more than a few of our questions were answered. It might even have been a useful exercise if what few substantive responses you did post had actually been on-line during the time when the forum was available to the public.

I don't want to seem mean-spirited, but it sure appeared that you were trying to make it look like the FAA had actively participated by posting so many replies--but they weren't answers, they were evasions, and they weren't there when the public could see them. It was an outrageous waste of time and money for us all.

So why *are* we here? Thousands of people have spent tens of thousands of non-productive hours dealing with this, and they invested millions of dollars defending themselves from what I have to characterize as an incredibly incompetent piece of staff work supported by a clear lack of management oversight that allowed it to see the light of day, all exceeded only by the failure of leadership demonstrated by the existence of an environment that allowed this to happen at all.

To be honest I'm scared to death that you're sitting there saying to yourself, "Boy he just doesn't get it, he has no idea how hard we worked on this." Actually, I think I'd be happier if you said, "Pfffft, we hardly even thought about this thing."

If you do think I don't get it, then as our Colonel would say, "Lad, what we have here is a failure to co-mun'-icate." To be honest, if that's all it was I'd be a lot less upset. It seems a lot more heinous than that.

What we should be talking about here isn't how high a helicopter should fly, it isn't how big a lake has to be to require the use of a life vest if you fly over it, it isn't whether the 25 mile rule is appropriate. We should be talking about who should be fired for #1 doing such bad staff work, and #2 for allowing this to become an NPRM at all.

If you haven't already figured it out, I'm here to make it very clear that I think this NPRM should be withdrawn. I'm also here to make it clear that if it isn't, I intend to take whatever steps are necessary

to see that congressional hearings occur to get to the bottom of this mess. You are threatening our livelihood, and the livelihood of our employees, and that's not something we take lightly.

So, no, I'm not pleased to have the opportunity to speak here to day as other speakers have said. I'm angry as hell that I had to be here, that I had to take the time and spend the money to come here because you've been so flagrantly wasting the public's tax dollars—*my tax dollars*.

We work very closely with the folks at the San Diego FSDO and without exception they're bright, hardworking--make that overworked--and professional, and they 'don't cut us no slack,' and that does help us fly safer. This debacle on the other hand really makes me worry about the future of aviation in America. It makes me worry that what we're seeing here is another example of how we've lost those old fashioned values of working hard, doing what's right, and taking personal responsibility.

In fact, there's a rumor going around that this whole travesty is just about performance based management and an attempt to improve the 135 accident statistics by rolling in the much better part 91 numbers. But I don't think you're really that stupid.

I think you're smart enough to realize that things got off on the wrong foot somehow and you need to pull this NPRM and get the numbers. If you do that, if you decide to take a rational look at the sightseeing and air tour industry to see if there's *really* a problem; and if there is, and if you decide to look for reasonable solutions, you can count on us to help however we can. That's not philanthropy, by the way, that's pure self-interest. If we do this right it will be more profitable and more fun because it will be safer.



Believe me, we will admire you a lot more if you have the character to drop this instead of trying to save face and push on. Just get your ducks in a row and then let's revisit this issue if the facts justify it.

By the way this guy understands, as we do, that getting all us ducks in a row is a challenge--we really do understand the difficulty of your problem.

We're all too aware that he *also* seems to understand the "speak softly and carry a big stick" concept. We hope you have sense enough to use it carefully in the public's best interest, not just the FAA's.

Be careful you don't kill the duck that lays your golden eggs.