



PROTECTING Confidentially

The problem with trying to explain the things that we do in the aviation industry is that many levels of information usually need to be known before understanding becomes possible. That's one of the reasons the general news media get aviation stories wrong. To be sure, there are dedicated reporters who know aviation well and are very good, and most general assignment reporters try to get it right, but sometimes deadlines get the better of them.

While much of the misunderstanding about what we do is technology-based, when it comes to explaining how we got to where we are in keeping aviation safe, the path to understanding is even more tortured. The medical industry — not a group of dummies — still is struggling to distill our multi-layered risk reduction schemes into something it can intellectually accept and practically adopt.

That knowledge gap became a factor when attorneys in February asked Magistrate Judge James B. Todd to unlock Comair's aviation safety action program (ASAP) records to see if the airline's management knew of any unsafe conditions that, if corrected, might have prevented the 2006 runway confusion

accident in Lexington, Kentucky, U.S. (ASW, 11/07, p.38).

Various aviation groups tried to explain why violating the confidentiality of Comair's ASAP is a bad idea, but to no avail. In ordering that the information be released, Todd said that the program would persist because it is so important. He could say something like that because he wasn't aware of — or couldn't appreciate — the difficulty U.S. operators had in getting legal clearance for the Federal Aviation Administration to allow confidentiality protection, then selling the idea to their employees. Todd further said, according to one report, that instead of companies and individuals being afraid of what legal damage ASAP disclosure might cause, they should be more afraid of increased risk and lawsuits if the program was shut down.

That logic, to my eye, is how we used to look at safety: Try real hard not to crash because lots of bad things accompany accidents. Then we discovered the benefits of data-based action plans, protected reporting systems and just culture, and a new level of safety was achieved.

Further, there seems to be little chance that giving a bunch of smart

lawyers access to information about hundreds of incidents, misunderstandings and close calls will result in anything positive. How can an airline's handling of ASAP reports be defended? And with what standard, reasonable diligence or zero tolerance?

It seems that the battle against criminalizing accidents and opening up confidential reporting systems cannot be fought solely on a case-by-case basis, although that must be part of the plan. But to better protect a proven system against well-meaning legal actions with potentially devastating results, laws must be changed to set limits, establish boundaries of what is fair game and what is too important to the lives of countless future passengers to be subject to the whims of local legal forces. That will be a tough sell, but it is well worth the effort.

A handwritten signature in black ink that reads "J.A. Donoghue".

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