

INTRODUCTION

USHPA Board Members,

I have read the list of charges included in the Martin Palmaz letter dated March 20th, 2015. I have provided a written response to each of those charges by the numbers below with additional follow-on information. I have also received a second letter from Richard Hass on April 14th, 2015. The charges listed in the second letter were not sent in a timely manner so that I would have them within the required 10 days before the scheduled hearing on April 22nd. I asked Mr. Hass and Mr. Palmaz for a postponement of this hearing until the first week in May (ideally May 6th) so that I might address those additional charges, but Mr. Hass refused to grant me the requested postponement. Additionally, Mr. Hass responded to my request for postponement (see attached messages) by stating:

“While the memo provides additional detail to the claims already of record as you requested; it doesn’t add any new claims. ”

Similarly, on the Oz Report Forum, I asserted to Mr. Forbes a need for more time to address the recently added second letter, and he replied on April 16th, 2015 with this statement:

“There was nothing new in the most recent communication to him, just an emphasis on the questions that will be asked and a request that he come up with credible answers (if such there are) for those questions.”

I believe that both of these statements are false, and I believe that there are explicitly new accusations and new questions in the second letter. However, since they were not presented in a timely manner, and since both Richard Hass and Mark Forbes assert that there is no new material in them, and since I was not granted the requested postponement to address them, I will confine my responses to the original Martin Palmaz letter of March 20th, 2015. The same is true of any additional materials that were offered to me via USHPA's web site on April 15th or any later date. I simply have not been given sufficient time to review all those additional materials and provide a response. If USHPA wishes to introduce items from the second letter or from USHPA's web site, then I am again requesting a postponement of my required response to May 6th, 2015.

In the event that USHPA decides to proceed with the expulsion hearing on April 22nd, 2015 without providing the requested postponement, I choose to make the proceedings open to all members and I will attend in the capacity of an observing member. I hereby ask that this document be distributed to all Directors in advance of the meeting, and that the video evidence mentioned in this document be viewed by all Directors at the meeting. Anyone listening from home may simultaneously view the videos from the web. And finally, I ask that one of the Directors most favorable to my efforts read this entire document as my statement to the Board.

Sincerely,
Bob Kuczewski
USHPA #81898

Video Evidence

The following videos (available at USHawks.org) are included in this response:

November 9th Incident: <http://ushawks.org/forum/viewtopic.php?f=2&t=1629&start=330#p11400>

Tandem Violation: <http://ushawks.org/forum/viewtopic.php?f=2&t=1629&start=330#p11402>

ANSWERS TO CHARGES BY THE NUMBERS

Let me start by the numbers. I will list the number of each charge from the Martin Palmaz letter of March 20th, 2015. I will immediately follow each number with “True” or “False” or “Not a violation”. The meanings of these are as follows:

True – The charge is factual in supporting my expulsion from USHPA.

False – The charge is false and does not support my expulsion from USHPA.

Not a violation – The charge itself is not a violation of any known rule, SOP, or Bylaw.

I will then follow each item with a brief description stating the facts as I know them.

1. Not a violation – Creating national hang gliding associations is not a violation of any USHPA SOP that I have ever read or has ever been presented to me (see Anti-Trust laws of United States).
2. False – I have not endangered the safety of anyone at Torrey Pines.
 - 2a. False – I have not disrupted the training of students at Torrey Pines.
 - 2b. False – I have not disrupted training of students at Torrey Pines.
 - 2c. Not a violation – There is no rule prohibiting pilots from being on the field at Torrey Pines.
 - 2d. Not a violation – There is no rule prohibiting pilots from being on the field at Torrey Pines.
3. False – I have not endangered the Torrey Pines Gliderport.
4. False – I have not made misstatements or misrepresentations to the City Council.
5. False – I have not misrepresented my relationship with USHPA to the City Council.
6. False – I absolutely believe those pictures of Gabe Jebb prompted the SOP change.
7. False – I have not published false or misleading statements about USHPA.
8. False – I have not misrepresented my qualifications to serve as an expert witness.
 - 8a. False – I have not misrepresented my paragliding experience.
 - 8b. False – I have not misrepresented my hang gliding experience.
 - 8c. False – I have not misrepresented my duties as a USHPA Regional Director.
9. False – I have not made misrepresentations as an expert witness.
 - 9a. False – I have personally witnessed at least 2 such collisions at Torrey Pines.
 - 9b. False – My statements were made with respect to the top landing area since that was the area where the accident took place. The restriction is based on physical size of the LZ, obstructions on the the LZ, gliders on the ground in the LZ, students being trained on the LZ, and traffic on the LZ.
 - 9c. False – The Torrey Pines landing zone is technically challenging for a variety of reasons including traffic in the air, kiting on the ground, instruction on the ground, spectators and bystanders in the LZ, multiple approach patterns, multiple aircraft types (HG, PG, RC, and sometimes sailplanes), complex wind patterns, potential rotor, and many other reasons.
 - 9d. False – Minimum flight hours are a component of USHPA ratings which are used to rate sites.
 - 9e. False – Minimum site ratings is a common practice. Sometimes that rating is “No rating”.

