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GREG REIGEL

President's Message

by
Jim Waldon

Our next conference location is set. We have chosen Seattle, Washington as the location, April 27 - 30, 2016 as the date, and the historic Edgewater Hotel as the hotel. We are in the process of developing our speaker itinerary. We are excited about this location and look forward to seeing you all there. The discounted room rate will be available for four days before and after the conference for those of you wanting to make a vacation out of your trip.

A few of the extracurricular activities available are:

- A tour of Boeing
- A trip the Museum of Flight
- An Argosy cruise to Tillicum Village on Blake Island - The Northwest's version of a Luau
- Pike Place Market
- The Waterfront
- The Space Needle

Our Seattle conference will focus on:

- Recent Regulatory Changes
- Emerging Technologies
- Private Aviation
- Other Transportation Areas - Trains and Boats and Cars and such

As most of us know, the FAA has recently changed their focus regarding enforcement actions. This has caused us to look at where we as a group are focused. One area we would like to expand is non-aviation transportation. Another area we will be focusing on is emerging technologies like UAVs and automation. However, we will continue to focus on regulatory and private aviation litigation. We are excited about these adjustments and think that these changes will appeal to a larger audience.

I mentioned in my first article that we are focused on growing the group and that I would provide membership count updates. We are currently at 155 members and growing.

So, as the leaves begin to change this fall keep in mind that our conference is just around the corner. We are currently finalizing the agenda, looking for sponsors and praying for sunny skies! Enjoy your fall and we will see you in Seattle in the Spring!

Jim Waldon
President, IATSBA



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Editor's Column

by
Greg Reigel



GREG REIGEL is a partner with the law firm of Shackelford, Bowen, McKinley and Norton, LLP in Dallas, Texas. He has more than two decades of experience working with airlines, charter companies, fixed base operators, airports, repair stations, pilots, mechanics, and other aviation businesses in aircraft purchase and sale transactions, regulatory compliance including hazmat and drug and alcohol testing, contract negotiation, airport grant assurances, airport leasing, aircraft related agreements, wet leasing, dry leasing, FAA certificate and civil penalty actions and general aviation and business law matters. Greg also has extensive experience teaching the next generation of aviation and legal professionals including in such courses as aviation law, aviation transactions, aviation security, business law and trial advocacy. Greg holds a commercial pilot certificate (single-engine land, single-sea and multi-engine land) with an instrument rating.

As I sit enjoying the warm, fall weather here in Texas, I know many of you have already experienced the changing, and falling, of the leaves, as well as the brisk (maybe even “cold”) mornings signaling the coming of winter. Although “fall” weather will also arrive here at some point, I have to say I don’t mind waiting longer for that transition. And with the change of seasons, we are also experiencing changes in the aviation industry and our bar association.

The FAA’s new enforcement philosophy appears to be trickling down through the agency resulting in fewer legal enforcement actions. This is, in my opinion, a good thing - for certificate holders as well as aviation safety in general, even though it may mean less legal enforcement work for members of our bar. Change is also in the air for our bar association. We have new leadership and we are growing, both in membership and in response to the changes in our industry.

But, amidst this change we have the “constant” of yet another interesting and informative edition of the IATSBA Reporter. In this edition our President, Jim Waldon, gives us an update on his goal to increase our organization’s reach and membership. He also provides preliminary “teaser” information regarding our conference next spring in Seattle, Washington from April 27-30. In addition to a new location with outstanding options for “extra-curricular activities”, the conference is sure to include the exceptional speakers and educational presentations we have all come to appreciate. Make sure to save the dates now.

Next, John Yodice, discusses several recent NTSB decisions in FAA enforcement actions highlighting the

Board’s strict application of its deadlines in appeals and the exceptionally high bar for establishing “good cause” for a delay. From the NTSB, Tracy White analyzes two recent cases in which two Federal courts vacated the Board’s decisions in enforcement matters and remanded them to the Board for further proceedings. We have also included information on an upcoming training program the Board will be conducting March 29-30, 2017 called “NTSB Investigations: What Legal Professionals Need to Know.”

We also have an article from the new chair of our Emerging Leaders section, Sean Barry. Sean and Gary Halbert, one of our past-presidents, explain what organizations and their counsel can do to prepare contingency plans for use in the event of an aviation accident or incident. Good stuff.

Finally, and on a lighter note, this edition of the Reporter includes two book reviews written by two of our members. Kevin Durkin reviews a new legal/military/aviation thriller, *Broken Eagle*, by fellow member James T. Crouse. And Justin Green, our immediate past-president, discusses the non-fiction book *The Crash Detectives*, by Christine Negroni.

As always, if you would like to submit an article but you have questions regarding topic, availability etc., please feel free to contact me. I will be happy to answer questions and help you through the process. Or if you have an announcement, news, a press release or an event you would like to share with other IATSBA members, please send me the details so we can include your information in the Reporter

I hope you enjoy this edition of the IATSBA Reporter.

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This column is intended as an aid to practitioners to help keep abreast of recent developments in the law and procedures governing Federal Aviation Administration enforcement actions and medical certification. Your comments and suggestions are welcome.

NTSB PROCEDURE: FAILURE TO ANSWER FAA COMPLAINT RESULTS IN DENIAL OF APPEAL

The NTSB continues to be strict on adherence to the procedural time limits in its rules of practice. Counsel familiar with more reasonable treatment in other forums should not be misled. In this case, the FAA ordered the suspension of a pilot's commercial certificate for 185 days for operating a glider below the minimum safe altitudes prescribed in FAR §91.303. The pilot timely filed an appeal of the FAA order with the NTSB. In routine fashion, the FAA filed its order with the NTSB as its complaint (a point of confusion for respondent's counsel is that the FAA's filing is not styled a "complaint" but still says it is an "order.")

The NTSB Office of Administrative Law Judges then sent a letter to the pilot warning the pilot of the necessity of the timely filing of an answer to the FAA's complaint (order). The pilot, who appeared *pro se*, filed his answer almost a month late. The FAA filed a Motion to Deem the Allegations Admitted and for Judgment on the Pleadings. The pilot asked the NTSB judge to overlook the untimely filing of his answer, saying that the letter had fallen behind his desk, unopened. The law judge granted the FAA motion, holding that the misplacement of the

letter from the law judge's office did not amount to good cause for the late filing. The judge affirmed the FAA order of suspension.

The pilot, now represented by counsel, appealed to the full five-member NTSB asking the Board to consider deviating from strict adherence to the Rules of Practice, citing to Rule 60(b) of the Federal Rules of Civil Procedure (note that the Pilot's Bill of Rights states that the FRCP are to be followed to the extent they are "consistent with sound administrative practice.") Rule 60(b) states, "on motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceedings," for various reasons, such as: mistake, inadvertence, surprise, or excusable neglect; the existence of newly discovered evidence; fraud; a void or vacated judgment; or any other reason that justifies relief. Notwithstanding this argument, the Board denied the appeal, citing to its "longstanding jurisprudence for stringent adherence to deadlines. The Board has held that incorrectly calculating a deadline will not fulfill the good cause standard." *Administrator v. Rohrbach*, NTSB Order No. EA-5753 (2015).

To the same effect in a separate case, the Board denied a pilot's appeal, and affirmed a 225-day suspension of the pilot's commercial certificate. The pilot was charged with operating a Robinson R44 on four separate flights along the coast in southern California only 10-30 feet above the shore containing beachgoers. The pilot timely appealed the suspension to the NTSB but filed his answer more than a month late. The NTSB judge granted the FAA's motion to deem the allegations admitted, and then granted the FAA's motion for judgment on the pleadings.

