

Targeting the Top

For years, Flight Safety Foundation has been watching and commenting on criminal prosecutions associated with aviation accidents and incidents. Our goal has been to defend the essential flow of safety information that is the lifeblood of the safety programs in our industry. It is obvious to us that prosecuting the people who make the reports will reduce reporting, but now there is a new trend to deal with.

This trend became obvious at our recent European Aviation Safety Seminar in Bucharest, Romania, where a panel of noted attorneys and experts in the field pointed out that the focus of juries and judges in accident cases has been shifting away from front-line employees. Recent cases, the panelists said, have been directed at establishing negligence on the part of companies, managers and even corporate boards.

There are more than a few recent examples. Last year, in the trial arising from the July 1, 2002, midair collision over Überlingen, Germany, none of the first-line controllers were convicted, but four managers for the air traffic control service provider were convicted for introducing negligent and potentially dangerous working practices.

Just this past March, six Crossair managers were indicted by Swiss prosecutors in connection with the November 2001 Avro RJ100 crash near Zurich Airport for “having employed a pilot with known shortcomings who caused the crash through faulty conduct.”

Also in March, judges presiding over a civil suit arising from the August 2006 Comair runway-confusion accident in Lexington, Kentucky, U.S., ruled that confidential voluntary reports contained in the company's Aviation Safety Action Program could be used in court. The ruling was made in response to plaintiffs' assertions that airline management had failed to address serious safety problems and that management's lack of action constituted “a gross and wanton disregard for safety.”

On April 6 in the U.K., a new “Corporate Manslaughter and Corporate Homicide Bill” took effect. It supersedes a statute that tasked juries to consider if corporate actions were “so negligent as to be criminal.” The new law asks if conduct of management “falls far below what could reasonably have been expected.” This sends a pretty clear message. When it comes to safety practices in the United Kingdom, no company can afford to be much below average.

This trend puts those of us in the safety business in a curious position. It is difficult to say that this will discourage reporting by front-line operators. It is more likely that prosecutors will make immunity deals with front-line employees in order to get information about their employers.

Our new concern will be managing how this plays out in the board rooms. Poorly informed legal counsel and executives could use this as an excuse to stay away from voluntary reporting systems and flight data monitoring programs. Or, in a misguided attempt to limit their liability, they could limit the information retained in such programs.

That would be the wrong reaction. The right reaction is to commit to safety management. CEOs and board members should know that the future of their companies, and possibly their freedom, may be at stake. The environment is changing, with the public around the world asking for increased executive accountability. It is up to safety professionals to reach out to executives and explain that the only way to limit their liability is to manage safety in an open and effective manner — and that this could even keep some people from getting killed.



*William R. Voss
President and CEO
Flight Safety Foundation*