- 9f. False – USHPA SOPs for P1 (12-02.13): “A Beginner pilot has the knowledge and basic skills necessary to fly and practice under direct instructor supervision and within significant operating limitations.” The phrase “direct instructor supervision” clearly implies a method of communication by which the instructor may provide supervision. For sites like Dockweiler, this might be direct verbal communication. For sites like Torrey, Sylmar, Crestline, this is typically via direct communication via radio.
- 9g. False – I have watched the video and there were numerous gliders in the air and on the ground that day. It was a particularly good day as evidenced by the antics of tandem pilots Brad Geary and Max Marien. Furthermore, the fact that the two students collided while under instructor supervision is prima facie evidence that it was crowded enough for a collision.
- 9h. False – Allowing students to fly on a crowded day with ratings 2 or 3 levels below the site rating without direct supervision is an extreme departure from standard practice.
- 9i. False – The Torrey Pines Gliderport is rated as H4/P3 for a variety of reasons. Students without the required rating should only fly in uncrowded conditions and under direct radio supervision.
- 9j. False – All instruction of students must provide a reasonable “buffer” between each student and all other aircraft. The distance of the “buffer” must be based on the glider's speed, and the maximum expected time that it will take the student to control their glider or respond to commands. Any distance less than that is an accident waiting to happen.
- 9k. False – Every site must have rules (either explicit or implicit) to maintain safe separation between aircraft on approach and landing.
- 9l. False – I did not imply that multiple gliders could not land safely at Torrey Pines given pilots with the proper level of expertise.
- 9m. False – It does require extreme vigilance and concentration to safely monitor and guide a student who lacks the skills and ratings required to fly in the ambient conditions. When those ambient conditions include crowding, the difficulty for the instructor does increase exponentially. Indeed, when crowding is severe, there is no amount of instructor vigilance or concentration which can keep the student safe.
- 9n. False – Any distraction of the instructor (including from illness) represents a significant increase in risk to any student requiring guidance in the air.
- 9o. False – It is improper to allow pilots to exercise the privileges of any rating without having completed all the requirements and documents needed to obtain the rating.

GENERAL DISCUSSION BY CATEGORY

In addition to answering each charge “by the numbers” (above) I'd like to add some additional comments to each group of similar charges.

US Hawks

I have examined the USHPA documents, and I have not found any USHPA rule against creating competing organizations. Furthermore, since USHPA is effectively a monopoly, any threat to expel me for this particular charge is likely a violation of Anti-Trust laws. I have learned that someone has contacted the United States Department of Justice on this matter, and I have no further comment at this time.

Torrey Pines

The charges related to my "disruption" of instruction and being in an "active airfield restricted area" are all false. Those were the claims that Robin Marien used to try to convince the Judge (who had no experience in hang gliding or paragliding) that Torrey Pines was effectively equivalent to LAX airport. The “prosecution” (Robin Marien and his lawyer) presented their case for at least 6 days over the course of 4 months. During that entire time, they controlled the calling of witnesses and the direct questioning of those witnesses. They rested their case 1 hour before the end of the final day of the trial. So any statements made by the Judge up to that time were made without hearing a word of our formal defense case.