On appeal to the full Board, the pilot asked the Board to deviate from its

long-held practice of requiring a timely answer, urging that "inadvertence or mistake is understandable." The pilot also argued that the FAA should have produced evidence such as affidavits, exhibits, or testimony in support of its case. The Board held: "We will not accept late-filed answers, motions, or pleadings unless the party requesting our acceptance of the untimely document articulates good cause for the delay...The absence of exhibits or other evidence attached to the Administrator's complaint fails to amount to good cause to excuse respondent's delay in filing a timely answer." *Administrator v. Jimenez*, NTSB Order No. EA-5755.



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NTSB General Counsel

by:
Tracy M. White

The month of August saw two Federal courts vacate the Board's decisions in enforcement matters and remand them to the Board for further proceedings. Most recently, the U.S. District Court for the Western District of Texas vacated the Board's decision and remanded the case for further proceedings in the matter of *Langford v. Huerta*, No. MO-CV-00006 (August 9, 2016). In its decision, the District Court found that the Board made arbitrary and capricious findings and abused its discretion by relying on uncharged conduct and allegations in affirming the law judge's decision on remand. This marks the second time the District Court has remanded this matter to the Board.

On August 4, 2016, in the matter of *Boeta v. Federal Aviation Administration*, --- F.3d ----, 2016 WL 4150903, the United States Court of Appeals for the Fifth Circuit reversed the Board's determination that Boeta's conduct was not inadvertent and, therefore, that he was not entitled to a waiver of sanction pursuant to the Federal Aviation Administration's (FAA) Aviation Safety Reporting Program (ASRP). The Court of Appeals disagreed with the Board and found that the record established that Boeta's conduct was inadvertent and that he was entitled to a waiver of sanction under the ASRP. Therefore, the Court of Appeals determined the Board's rejection of Boeta's waiver of sanction defense was arbitrary and capricious as a matter of law.

Langford v. Huerta

On October 12, 2009, Langford was pilot-in-command of a Lear 45 and operated the aircraft on a repositioning flight at Midland Airpark in Midland, Texas. After landing the Learjet on runway 25, Langford and his co-pilot vacated runway 25 by first turning left onto runway 16 and then turning eastbound onto taxiway Echo. A flight instructor and a student pilot were in a Cessna 172 facing north on taxiway Bravo, and were holding short of the runway awaiting clearance from air traffic control. Taxiway Bravo is parallel to runway 16 and perpendicular to taxiway Echo.

In this position, the Cessna blocked Langford's taxi route back to his parking position near the midpoint of runway 16 along taxiway Bravo. Consequently, Langford requested that the flight instructor switch places with him, but the instructor declined the request. The instructor then heard the Learjet's engines "spool up" as Langford turned onto taxiway Bravo in front of the Cessna with the Learjet's tail facing the Cessna's nose. Langford then accelerated the Learjet's engines while applying the brakes resulting in a jet blast that the instructor and student pilot testified made the Cessna shake vigorously as the student pilot pushed forward the control yoke to hold the nose landing gear of the Cessna on the ground. Langford's maneuver left skid marks in a straight line away from the Cessna. The instructor and student were not harmed and the Cessna was

TRACY M. WHITE joined the Office of General Counsel in 2014. Ms. White handles cases on the Board's enforcement docket and serves as the attorney overseeing employment law matters. Prior to joining the Board, Ms. White was an attorney with the Federal Highway Administration (FHWA), a modal administration of the U.S. Department of Transportation, where she handled environmental and right-of-way litigation and provided guidance to FHWA field offices on Federal statutory and regulatory requirements involved in administering the Federal-aid Highways Program. Ms. White is a former U.S. Department of Transportation Honors Attorney.

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not damaged. The Cessna departed Taxiway 16 after receiving clearance.

On October 7, 2010, FAA issued an order suspending Langford's ATP certificate for a period of 90 days. FAA's order alleged Langford violated 14 C.F.R. § 91.13(a) on the basis that his actions were reckless in that they endangered instructor's and student's lives as well as the Cessna they piloted.

Langford appealed FAA's order, and an NTSB law judge affirmed the suspension on June 14, 2011. The Board, however, remanded the case to the law judge on April 12, 2012 for credibility determinations. NTSB Order No EA-5625 (2012). The law judge issued a decisional order on remand, on August 27, 2012, again, affirming FAA's order. Langford appealed the law judge's decisional order on remand, and on August 12, 2013, the Board affirmed the law judge's decision primarily on the basis that the law judge's credibility assessments were consistent with the evidence. NTSB Order No EA-5673 (2013).

Langford appealed the Board's Opinion and Order to the United States District Court for the Western District of Texas on September 30, 2013. The District Court remanded the case to the law judge with the direction to resolve the issues of: (1) whether the Learjet was 40 to 50 feet away from the Cessna when the jet blast occurred, and (2) how that finding impacted whether ... [Langford] violated § 91.13(a). *Langford v. Huerta*, No. MO-

13-CV-096 at 32 (W.D. Tex. Sept. 17, 2014). In addition, the District Court found the law judge erred in affirming FAA's 90-day suspension on the basis that Langford's conduct was intentional or deliberate, when Langford was not charged with such conduct nor was Langford permitted to put on evidence of deliberateness or intent during the hearing. Therefore, the District Court instructed the law judge to determine whether the sanction of a 90-day suspension period was warranted based upon the alleged grounds of reckless and careless conduct, as charged in the complaint, not intentional or deliberate conduct.

The District Court's September 17, 2014 decision is available at: www.ntsbt.gov/legal/alj/OnODocuments/Aviation/5734.pdf (appended to the Board's order remanding the case to the law judge).

In response to the District Court's remand, the law judge issued a Decisional Order on Remand from the United States District Court reaffirming his findings. The law judge found that the preponderance of reliable and probative evidence established that the Learjet was between 40 and 50 feet away from the Cessna at the time of the jet blast. The law judge further explained that Langford's actions were intentional in nature and were done in such close proximity to the Cessna as to be reckless and endanger the safety of both the Cessna as well as the instructor and student in violation of § 91.13(a). The law judge, therefore,

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upheld FAA's 90-day suspension of Langford's ATP certificate.

Langford appealed the law judge's Decisional Order on Remand from the United States District Court and argued the evidence did not support the law judge's conclusion that the Learjet was 40 to 50 feet from the Cessna at the time of the events. Langford also argued the law judge should not have mentioned whether he believed Langford's conduct was intentional, and that the law judge erred in failing to analyze whether the 90-day suspension period was appropriate in light of the facts.

The Board affirmed the law judge's Decisional Order on Remand from the United States District Court, but reduced the sanction to a 45-day suspension. NTSB Order No EA-5763 (2015). In affirming the law judge, the Board determined Langford's conduct was careless and reckless and endangered the life or property of another and explained, "Activity that causes smoking gears, the locking up of a main gear, and leaves black skid marks on the runway are all indications [Langford] could have harmed his co-pilot and the Learjet." *Id.* at 11. The Board also opined, "Moreover, the fact the activity occurred within relatively close proximity to another aircraft *and an active runway* signifies carelessness or recklessness on the basis that the conduct could have endangered the life or property of another." *Id.* (Emphasis in original).

In reviewing the sanction, the Board explained that in determining that Langford's behavior, *in toto*, was reckless, the Board considered his "individual actions within the sequence of events from which the violation arose, some of which may have been either intentional or deliberate." *Id.* The Board clarified, however, that to avoid any conflict with the opinion of the District Court, the Board eliminated any consideration of whether Langford acted with intent or deliberation in reevaluating the appropriate sanction. While the Board determined that the evidence supported consideration of other aggravating factors, the Board reduced the sanction to a 45-day suspension.

