Flight Safety Foundation

Comments on Criminalization

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Presented to the Safety Information Protection Task Force (SIP TF)

Listening Session – Working Group 3

Outreach & Communications

Good Morning Vice Chair Quinn, and Mr. Illson of International Civil Aviation Organization and members of the SIP TF. On behalf of the Flight Safety Foundation I would like to commend you for conducting this listening session. It is my pleasure to provide a perspective viewpoint on the protection of safety information.

Let me start by recognizing our Foundation President and CEO – Bill Voss. Bill has served in the past as the head of the ICAO Air Navigation Branch, and most recently serves the Foundation for the past 6 years. His work and support of safety information sharing has been the benchmark of this initiative. Bill is unable to be with us today due to recovery from a recent surgery. We wish him a speedy recovery and look forward to seeing him again among us in about 4 weeks.

The Flight Safety Foundation is an independent, non-profit, international organization engaged in research, education, advocacy and publishing to improve aviation safety. The Foundation’s mission is to be the leading voice of safety for the global aerospace community.

My service at the Foundation began two and a half years ago, after 26 years as a professional pilot with Delta Air Lines, which included 10 years in the flight safety department of which I facilitated many programs including ASAP. For the last 3 years at Delta I was the Chief Pilot of the Atlanta International Pilot Crew Base. After retiring early from Delta I became the Vice President of Safety & Security for World Airways were I lead the beginning of World’s participation in the US FAA ASAP and ASIAS programs.

For over 10 years the Flight Safety Foundation has been supportive of not criminalizing safety investigations of accidents. In October of 2006, we entered into a joint resolution with the Royal Aeronautical Society, L’Acadamie National de L’ Air et l’Espace in France and the Civil Air Navigation Services Organization that declared that the increased threat of involvement of law enforcement during an investigation into aviation accidents and incidents could have a detrimental effect on aviation safety.

Since that time, some of the Foundation’s most important work has centered upon determining the probable cause of the accident and contributing factors, not to criminally punish individuals. The General Counsel of the Flight Safety Foundation, Ken Quinn, has been a strong leader in promoting the Foundation’s position on the “what” and “why” of an accident and not unnecessarily targeting blame.

The safety of the traveling public depends on encouraging a climate of cooperation following accidents and significant events. Overzealous prosecutions would threaten sources of information and jeopardize safety. Programs such as Aviation Safety Information Analysis and Sharing (ASIAS), Flight Operational Quality Assurance (FOQA), Aviation Safety Action Program (ASAP), and Voluntary Disclosure Reporting Program (VDRP) are contributing to an increase in data collection for analysis and information sharing. The Foundation supports these programs and has just recently signed a Memorandum of Cooperation with ICAO, which will help facilitate more information sharing globally among westernized and non-westernized states.

The Foundation urges industry, government, association, and family assistance groups to come together, as you have already heard from one of our Board member Paolo Pettinaroli and head Foundation 8, to consult on the “fixes”. Those “fixes” must come from data that is obtained through many sources that voluntarily contribute sensitive information for the common good of safety related purposes.

If we take a look at the possibility that shared safety information might be used for prosecution of those involved in an accident of significant event, that information will be shut off. I will cite the ComAir regional jet accident in Lexington, Kentucky. Once the court became involved and was able to obtain past ASAP data in conjunction with litigation, voluntary ASAP data began to slow and even be shut off in some cases. There are five cases that have used safety information to establish civil and criminal liability. Using voluntary safety information in the wrong context will potentially harm the safety of the entire system.

There is some light on the horizon due to some recent changes from states such as France with the most recent court decision to throw out the convictions against continental Airlines and one of their mechanics. Brazil and Spain have both decided to offer training courses on how to investigate, analyze, and use information for purposes other than criminalization.

In conjunction with this listening session today the Foundation would like to note the following for consideration of this Task Force:

1. The Foundation – ICAO MOC will breathe some life into information sharing, and we will need binding laws and standards in order to gain the most benefit from that information
2. New ICAO SARPs and guidance materials will cause states to collect and protect valuable flight data
3. Ensure appropriate levels of protection for safety data, accident records, and voluntarily-disclosed information
4. Consideration of bringing entities such as governments and legal together for common understanding of how safety information should be used

In conclusion, safety data needs to be protected and used effectively to keep aviation the safest mode of transportation in the world. We have to be vigorous about protecting the information, but can’t put ourselves ahead of justice. If there is intentional disregard for safety then there needs to be accountability.

The Foundation will continue to facilitate information sharing, promote the protection of safety data, and embrace all entities that can contribute to the continuous improvement of aviation safety.

Thank you for your time and attention. If time permits I would be happy to answer any questions.