The reason that we were only given 1 hour to present our defense was evident in the Judge's final ruling. Robin Marien and his long list of witnesses had failed to show any evidence of violence or threats of violence or stalking or any other conduct required to sustain their request for a workplace violence restraining order against me. At that point, the Judge really didn't need to hear much of our defense, and in the interests of saving time and expense (for everyone) she severely limited our presentation of witnesses and facts. In particular, she allowed almost no testimony directed at establishing pilots' rights to use the site if they did not directly address the issue of workplace violence.

Even so, in the Judge's final ruling she wrote:

“Petitioner [Robin Marien and Air California Adventure] agrees that Respondent [Bob Kuczewski], being a pilot , has a right to be in the restricted area.”

She went on to say:

“there is no indication that Respondent [Bob Kuczewski] has caused harm or intends to cause harm to any of Petitioner's employees. Under California law Civil Code Sec. 1708.8, it is not per se illegal for someone to film another in a public place regardless of whether there is a physical trespass or not ... (Civ. Code, section 1708.8). Use of the camera in a public forum is clearly acceptable but they cannot be used to harass or invade the privacy of another. Petitioner has not proven that Respondent has violated any privacy laws.”

She further went on to say:

“none of the facts seem to support the conclusion that anything he [Bob Kuczewski] is doing is illegal”

She concluded with:

“The temporary restraining order is therefore denied and dismissed.”

Now there can be many different interpretations of what the Judge said (and I'm sure there will be), but her final ruling was definitive and unambiguous. The order was denied and dismissed. In other words, Robin Marien, and Gabriel Jebb, and Danielle Kinch, and their whole crew had falsely accused me of doing something that I had not done. That speaks volumes. That ruling clearly casts doubt on any of the past, present, and future claims made by Robin Marien and his “crew” against me. So any accusations by Robin Marien or any of his employees or associates must be viewed in light of them making false accusations which were not upheld in a court of law.

The take away message from this – for USHPA – is that when evaluating conflicting claims between Robin Marien and myself, I have earned and deserve the benefit of the doubt. I add this “benefit of doubt” to the already implied presumption of innocence and ask that all of the charges based on allegations by Robin Marien or his “crew” be dismissed by USHPA. These include charges 2, 2a, 2b, 2c, 2d, 2e, and 3.

As additional supporting material, I direct the USHPA Board to the photographic and video evidence in the topic titled “Jailed for taking pictures at Torrey” available at:

<http://ushawks.org/forum/viewtopic.php?f=2&t=1629>

In addition to the photos and video of the event, that topic also contains a full transcript of the event.

City Council

I stand behind all of my statements to the San Diego City Council. In several years of speeches, it wouldn't surprise me if I had made a mistake somewhere, and I'd be happy to review any specific statement that USHPA has a problem with. But so far, USHPA hasn't shown one statement that I've made to the City Council that is false or a misrepresentation of anything. I may speculate or ask rhetorical questions when presenting to the City Council, but I do not make false statements or statements that are misrepresentations.

The Palmaz letter does call out my statements that the USHPA helmet SOP change was based on the November 9th incident with Gabe Jebb. I firmly believe my representation to the City Council was correct, and I have yet to see any evidence from USHPA (or anyone else) to the contrary. The old helmet SOP had been in place for years, and yet within weeks of my filming and publishing of Gabe Jebb's poor example, the USHPA EC "coincidentally" felt the need to change that SOP ... *between USHPA Board Meetings*? Furthermore, Rich Hass specifically wrote an unsolicited letter to me telling me about that particular SOP change. Why would he do that if the SOP change was completely independent of that incident?

USHPA

There's only one charge in this category: "Repeated publication of false and misleading statements concerning USHPA, its officers and its directors."

Again, there have been no specifics provided. Instead, I expect Tim Herr will dredge up some obscure error I've made somewhere in the last 10 years or cite my improper spelling of "USHPA" as a "false or misleading statement". If there's something that USHPA feels I've published that's in error, then the proper procedure is to cite that specific publication and communicate a request for correction. To date, USHPA has failed to make any such a request.