Langford, again, appealed the Board's Opinion and Order to the U.S. District Court for the Western District of Texas. The District Court found that the Board's determination that the Cessna and the Learjet were in close proximity to each other was not arbitrary or capricious.

The District Court, however, identified two flaws in the Board's decision. First, the District Court determined that the Board's finding that Langford's conduct endangered himself, his co-pilot and the Learjet was arbitrary and capricious. The District Court pointed out that the Administrator's complaint only alleged that Langford's conduct endangered the Cessna and its occupants and that the issue of endangerment to Langford, his co-pilot or the Learjet were not

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addressed at the hearing. District Court further explained that the Board erred in making this determination because it was not supported by substantial evidence since no testimony or other evidence was presented to show that Langford, his co-pilot or the Learjet were actually or potentially in danger as a result of Langford's conduct.

Next, the District Court also determined that the law judge's finding that Langford's conduct was intentional in nature did not comply with the District Court's prior instruction that the law judge determine whether the 90-day suspension was warranted based upon the alleged grounds of reckless and careless, not intentional or deliberate conduct. The District Court further found that the Board's affirmation of the law judge's order was an abuse of discretion that prejudiced Langford. The District Court stated that Board's explanation that Langford had a motive to spool up the engines of the Learjet and the Board's statement that some of Langford's individual actions may have been intentional or deliberate were indicators that the Board's decision was premised on intentional or deliberate conduct that was not charged in FAA's complaint.

The District Court also determined that while the Board reduced the suspension of Langford's ATP certificate to 45 days, the sanction was still excessive compared to the Board's precedent in other jet blast cases based on careless and reckless conduct, which, the District Court

stated, typically imposed a sanction of approximately 15 days for pilots holding an ATP certificate. The District Court found that the Board acted in an arbitrary and capricious manner by departing from its precedent without providing reasoned analysis or explanation.

The District Court's August 9, 2016 decision may be accessed through [PACER](#) (account required).

Boeta v. Federal Aviation Administration

In 2009, Boeta was hired by Capital Aerospace, Inc. (Capital), as an independent contractor to pilot a Beechjet 400-A (N497RC). Redi-Carpet Properties, LLC, owned N497RC and Capital managed the aircraft. Capital entered into an agreement with USAC Airways 691, LLC, (USAC), a part 119 carrier, to place N497RC on USAC's OpSpecs; this listing provided authorization to operate N497RC commercially under part 135 and to operate N497RC in reduced vertical separation (RVSM) airspace.

USAC also entered into a dry-lease agreement with Redi-Carpet to lease N497RC on an exclusive basis. Under the agreement, USAC would operate the aircraft for charter jet services under USAC's air carrier certificate and its RVSM Maintenance Procedures Manual. USAC maintained operational control of N497RC during the time the aircraft was on its OpSpecs.

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As a result of disagreements between USAC and Capital, USAC stopped dispatching flights for N497RC after March 20, 2011 and terminated its agreement with Capital and with Redi-Carpet. By June 12, 2011, FAA removed N497RC from USAC's OpSpecs and, as a result, N497RC was no longer authorized to operate commercially under part 135 and was no longer approved for RVSM operations.

In September 2011 — six months since USAC last dispatched a flight and four months after USAC had FAA remove N497RC from its OpSpecs — Boeta received a dispatch from Capital, instructing him to pilot N497RC from Sugar Land, Texas, to Palm Beach, Florida. Boeta filed a flight plan indicating N497RC was authorized to operate in RVSM airspace, and proceeded to operate N497RC in RVSM airspace during the flight.

When Boeta landed N497RC at Palm Beach, the aircraft was met by FAA inspectors who performed a ramp check. They asked Boeta to verify that the operator had authorization for N497RC to be flown in RVSM airspace. Boeta initially told the inspectors that the flight had been operated under part 91 and that the owner of N497RC was on-board the aircraft, prompting the inspectors to ask to see the owner's Letter of Authorization (LOA) from FAA authorizing N497RC to operate in RVSM airspace. Boeta returned to the aircraft and searched for some time

before calling Capital to fax him a copy of the LOA. Instead, Capital faxed a copy of USAC's outdated OpSpecs that still included N497RC. Boeta then told the inspectors that he had misspoken; that the flight had actually been operated under part 135, not part 91.

Within ten days following the flight, Boeta filed a voluntary report pursuant to FAA's ASRP. Under the ASRP, FAA may waive the imposition of a sanction, despite the finding of a regulatory violation, as long as certain requirements are satisfied. To qualify for a waiver of sanction under the ASRP, FAA requires inter alia that the violation be inadvertent and not deliberate.

On July 13, 2012, FAA issued an order suspending Boeta's ATP certificate for a period of 60 days on the basis that Boeta violated 14 C.F.R. §§ 91.180(a)(1) and (2) and Part 91, Appendix G, section 4(b) (1) by operating N497RC in RVSM airspace without authorization. Boeta appealed the suspension and the matter proceeded to a hearing before an NTSB law judge. Boeta argued he reasonably relied on the fact USAC's air carrier certificate and OpSpecs previously authorized the operation of N497RC in RVSM airspace. Boeta also argued he was entitled to a waiver of sanction under FAA's ASRP.

On August 7, 2014, the law judge determined FAA proved Boeta operated N497RC in RVSM airspace

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without the proper authorization. The law judge found Boeta was aware USAC neither dispatched the September 8, 2011 flight nor had operational control over the flight. The law judge further noted Boeta was aware USAC had not dispatched a flight for N497RC since March 2011. Therefore, the law judge rejected Boeta's defense that he reasonably relied on USAC's outdated OpSpecs. The law judge also determined Boeta's conduct was not inadvertent because Boeta chose not to check N497RC's RVSM authorization status prior to the flight.

Boeta appealed the law judge's decision to the Board and argued the law judge erred by limiting Boeta's cross-examination of several witnesses, improperly rejecting Boeta's defense of reasonable reliance, and rejecting Boeta's request for a waiver of sanction under the FAA's ASRP. On April 16, 2015, the Board issued an Opinion and Order affirming the law judge's decision. NTSB Order No. EA-5744 (2015).

The Board found that the law judge did not abuse his discretion in limiting Boeta's cross examination of witnesses and affirmed the law judge's rejection of Boeta's reasonable reliance and waiver of sanction defenses. In rejecting Boeta's argument that he reasonably relied on the outdated OpSpecs, the Board reasoned that Boeta, as the pilot in command, had an obligation to review the OpSpecs or LOA immediately before the

September 8, 2011 flight to ensure N497RC was RVSM authorized before filing a flight plan and before operating in RVSM airspace.

The Board further noted that had he done so, Boeta would have become aware of the change in RVSM authorization. The Board determined the record established Boeta was aware USAC did not dispatch the flight and was aware that the flight was not under the operational control of USAC. In rejecting Boeta's argument that he was entitled to a waiver of sanction under FAA's ASRP, the Board determined his conduct was not inadvertent because he chose not to check the status of N497RC's RVSM authorization prior to the flight.

The Court of Appeals concluded that the Board did not err in rejecting Boeta's assertion that the law judge improperly limited his cross-examination of several witnesses and in rejecting his affirmative defense of reasonable reliance on the OpSpecs. The Court of Appeals, however, reversed the Board's finding that Boeta was not entitled to a waiver of sanction under the ASRP.

The Court of Appeals stated that the Board's decision that Boeta's conduct was not inadvertent improperly focused exclusively on Boeta's failure to review either an OpSpecs or LOA immediately before the flight in RVSM airspace and focused on Boeta's failure to ensure that an OpSpecs or LOA was physically in the aircraft

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prior to the flight. The Court of Appeals further explained that the Federal Aviation Regulations contained no requirement that a pilot in command verify that an operator is authorized for RVSM operations by actually consulting the authorization in an operator's OpSpecs or LOA; rather, FAA Advisory Circular No. 91-85 (in effect at the time of the subject flight) stated that a pilot must verify that the aircraft, not the operator, is approved for RVSM operations.