I stand fully behind my primary criticisms of USHPA:

1. Failure to act responsibly regarding the problems at Torrey Pines.
2. Failure to support a balanced Soaring Council as per USHPA's Spring 2010 Board Resolution.
3. Arbitrarily deciding who can attend or cannot attend Executive Committee meetings.
4. Failure to provide open and accountable voting records by the Board. Note that the Board's recent practice of reporting "unanimous" votes does not satisfy this requirement because it does not give members an unambiguous voting record for each Director. Members cannot tell if a particular Director simply failed to vote or may not have even been in the room. Several years ago I had a fairly detailed discussion about this problem with Director Bolosky (see attached email from Bill Bolosky). Mr. Bolosky was attempting to remedy this problem by keeping an accurate accounting of which Directors entered or exited the room so absent Directors could be tracked. However, even if such a system were implemented, it would not account for Directors who either failed to vote or later claimed to fail to vote. The bottom line is that even to this day (as evidenced by the Board's most recent minutes) there is no unambiguous way for members to tell which Directors voted for which measures.

Expert Witness in Hamby Case

This category of charges includes claims that I've misrepresented my hang gliding experience or my paragliding experience or my duties as a Regional Director. As mentioned in the introduction, I have have requested the specific statements that USHPA is claiming that I've made. USHPA has not responded in a timely manner with any specific statements despite my repeated requests. Unless shown otherwise, I believe the description of my experience and/or duties in those capacities was properly represented. In particular, my duties as a Regional Director were taken Directly from the USHPA SOPs that defined them.

Testimony in Hamby Case

This category of charges is USHPA's (and Tim Herr's) attempt to either punish me or get me to recant my testimony in a case where a young woman was injured while under radio instruction with a Torrey Pines instructor. As listed by the numbers (above), I stand behind all of the statements made in that testimony.

As background for this discussion, I direct the USHPA Board to the video evidence in the topic titled "Jailed for taking pictures at Torrey" available at:

<http://ushawks.org/forum/viewtopic.php?f=2&t=1629>

That video shows not only the incident itself but a subsequent flight by two Torrey Pines Tandem instructors (Brad Geary and Max Marien) each with a child passenger engaging in stunts that clearly threaten USHPA's FAA tandem exemption and possibly the FAA's view of our ability to be "self-regulated" sports under USHPA's domination. This is particularly troubling given the recent events at Jean Lake.

With regard to the ratings allegations, Torrey Pines is rated and enforced as an H4/P3 site. The primary usefulness of USHPA ratings lies in their ability to match pilot skill levels with site requirements. So if a site is rated as "P3" that clearly means that someone has determined that P0, P1, and P2 pilots do NOT possess the skills needed to safely fly that site under commonly occurring or commonly expected conditions. Furthermore, the USHPA SOPs state very clearly the "Recommended Operating Limitations" for each rating:

P0: "It is highly recommended that all flights be made under the direct supervision of a USHPA Certified Basic or Advanced Instructor. "

P1: "It is highly recommended that all flights be made under the direct supervision of a USHPA Certified Basic or Advanced Paragliding Instructor. " "Should fly appropriate sites for this skill level."

Both of those use the phrase "under the direct supervision" of a USHPA instructor. The word "direct" is very clear. If you look up the word "direct" at wiktionary.org, you'll find that its first definition is:

1. Straight, constant, without interruption. (<https://en.wiktionary.org/wiki/direct>)

In other words, both the P0 and P1 rating come with a USHPA Recommended Limitation that ALL flights be conducted under the straight, constant, and uninterrupted supervision of a USHPA instructor.

Furthermore, it is either stated (P1) or implied as obvious (P0) that pilots must fly appropriate sites for their rated skill level. Again, what other relationship could we assign between pilot ratings and site ratings?

The Torrey Pines Gliderport has been rated as a "P3" site for at least 10 years. Now we all know that instructors can use their judgment to allow pilots with less of a rating to fly at a site with a higher rating. But such an exception places the burden on the instructor to ensure that all such rating exceptions are conducted safely. It cannot be the student's responsibility because the student has already been determined not to possess the skill and judgment to fly the site. When an instructor allows a student to fly at a site above the student's rating, the instructor is using the instructor's own judgment (on conditions, weather, crowding, etc) to "make up the difference" between the student's own skills and the skills needed to fly the site safely. Again, there can be no other relationship that makes sense.