Here, the Court of Appeals reasoned that a pilot, once aware that the authorization exists in the operator's OpSpecs, has no ongoing obligation to confirm that it remains current and valid, but rather the pilot must rely on the operator for the current OpSpecs. USAC, the Court of Appeals determined, never terminated its agency relationship with Boeta, and as a result, USAC had a continuing obligation to keep Boeta informed of the changes in its OpSpecs. The Court of Appeals found no indication in the record that USAC, Capital, or Redi-Carpet expressly informed Boeta that N497RC had been removed from USAC's OpSpecs and was no longer RVSM authorized. Therefore, the Court of Appeals found Boeta's conduct to be inadvertent and determined that the Board's rejection of Boeta's defense of waiver of sanction under the ASRP was arbitrary and capricious as a matter of law.

Circuit Judge Stephen
A. Higginson dissented from the

majority's reversal of the Board's decision that Boeta was not entitled to a waiver of sanction. In agreeing with the law judge and with the Board that Boeta's conduct was not inadvertent, Judge Higginson noted that Boeta testified that he understood that the flight was not dispatched by or under the operational control of USAC, and that he also knew if USAC did not dispatch a particular flight, N497RC could not be flown under part 135 or operate in RVSM airspace in reliance upon USAC's OpSpecs.

Judge Higginson explained that Boeta's knowledge that USAC did not dispatch the flight provided him reason to question whether N497RC's RVSM authorization was valid because Boeta was also aware that Capital did not hold any form of RVSM authorization itself. He further pointed out that Boeta was well aware that USAC had not dispatched any flights in months and that Boeta himself had flown flights for Capital in the interim. For these reasons, Judge Higginson stated that substantial evidence supported the Board's finding that Boeta ignored surrounding circumstances of the invalidity of the flight's RVSM authorization and, therefore, it was not arbitrary and capricious for the Board to conclude that Boeta's violation did not qualify as inadvertent and that a waiver of sanction was not justified.

The Court of Appeal's decision is available at <http://www.ca5.uscourts.gov/opinions/pub/15/15-60431-CV0.pdf>

Emerging Leaders

by:
Gary L. Halbert &
Sean P. Barry

CONTINGENCY PLANNING FOR AIRCRAFT ACCIDENTS AND INCIDENTS



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SEAN P. BARRY is a member of Holland & Knight's New York Litigation Practice Group, focusing in the area of transportation and commercial disputes. Sean was also a sergeant in the United States Marine Corps Infantry. He completed two tours of duty in Iraq and is a Purple Heart recipient.

Introduction

Organizations in the commercial aviation industry must be prepared to address a wide array of risks related to aircraft accidents and incidents, implement plans to reduce or eliminate risk, and execute on such plans in the unfortunate event that such risks become reality. Proper risk analysis, planning, and training will enable the organization to react more effectively under stress. An immediate response to an aircraft accident is crucial to saving lives, preserving property, fostering positive relations with victims and their families, and limiting liability. Modern technology has provided for improved aircraft safety and survivability in crashes. But new technology and new capabilities also comes with new risks.

I. Creating Emergency Response Plans

The Federal Aviation Administration (FAA) and National Transportation Safety Board (NTSB) place considerable emphasis on accident response performance. The risks associated with poor response performance may be substantially mitigated by having robust emergency crisis management plans reasonably designed to respond to the range of foreseeable risks and having practiced the various responses delineated by those plans. Response plans can be reduced into checklists that can be easily referenced during an emergency to ensure the plans are followed.

A. Start with Lessons Learned

Plans need to remain responsive to the ever-changing risks

associated with aircraft operations. This requires staying current on the best practices in the industry. A good place to begin is by learning from recent mistakes made by others. The FAA provides an entire section on its website to lessons learned from aircraft accidents.¹ Similarly, the NTSB makes safety recommendations designed to prevent future events.² Moreover, the Department of Transportation (DOT), FAA, and NTSB often provide feedback and recommendations on how an organization failed to properly respond to an accident. These publicly available sources serve as excellent resources to assist with starting the response planning process.

B. Creating Immediate Response Plans

A response plan should begin with a checklist of clear and specific immediate steps to be taken as soon as notice of an accident is received. The checklist should also allow for annotation of completed and follow-up items. As a non-exhaustive list, the immediate steps should include:

- notifying the appropriate authorities;
- identifying and contacting personnel (primaries and backups)³ to mobilize

1 See <http://lessonslearned.faa.gov/>.

2 See 49 U.S.C. §§ 1131-32. The safety recommendations are also available on the NTSB's website, http://www.ntsb.gov/safety/safety-recs/_layouts/ntsb.recsearch/RecTabs.aspx.

3 It is important to monitor the key personnel required to carry out tasks during accident response. During a response, key personnel often work for long periods of time without proper (or any) rest. It may not be safe for these individuals to operate vehicles. Creating shifts

in response to the accident;

- identifying unique considerations for each airport at which an air carrier operates and aircraft in the fleet and individuals with specific expertise in areas such as engineering, maintenance, and training, for example;
- creating and staffing an emergency operations center (EOC);
- determining who is in charge of the EOC;
- implementing family assistance procedures;
- prioritizing incoming tasks;
- monitoring and logging requests from authorities;
- implementing media relations and social media procedures; and
- conducting continuing operations safely.

Each response plan should account for multiple concurrent investigations and be flexible in responding to the demands of each.

C. Creating a Victim and Family Assistance Plan

Airlines and airports are required to assist with victims and their families after an accident.⁴ In fact, there is a statutory duty to immediately implement a family assistance plan after an aircraft accident. The Aviation Disaster Family Assistance Act of 1996 requires airlines to submit a plan to the Department of Transportation that addresses “the needs of the families of passengers involved in any aircraft accident involving an aircraft of the

and implementing a process to monitor fatigue should not be overlooked.

4 See 49 U.S.C. § 1136; Aviation Disaster Family Assistance Act of 1996 (as amended), Public Law 104-264, Oct. 9, 1996, 110 STAT. 3213, 3265.

air carrier and resulting in a major loss of life.”⁵ The plans must include certain processes and assurances, such as the air carrier’s requirements concerning:

- publicizing contact information and designating staff resources to communicate with the passengers’ families;
- notifying the families of the passengers of the accident and key information regarding the investigation;
- consulting about the status of all passenger remains and personal effects;
- returning passenger possessions;
- retaining unclaimed possessions for at least 18 months;
- providing reasonable compensation to service organizations, such as the American Red Cross, for services provided;
- assisting with travel to the location of the accident and care while family members stay at such locations;
- committing sufficient resources to carrying out the plan; and
- training employees and agents to meet the physical and psychological needs of survivors and family members following an accident.⁶

The plan submitted to the DOT is more an outline of assurances regarding the organization’s abilities than the actual plan itself. The implementation of a family assistance response following a major accident requires detailed plans, processes, and checklists. The NTSB highlights the issues that need to be considered through its Office of Transportation Disaster Assistance⁷ and guidance for

5 49 U.S.C. § 41113(a).

6 49 U.S.C. § 41113(a).

7 This information is available on the NTSB’s

submitting family assistance plans.⁸ Failure to comply with assurances made with respect to a family assistance plan could risk penalty or even revocation of an airline certificate.