That explanation formed the core of my testimony in the Hamby case, and I stand firmly behind it. The bulk of the March 20th Palmaz letter (items 9a through 9o) attempts to discredit that core by attacking a number of my related statements. I have addressed them all in my "by the numbers" response above and I stand behind those statements as well.

USHPA's Purpose

As mentioned earlier, I have requested the citation for any specific USHPA bylaws or SOPs that I've been accused of violating. So far the only response has been Bylaws Section 4 paragraph iv:

Expulsion of the member based on the good faith determination by the Board of Directors or a committee designated to make such determination that the member has failed in a material and serious degree to observe the rules of conduct governing this corporation as promulgated by the Board from time to time or has engaged in conduct materially and seriously prejudicial to the purposes and interests of the corporation.

Since no rules of conduct have been cited, this leaves the only remaining clause to be:

“has engaged in conduct materially and seriously prejudicial to the purposes and interests of the corporation.”

This brings up the question of what are the purposes and interests of the Corporation. Article I Section 2 of the Bylaws state this:

“The primary purposes of the Association are to engage in the development, study and use of hang gliders and the sport of hang gliding; to make available and disseminate knowledge about hang gliders and hang gliding; to promote the organization of meets and competition for the flying of hang gliders; to select pilots for national and international competition; to promote the training and rating of students interested in learning the art of hang gliding; and to promote safety and safe flying practices. As used in these Bylaws, the term “hang gliding” encompasses all fuel-less flight systems and aircraft capable of being launched by human power alone.”

My actions over the past 7 years have been in perfect alignment with those stated purposes. Let me list a few that come to mind:

1. Creation of the Torrey Hawks Hang Gliding Club in 2007.
2. Creation of the US Hawks Hang Gliding Association in 2010.
3. Assistance in creating and promoting new USHPA Chapters in the United States.
4. Design and use of “Little Hawk” as an outreach tool for the general public.
5. Efforts to provide oversight at Torrey Pines to promote the fair use of hang gliders.
6. Efforts to provide oversight at Torrey Pines to promote safety and safe flying practices.
7. Efforts to obtain site insurance at Torrey Pines to further ensure our continued use of that site.
8. Efforts to promote hang gliding by honoring our history via the ongoing Otto meets.

I'm sure that's not the full list, and you can find more at the US Hawks web site <http://ushawks.org>.

Furthermore, and more to the point, it remains to be seen whether the actions that USHPA is claiming are “prejudicial to the purposes and interests of the corporation” might indeed turn out to be exactly what the corporation (and the sport in general) needs most right now. It could be easily argued that my efforts to obtain oversight at Torrey Pines would have prevented the Hamby accident by putting the concessionaire under closer scrutiny. It could easily be argued that my efforts at oversight might have

prevented the obscene abuse of the FAA's tandem exemption demonstrated by the Brad Geary and Max Marien flights shown on the video. In other words, there is no clear or “materially” evident conclusion whether my actions are prejudicial to the corporation or in its best interests. Indeed, USHPA member #5, Joe Faust has publicly called for Presidential awards for my efforts. While I wouldn't go so far as to justify that at this time, Joe makes the very clear point that the view of my actions is highly subjective.

Conclusion

In conclusion, I assert that I have not violated any of the SOPs, Bylaws, or any other rules of USHPA that would justify my expulsion. I hereby request that this hearing make that determination. The Presidential Citation can come later.

From: Richard Hass <richhass@comcast.net>
To: Bob Kuczewski <bobkuczewski@gmail.com>
Cc: Martin Palmaz <martin@ushpa.aero>
Subject: Re: Request for Materials and Time for Review
Date: 04/16/2015 09:58:43 AM

In response to your request for additional time, you are reminded; you were given 33 days notice from the date of Martin's notice. USHPA bylaws require 10 days notice (15 days notice of the expulsion date minus 5 days between the hearing and the expulsion date). You have already been given 3X the required advance notice.

Although USHPA believes Martin's letter satisfies the notice requirements and provides sufficient detail in order for you to respond to the claims, USHPA provided you with considerably more detail in the memo you received earlier this week. While the memo provides additional detail to the claims already of record as you requested; it doesn't add any new claims.

USHPA believes you have been given more than adequate time to prepare your response. Accordingly, USHPA will adhere to the April 22nd scheduled hearing date and deadlines previously established.