In February 2014, the DOT fined Asiana Airlines \$500,000 for not adhering to their family assistance plan following the 2013 crash at San Francisco International Airport (SFO).⁹ The DOT found that Asiana Airlines did not comply with its obligations by taking approximately an entire day after the crash to adequately publicize a telephone number, taking as long as five days after the crash to contact the families of several passengers, and committing insufficient staffing and financial resources to carry out its family assistance plan.¹⁰

To comply with its obligations, an airline should be ready to do at least the following immediately after an accident:

- publicize the toll-free telephone number and family assistance website, which should be able to be immediately activated following an aircraft accident;
- provide at least one dedicated representative per family after an accident;

website at <https://app.ntsbt.gov/tda/family.html>.

⁸ This information is available on the NTSB's website at <http://app.ntsbt.gov/doclib/tda/Federal-Family-Plan-Aviation-Disasters-rev-12-2008.pdf>. The NTSB's guidance includes a template Victim Support Checklist for tasks to be completed by the airline after an accident. *See id.* at 48-51.

⁹ D.O.T. News Release: U.S. Department of Transportation Fines Asiana Airlines for Not Adhering to Family Assistance Plan Following Crash, DOT 21-14 (D.O.T.), 2014 WL 708135 (Feb. 25, 2014).

¹⁰ *Id.*

- ensure each representative has the proper training and personalities;
- ensure representatives are able to communicate in the languages spoken by the flight's passengers;
- provide resources to assist victims and family members;
- assist with travel for victims and family members;
- locate, compile, and store passenger possessions;
- plan for cleaning and return of personal property; and
- care for family members at the accident site origin and/or destination.

D. Media plans

After an accident, there is often a strong desire for an organization to want to defend its employees, operations, response, and brand. Making the wrong statement, however, can impact an organization's ability to be a "Party" to the NTSB investigation. Without prior consent, Parties to an investigation are prohibited from disclosing information concerning the accident before the NTSB.¹¹ The NTSB is concerned with ensuring that disseminated information is sufficiently detailed, in the appropriate context, and not released in a manner that may harm the investigation. The NTSB will remove Parties for publicly commenting on or providing their own analysis of an ongoing investigation. That being said, the organization is not well-served by saying nothing.

¹¹ *See* 49 C.F.R. § 831.13. Section 831.13(b) provides in relevant part: "no information concerning the accident or incident may be released to any person not a party representative to the investigation (including non-party representative employees of the party organization) before initial release by the Safety Board without prior consultation and approval of the IIC."

Best practices dictate having a clear media relations and social media policy to implement during an accident response and the investigation. The goal is to make public statements as a compassionate, concerned organization that is in compliance with NTSB regulations. Failing to properly handle corporate communications can lead to animosity with victims or their families, which could negatively impact the settlement of imminent claims.

As a general rule, anything that you could say the day before the accident, you can say after the accident. For example, it is likely acceptable to release a statement about the type of aircraft, flight hours, crew makeup, that an airline has a robust emphasis on safety and a formal safety program, or that the accident flight crew met all applicable airline training requirements. Nonetheless, certain topics may be best left to the NTSB.

A media plan should include:

- immediately notifying all employees at all levels of the accident or incident;
- providing guidelines regarding proper and improper communications;
- identifying key media relations employees with understanding of NTSB rules;
- establishing an internal vetting process for the release of any statement (made on behalf of the company or by employees personally) that is related in any way to the accident, employees, victims, or investigation;
- instituting an immediate prohibition of disclosing accident- or investigation-related information, specifically including information regarding causation, findings, or the activities being conducted by the NTSB, outside the vetting process;

and

- making public statements as a compassionate, concerned organization in compliance with NTSB rules.

II. Plan Execution

Creating an emergency plan for your organization, however, is only the beginning. It cannot be stressed enough that a plan is only as good as your ability to implement that plan. The DOT, FAA, and NTSB expect organizations to be able to follow through with any plan that is submitted, with potentially dire consequences for failure to comply. Thus, it is important to know that your key personnel can implement the plan when the time comes before representing your ability to do so.

To ensure that the plans remain relevant and up-to-date at all times, organizations should designate individuals to be responsible for periodic review of its plans. Plans should be regularly reviewed and carefully analyzed to determine whether revision is necessary. Additionally, there should be a process in place for tracking responsible individuals and, if necessary, replacing responsible individuals who change positions or leave the organization.

Conducting frequent scheduled and non-scheduled drills helps to ensure those with designated roles are prepared for the tasks assigned to them. Whenever possible, attempt to involve local personnel in drills. These drills can also be crucial to identifying the plans' shortcomings and other areas for improvement. After a drill is completed, conduct a debrief to locate areas of friction.

III. Consideration of Future Litigation

After an aircraft accident or incident, it is important to consider both the impending NTSB investigation and the civil litigation claims that will follow. Although the NTSB's primary responsibility is safety¹² and "NTSB investigatory procedures are not designed to facilitate litigation,"¹³ the investigation will undoubtedly have an impact on later litigation.

Although many organizations will have a duty to comply with an NTSB investigation, particularly if they want to remain a Party to that investigation,¹⁴ it is important to know your rights and how the investigation is likely to impact future litigation.

A. NTSB Communications Generally Not Confidential

Communications between the Party and the NTSB may be discoverable in future litigation, once the investigation is complete, and subject to Freedom of Information Act (FOIA) requests.¹⁵ Indeed, before

¹² See 49 U.S.C. §§ 1131-32.

¹³ *Chiron Corp. and PerSeptive Biosystems, Inc. v. National Transportation Safety Board*, 198 F.3d 935, 940 (D.C. Cir. 1999); see also *In re Air Crash at Lexington, Ky., Aug. 27, 2006*, No. 5:06-cv-316, 2008 WL 2796875, at *2 (E.D. Ky. July 18, 2008).

¹⁴ See 49 C.F.R. § 831.11. Guidance regarding an NTSB investigation and the Party system can be found in the NTSB aviation investigation manual for major team investigations, which is available on the NTSB's website at <http://www.ntsb.gov/investigations/process/Documents/MajorInvestigationsManual.pdf>.

¹⁵ During an NTSB investigation, there are certain restrictions on the dissemination of information. See 49 C.F.R. § 831.13; see also *Caves v. Beechcraft Corporation*, Case No. 15-CV-125-CVE-PJC, 2016 WL 355491 (N.D. Okla. Jan. 29, 2016) (holding that defendant raised a valid privilege based on 49 C.F.R. §

obtaining party status, the NTSB requires a Party to certify that it will not "assert in civil litigation arising out of the accident any claim of privilege for information or records received as a result of my participation in the NTSB investigation."¹⁶

B. NTSB interviews and subpoena power

The NTSB has the power to summons witnesses and require the production of evidence by issuing subpoenas in support of its investigations.¹⁷ In practice, however, many requests are initially informal. A person interviewed by the NTSB "has the right to be accompanied, represented, or advised by an attorney or non-attorney representative."¹⁸ Non-compliance with an NTSB subpoena is enforceable by court order.¹⁹

Conclusion

In summary, the way an organization responds after an accident has the ability to save property, goodwill, the ability to operate, and, most importantly, human life. If done poorly, a response can exacerbate the stress and confusion associated with an accident response. This can lead to criticism, fines, and sanction by government agencies as well as animosity from victims and their families. To avoid substandard performance,

831.13 and declined to compel the production of investigation-related communications with the NTSB while the investigation was ongoing).

¹⁶ This requirement is found on the NTSB Certification of Party Representative form, which is available on the NTSB's website at http://www.ntsb.gov/legal/Documents/NTSB_Investigation_Party_Form.pdf.

¹⁷ See 49 U.S.C. § 1113(a).

¹⁸ 49 C.F.R. § 831.7.

¹⁹ See 49 U.S.C. § 1113(a)(4).

Book Review

by
Kevin P. Durkin

BROKEN EAGLE James T. Crouse

I recently sat down on the porch of my summer home to read the new legal/military/aviation thriller, *Broken Eagle* by author James T. Crouse, and within a few minutes was totally hooked.

There are a limited number of books that once I start to read them I can't put them down. *Broken Eagle* fits into that category. I had the book in my hands when I fell asleep and as soon as I woke up, I poured a cup of coffee and got right back into it on the porch.

What's apparent in *Broken Eagle* is the author's background as an experienced helicopter pilot who flew research and development and maintenance test flights for the Army and his skills and expertise as an accomplished aviation lawyer with prolific legal writing skills.

The lead character in this fiction is Jake Baird, a former US Army hero turned lawyer. Jake has a sole practice with his loyal legal assistant, Florence Hilliard, in Raleigh, North Carolina. In the past, he has been frustrated handling cases against manufacturers of military aircraft because of the many real defenses they have in civil lawsuits. A lot of work and cost with no reward! He tells himself he doesn't want to handle these anymore until widow Lisa Thorpe shows up at his office and says, "My husband died in a military aircraft crash, and I need to know why. There was not a better pilot in the Marines." Jake was still an Army Reserve aviator, and to him the loss of a military aviator was personal.

The aircraft involved was the experimental (and fictional) military helicopter XV-11, known as the "Sea Eagle." Right after meeting Mrs. Thorpe, a mystery man shows up with a confidential, classified, Top Secret file about the development of the Sea Eagle which clearly shows to Jake that the aircraft is fatally flawed and will likely result in more deaths. They eventually establish a cooperative yet combative relationship that is one of the more interesting stories in the book.

Now the legal ethics situation comes into play. Using and not returning the documents immediately could result in Jake going to prison. He calls it a one-way ticket to Leavenworth. However, not using the documents will mean that the serious flaws in the helicopter will remain unrevealed, which he knows will result in more loss of life. Jake, of course, takes the moral road and realizes it's his job to make sure the flaws are exposed.

The book focuses on the "military industrial complex" and shows the huge military aircraft manufacturing industry's close ties to the government. The competing interests here are the US Government, NAVAIR (Naval Air Systems Command) and the manufacturers (Apex Helicopters and Vertical Aerospace) who all have a huge investment in this flawed aircraft and anticipate lucrative contracts from civilian derivatives. There is no simple fix for the design flaws for this aircraft so the exposure would result in huge financial loss and likely ruin careers. But the flaws have been concealed from the

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Book Review

by
Justin T. Green

THE CRASH DETECTIVES Christine Negroni



JUSTIN GREEN joined Kreindler & Kreindler LLP in 1997 after clerking for the Honorable Alfred J. Lechner in the Federal District Court for the District of New Jersey. He became a partner in January of 2003. Justin focuses his practice on helping families of aviation disaster victims, but also litigates other complex matters. Justin learned to fly while in the United States Marine Corps and served as his squadron's aviation safety officer after graduating from the Naval Postgraduate School's aviation safety program. He was responsible for his squadron's aviation safety, and also for investigating accidents. He holds an airplane and helicopter commercial license from the Federal Aviation Administration. As an aviation lawyer, Justin has successfully represented families in dozens of major aviation cases, including most recently the families of Continental Connection Flight 3407 and Turkish Airlines Flight 1951 victims. He edits Kreindler, Aviation Accident Law published by Lexis/Nexis.

When I was asked to review *The Crash Detectives* I was happy to say “yes” because I enjoyed Christine Negroni’s prior book, *Deadly Departure*, about the crash of TWA Flight 800. I expected to enjoy reading an account of major air crash investigation. But *The Crash Detectives* is really a nonfiction thriller. I could not put it down and read it cover-to-cover in one day. In this it reminded me of Jon Krakauer’s *Into Thin Air* about the 1997 Mt. Everest disaster.

The Crash Detectives is full of fascinating aviators and edge of your seat stories of aviation disasters and near misses. The writing is fast-paced and Negroni weaves together the facts of crashes separated from each other by years and advances in technology, but sharing common causes.

Negroni begins by posing a theory about what caused Malaysia Airlines Flight 370 to disappear and crash in the Southern Indian Ocean. I found it brave for her to do so because only small parts of the airplane have been found and the official investigation has released no probable causes. After finishing *The Crash Detectives*, however, it occurred to me that investigators of many of the accidents discussed had almost as little information as is currently available regarding Flight 370. Today, accident investigators can rely on advanced digital flight data and cockpit voice recorders that most often all about solve the mystery of what caused the accident. In the past, air safety investigators were forced by the lack of evidence to employ similar methods to those discussed in the book. Whether Negroni’s Flight 370

theory is correct may never be known because the airplane may never be found, but she is correct that it is wrong of investigators to simply give up rather than identify and correct any safety problems that could have caused Flight 370’s disappearance. We too often suffer from a lack of imagination in considering risks to aviation, and passengers and flight crews pay a heavy price for our lack of foresight. I hope that Negroni will write the “final chapter” in a new edition of her book if and when Flight 370’s black boxes are recovered.

The Crash Detectives includes a master class on human nature. Negroni examines the all too human mistakes made by pilots in a number of accidents, but also how the bias of “crash detectives” and the companies or nations they work for can negatively affect their work. On the other hand, she also addresses the unique ability of humans to identify and work through problems that the writers of the airplane’s checklist or computer code never considered. It is impossible to understand prior aviation disasters without understanding human limitations and our unique abilities.

Who should read *The Crash Detectives*? Anyone interested in aviation safety or aviation history. Anyone who wants to put down their fictional adventure or mystery novel and pick up a true story of heroes and mystery. The only people I would recommend not read the book are those among us who are deathly scared of flying despite the fact that the safest part of any journey ends when a commercial airplane pulls into its gate.

continued on page 21

Charitable Foundation

by
Gary Halbert

Pay It Back and Pay It Forward

I would hazard a guess that almost all of us can readily admit to assistance, and perhaps even mentoring or some other overtly generous act, from someone in this or a sister bar association that helped us find our place in the aviation and transportation bar. I have certainly benefitted from the graciousness of others in that regard. Please let me tell you about an opportunity within our bar to give back, pay it forward, or simply help another who has hopes of finding a home within the aviation and transportation legal community.

In 2014, through the outstanding efforts of then IATSBA Treasurer Ray Speciale, the International Air & Transportation Safety Bar Association created a mechanism through which the collective membership of IATSBA could assist those with hopes of joining the aviation and transportation community. This bar association created a Charitable Foundation through which our members could make tax-deductible donations to “provide scholarship funds for aviation and/or transportation-related educational purposes.” We envisioned individual members making donations

to the Foundation supplemented by contributions from a vibrant bar association allocated for this worthy purpose.

Our IATSBA President wants to move this program forward and begin offering scholarships large enough to have a meaningful impact on some law student or other individual in an aviation-related or transportation-related course of study.

Please join me as we fund a scholarship to be offered at the SMU Air Law Symposium in 2017. Through the size of this scholarship or scholarships, we would like the generosity of IATSBA and its members to stand out from the crowd. As we approach the end of 2016, and you review your charitable giving for the year, please consider this worthwhile program.

You can make your check payable to the IATSBA Charitable Foundation, include the word “scholarship” on the “For” line, and mail the check to: IATSBA Charitable Foundation, PO Box 3035, Frederick MD 21705-3035.

Emerging Leaders

CONTINUED FROM
PAGE 16

it is critical to have detailed plans based on multiple contingencies that are understood at all levels and able to be executed immediately by trained individuals within the organization. Plans must remain up-to-date with ever-changing technology and operations. Conducting frequent drills assists the organization to maintain the ability to react at a moment's notice and to review and analyze the plans' effectiveness. Finally, it is important to know your rights when participating in an accident investigation and the likely impact it will have on future civil litigation.