Mgforbes

Thu, Apr 16 2015, 9:29:56 pm

Nothing to fear (except bagpipes)

Bob's already had three times the required notice. There was nothing new in the most recent communication to him, just an emphasis on the questions that will be asked and a request that he come up with credible answers (if such there are) for those questions. He has had PLENTY of time. I said up at the top of this thread, weeks ago, that he needed to focus on making his case to the board of directors, instead of trying to stir up "popular support" for his cause. Apparently he has not taken that advice.

We don't want to drag this on forever. My personal opinion is that Bob's stalling, and he can continue stalling right up to the hearing next Wednesday. After that the board will consider what he has to say for himself and make a final decision on whether to expel him. If he has cogent arguments for why his behavior has not been materially and seriously prejudicial to USHPA and its interests, then he can make those arguments to the board. I'm sure that among the many pages he has written here he can come up with some excerpts to support his position.

If Bob can come up with some convincing arguments in his favor, I will take careful note of them as I make my own decision on his expulsion. I'm sure that other BOD members will do likewise. It is the board's job to determine what is, and what is not, action prejudicial to USHPA and its interests. That's a subjective determination, not a bright-line reading of some clause in an SOP. That is what the board is charged to do, under our Bylaws and under California corporate law. It is one of the responsibilities and duties that we accept when we are elected *by the members* to serve as directors. The members have delegated to us the task of managing the association, which on occasion includes disciplinary actions against individual members.

The Bylaws have been that way since USHPA was founded. This is not some sort of unusual language written into them to "get" BobK. Private membership associations, of which USHPA is one, have the right and the duty to determine whether someone is fit for membership, and the duty to deny membership or expel a member if they decide a person does not meet their standards. Those can include subjective standards such as taking actions which cause harm to the Association, *as determined by the board*.

To take an absurd example, if the board decided that I was harming USHPA by playing bagpipes outside the office in Colorado, they could vote to expel me from USHPA. "We can't get the membership cards processed with all that caterwauling going on!" That's materially and seriously prejudicial (in an absurd sense) because it causes expense and annoyance to our staff (earplugs, etc) and interferes with our ability to provide member services. The office staff would have already asked me politely to stop, and I would have refused. (And played even louder.) The board would have asked me to go somewhere else, and I would have loudly proclaimed that it's a public sidewalk and they can't keep me from practicing there. The police would have been called, and asked me nicely to move along, and maybe even cited me with a noise complaint after a repeat performance. And the next day, I'd be right back there again making a racket outside Beth's window, "asserting my rights as a citizen". Eventually a restraining order would be filed, USHPA's board would vote to expel me, and I'd either get arrested and jailed for violating the order or I'd finally go elsewhere. And then Beth could get some peace and quiet, at last.

I've always wanted to learn to play the bagpipes...

MGF

From: Bill Bolosky <bolosky@microsoft.com>
To: Bob Kuczewski <bobkuczewski@gmail.com>
Subject: RE: USHPA Voting
Date: Fri, 24 May 2013 17:05:33 +0000

:

We had a long discussion about recording votes at the beginning of the meeting. Roughly two things happened. First, Dave Broyles brought a motion that would have prevented me from recording the names of any voting directors unless I was required to do so by the rules. If it had passed, I wouldn't have been able to record the names of people voting no on a voice motion, for example. I brought a motion to have Dave's motion voted on by roll call, which passed. So the roll call vote you see at the beginning of the minutes shows the five directors who wanted to make it harder to record people's names.

We then went on to discussing my idea of keeping track of the people who came and went. Somehow this managed to get to a final vote before I was able to make a motion to use a roll call (which I suspect was mostly my fault rather than a scheme by Rich or anything). There were a total of 20 directors at the meeting (more showed up later). Dan Tomlinson had left the room, so there were 19 voting. It tied at 9-9, which left the president to break the tie. He voted no, and that was that. I'm really sorry that I didn't get the roll call motion in for this vote, it was a big mistake. So, roughly, you know five of the 10 people who voted no: the five who voted yes on Broyles' motion, minus Tomlinson plus Hass. I know that Mark and I voted yes. What I don't know (and again apologize for) is who the other five were.

--B