The Emerging Leaders group seeks to connect young professionals with an interest in aviation law and the NTSB through events primarily in the Washington, D.C. and New York City metro areas. If you fit this description or know someone who may be interested, please contact Sean Barry at sean.barry@hklaw.com. Additionally, please let Sean know if are interested in presenting on a topic that young professionals in this space would find appealing.

Book Reviews

CONTINUED FROM
PAGES 18 & 19

BROKEN EAGLE James T. Crouse

top government and industry leaders by rogue actors in the military and industrial procurement process who have been hiding the flaws from their superiors at NAVAIR and the aerospace contractors. These renegades will do literally anything, including murder, to prevent this exposure. There, the "race" begins between Jake and the villains.

I promise you that you will enjoy this thrilling tale that take many unpredictable twists and turns and is replete with fascinating characters.

Mr. Crouse is currently writing several other novels involving the

character Jake Baird uncovering justices and setting them right. I can't wait!

The difference between James T. Crouse and some of the well-known legal fiction writers like Grisham and Turow is that you don't know him yet. If Mr. Crouse's new books are as exciting as Broken Eagle, you will know him soon enough!

THE CRASH DETECTIVES Christine Negrón

Penguin Books (2016). The Crash Detectives is sold on Amazon.com and other Internet booksellers as well as bookstores.



<p>Title</p>	<p>NTSB Investigations: What Legal Professionals Need to Know</p>
<p>Description</p>	<p>Day 1: NTSB Investigations: What Legal Professionals Need to Know</p> <p>This session provides legal professionals with foundational knowledge needed to advise clients about the statutory framework that defines NTSB investigations, and the regulations, rules and practices NTSB follows in conducting its investigations. Presentations will also provide key information about what NTSB investigators consider important in critical phases of an investigation, such as investigative hearings and party submissions. Emphasis will be on understanding the legal reasoning through facilitated and interactive discussions of issues that commonly arise during the course of NTSB investigations.</p> <p>Day 2: NTSB Investigations: What Legal Professionals Need to Know</p> <p>This session will emphasize practical techniques when engaging with NTSB investigators in charge and protecting proprietary information while permitting the NTSB to complete its safety mission. The session will also include a detailed presentation regarding assistance to victims' families as well as practice tips from outside counsel who routinely represent clients before the NTSB.</p>
<p>ID Code</p>	<p>GC101</p>
<p>Dates and Tuition</p>	<p>March 29-30, 2017</p> <p>\$794 early registration by February 24, 2017 \$894 late registration, between February 25 - March 24, 2017</p> <p>\$100 processing fee will be added to tuitions for all offline applications. A tuition invoice can be ordered for a \$25 processing fee.</p> <p>Note: payment must be made at time of registration.</p>
<p>Times</p>	<p>Day 1: 8:30 am - 4:30 pm Day 2: 9:00 am – 4pm</p>
<p>Location</p>	<p>NTSB Training Center • 45065 Riverside Parkway • Ashburn, Virginia 20147</p>
<p>Status</p>	<p>OPEN. Applications are now being accepted.</p>
<p>Apply to Attend</p>	<p>Sign Up for This Course Here</p>

<p>Overview</p>	<ul style="list-style-type: none"> • Role of the NTSB Board and staff in conducting investigations • Impact of the "Government in Sunshine Act" in NTSB investigations • Overview of NTSB's authority to investigate transportation accidents and incidents and conduct safety studies and special investigations • Examination of important regulations governing NTSB investigations • The NTSB Party process and the role of Parties in accident investigations • Discussion of rules regarding the exchange of investigative information • Rules and best practices regarding parallel investigations • Overview of NTSB procedures for protecting proprietary information and balancing company concerns with the agency's reporting needs • Overview of NTSB handling of voluntarily provided safety-related information (VSI) • Review of recent NTSB rulemakings • Tips from the Investigator in Charge (IIC) • Discussion of responsibilities for victims of transportation accidents and family members • Discussion of balancing public affairs and legal interests • Overview of ethics considerations surrounding NTSB acceptance of gifts and voluntary services in investigations • Tips from outside counsel with experience dealing with the NTSB
<p>Performance Results</p>	<p>Upon completion of this course the participant will be able to:</p> <ul style="list-style-type: none"> ▪ Explain important NTSB investigative rules and practices ▪ Explain the NTSB investigative process and how a party representative can be prepared to participate during all phases of an NTSB investigation ▪ Understand how NTSB works with federal, state, and local agencies to carry out its transportation safety mission ▪ Gain awareness of family assistance responsibilities and advise clients how they can become better prepared to fulfill these important duties ▪ Brief clients on effective strategies for protecting proprietary information while cooperating with the investigation <p>Comments from course participants</p>
<p>Who May Attend</p>	<ul style="list-style-type: none"> ▪ Because of the subject matter, registration for this class is limited to attorneys and other individuals that occupy a professional legal position only.
<p>Accommodations</p>	<p>Area hotels and restaurants</p>
<p>Airports</p>	<p>Washington Dulles International (IAD): 10 miles Washington Ronald Reagan National (DCA): 30 miles Baltimore/Washington International (BWI): 60 miles</p>
<p>More Information</p>	<p>Email StudentServices@ntsb.gov or call (571) 223-3900</p> <p>Courses, forums and symposia are added to the schedule throughout the year. Subscribe to the e-newsletter to learn about upcoming events and new programs: http://app.ntsb.gov/trainingcenter/list/list_mw020207.htm</p>



NTSB INVESTIGATIONS: WHAT LEGAL PROFESSIONALS NEED TO KNOW

GC101

March 29-30, 2017

AGENDA

March 29, 2017

DAY ONE

08:30 AM–9:00 AM

Welcoming Remarks; Mission and Organization Structure of NTSB

“Let the Sunshine In”

This presentation focuses on the role of the NTSB Board and staff in improving transportation safety and examines the impact of the Government in Sunshine Act on the roles and functions of the NTSB Board.

09:00 AM–9:45 AM

NTSB Jurisdiction, Rules of Investigation, & Key Concepts

“From A to Z: Rules of the Road When An Accident Happens”

This discussion provides an overview of NTSB’s authority to investigate transportation accidents and incidents and conduct safety studies and special investigations. It also highlights important regulations to consider when advising clients who are parties to NTSB investigations

9:45 AM–10:30 AM

NTSB Party Roles in an Accident Investigation

“Let’s Party! (NTSB Style)”

This presentation highlights how an attorney can best advise his or her client in participating in the post-accident scene phases of an investigation. The discussion will highlight what the NTSB considers optimum party participation in the factual development, review of factual reports, and preparation of submissions and NTSB public hearings.

10:30 AM–10:45 AM

Break

10:45 AM–11:15 AM

Investigative Information

“Investigative Information: The Heart of the Investigation”

This session begins with an examination of the definition of investigative information and rules regarding the exchange of investigative information, with a focus on wreckage, data and testing. Facilitated small group discussions will follow the presentation. The discussions will explore issues such as duty to disclose information to the NTSB, access to the accident scene, press inquiries and conferences, and testing and results of evidence.

11:15 AM–12:00 PM

Civil Litigation, Company Internal Reviews, Criminal & Regulatory Investigations, Role of Law Enforcement

“The Ultimate Juggling Act: Balancing Multiple Investigations”

This session includes a presentation of the rules and best practices regarding parallel investigations while an NTSB investigation is underway as well as facilitated small group discussions that will examine topics such as coordination with the NTSB when conducting internal safety reviews.

12:00 PM–1:00 PM

Lunch

Keynote Speaker

1:00 PM–1:15 PM

Accident Scenario Breakout Session Instructions

1:15 PM–2:45 PM

Accident Scenario Breakout Sessions

2:45 PM–3:00 PM

Break

3:00 PM–3:45 PM

Proprietary Information and Trade Secrets

“What Does the Public Need to Know”

The NTSB statute permits the agency to disclose trade secrets or proprietary information, following notice and comment, if necessary to protect public health and safety. NTSB regulations require the agency to provide 10 days’ notice if it intends to release proprietary information or trade secrets. But in reality, the process includes iterative, collaborative negotiations between the NTSB Office of General Counsel and the supplier of information. This presentation will describe the process and the information NTSB considers before releasing such sensitive information.

3:45 PM–4:30 PM

Voluntarily Submitted Information

“Promoting Safety and Maintaining Confidentiality”

Congress has mandated that the NTSB protect voluntarily submitted safety-related information from disclosure to the public. The purpose of this requirement is to encourage the transportation industry to share safety information with NTSB, thus improving information flow. This presentation will describe when and how the NTSB protects from disclosure voluntarily submit safety information.

5:30 PM

Optional Dinner/Social

March 30, 2017

DAY TWO

8:30 AM

Introduction and Logistics

8:30 AM–9:15 AM

NTSB Rulemaking: Part 831

This presentation provides an overview of NTSB rulemakings.

9:15 AM–10:45 AM

The Investigator-In Charge Perspective

NTSB regulations give significant decision-making authority to an investigator-in-charge. In this panel discussion, experienced NTSB investigators-in-charge discuss how they organize and lead investigations and what they consider in rendering decisions. The panel will include investigators-in-charge from the Offices of Aviation Safety; Marine Safety; Railroad, Pipeline and Hazardous Materials Investigations; Highway Safety; and Research and Engineering.

10:45 AM–11:00 AM

Break

11:00 AM–11:45 PM

Family Assistance

When tragedy strikes, transportation operators need to develop successful lines of communications with the families of the victims. This presentation will describe the NTSB’s family assistance program and the best way for operators to work with the NTSB and other key stakeholders to provide important services for victims’ families.

11:45 PM–12:45 PM

Lunch

NTSB Board Member Presentation

12:45 PM – 1:30 PM

**Fusing Legal Interests and Public Affairs
“Managing Media and Public Relations During an NTSB
Investigation”**

This panel will discuss the most effective ways to ensure party members’ dissemination of information to the public complies with the Party Agreement and with the law.

1:30 PM–2:30 PM

**Ethics Issues During an Investigation: Gifts and
Voluntary Services**

2:30 PM–2:45 PM

Break

2:45 PM–3:45 PM

**Practice Tips From Outside Counsel, Working with
the NTSB**

This panel, moderated by the NTSB General Counsel, provides the perspective of attorneys who have successfully represented their clients through NTSB investigations.

3:45 PM – 5:00 PM

Closing and TWA-800 Tour (Optional)

Circuit Assignments



NTSB LAW JUDGE CIRCUIT ASSIGNMENTS

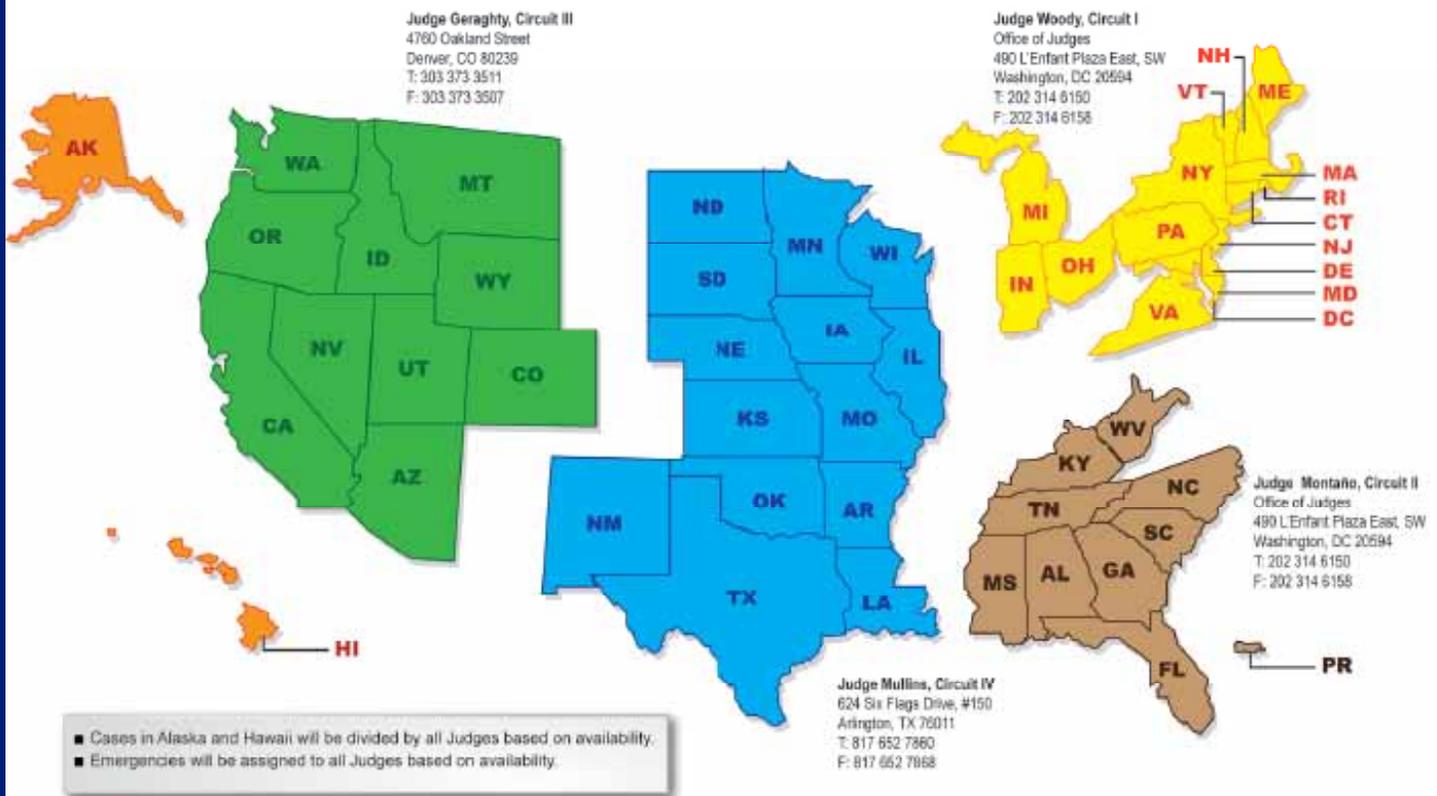


Image courtesy of National Transportation Safety Board, current as of April 1, 2013

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PLEASE CIRCLE MEMBERSHIP TYPE

Checks are to be made payable to "IATSBA" and sent to the mailing address below.
Online application and payment by credit card at www.IATSBA.org.

Regular/Full Annual Membership: ----- \$119.00

Federal Government Annual Membership: ----- \$59.00

Recent Law School Graduate Annual Membership:

(Within two years of graduation from law school) ----- \$49.00

Law School Student Annual Membership: ----- NO CHARGE

Associate Annual Membership

(Associate Membership is for those not eligible for a Regular/Full Membership.)

Associate Membership is non-voting. There are two types of Associate Membership.)

Associate with listing: ----- \$129.00

(May list credentials in Membership Directory - use the lines provided above.)

Associate without listing: ----- \$119.00



International Air & Transportation Safety Bar Association

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