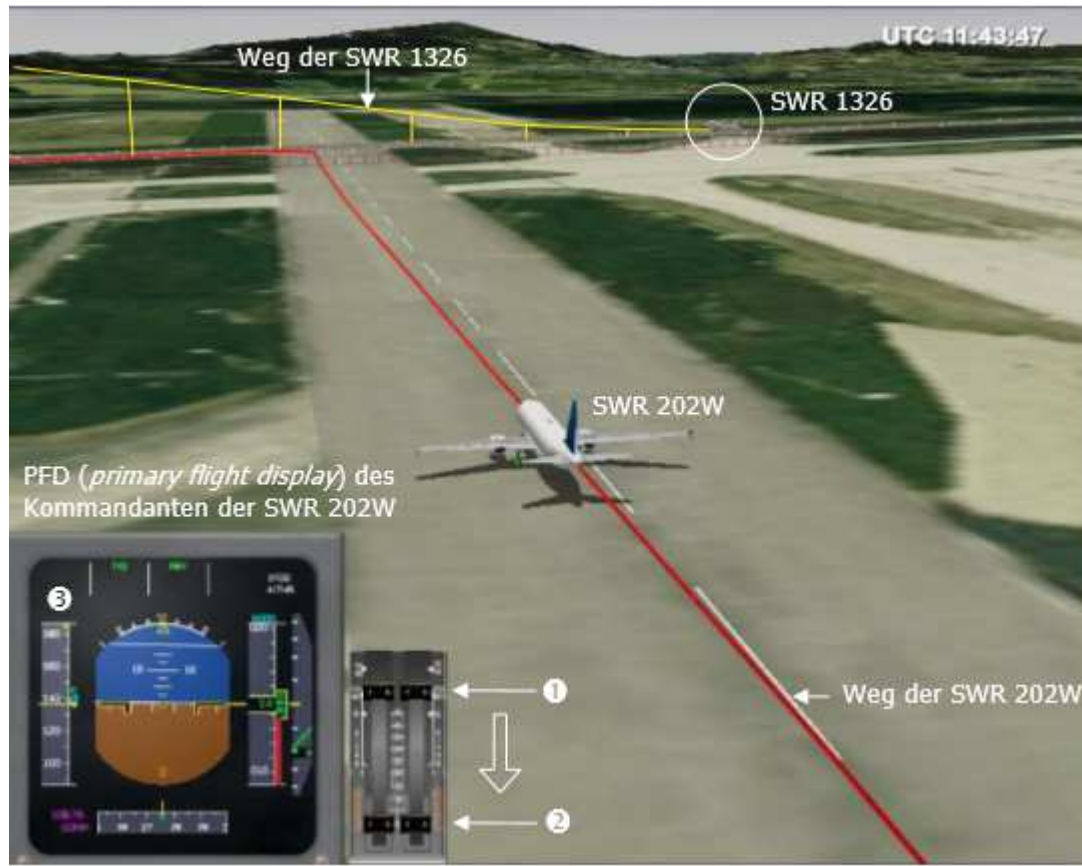


Just Culture vs. Criminal Law – Experiences with accused individuals

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28 years of experience with hazardous situations at Zurich Airport

- “Lawyer in Confidence” of Aerocontrol Switzerland since 1988
- Engaged as defendant attorney in 2 major accidents:
 - **Alitalia 404** controlled flight into terrain in November 1990
 - Ueberlingen mid air collision **DHL-611 / Bashkirian-Airlines-2937** of July 1st 2002
- Participant in several dozen safety exams of Swiss Transportation Safety Investigation Board
- Defendant attorney in 2 hazardous situations at crossing runways 16/28 of Zurich Airport in 2009 and march 2011



1. STATE ATTORNEYS PROSECUTE HAZARDOUS SITUATIONS

A short history of criminal prosecution of hazards at Zurich Airport (I)

- If *major accident* with dead and injured the controller(s) involved face prosecution
- If *hazardous situation*, up to 2009 prosecution was not probable
 - Lack of information / lack of “police of air” in CH
 - Reputation: Zurich Airport known as safe
 - Complex elements of an offense

A short history of criminal prosecution of hazards at Zurich Airport (II)

- Since 2010 change of policy: Some major hazards are prosecuted
 - Reputation: too many hazards at Zurich Airport
 - Negative publicity
 - Incident reports of SAIB which are intended to promote safety as basis of prosecution
- Case OLT212/BER966Z of 31 July 2008 was shut down in 2011
- One other case in court / one pending at prosecutor's offices



2. CONSEQUENCES OF ENHANCED PROBABILITY OF PROSECUTION

Concerns of controller involved in investigation of SAIB in case of serious hazard

- “Every saying may be used against you”
- Right to keep silent
- Uncertainty if criminal prosecution follows in case of safety standards seriously violated
- Uncertainty of professional future during criminal prosecution and maybe later on

Controller in criminal prosecution

- Timeline of SWR 1322/SWR 202W of 2011-03-15:

2011-03-15	SERIOUS HAZARD	
		Controller interviewed 2 times by SAIB
2012-03-06	SAIB FINAL Report	
		Controller interviewed 3 times by StA expertise for StA in 3 steps
2014-07-28	Writ of accusation	
2014-12-16	1st Court session	
		expertise for court
2016-04-28	2nd Court Session	
2016-12-07	Pronunciation of Sentence	
If there is an appeal Winter 2017/2018	Sentence of Zurich Appeal Court	
If there is an appeal 2018/2019	Sentence of Swiss Supreme Court	

Aim of juridical procedure and **role of defense:**

- Not to understand what really happened
- But to come to a conclusion, which position is more persuading
 - → Keep silent during prosecutor's investigation
 - → Never help prosecutor to understand elements of the case better
 - → Attack prosecutor's position only in court
 - → Build up an independent view on facts of the case

Not 2 aircrafts, a complex cosmos of tasks

Negligence according to writ of accusation: “The accused did not maintain continuous watch of all movements according to ICAO Doc 4444 7.1 .1.2 but dedicated himself to study the program of NAV-Checker flight.”





3. PROSECUTOR'S VIEW ON MAN'S LIABILITY



4. LAW VS. JUST CULTURE: MISTAKES ARE THE RESULT OF NEGLIGENCE

Committing mistakes is human

- Nobody is perfect...
- Mistakes an important source for learning
- → These modern insights in behaviour of man and enterprises lead to propagate just culture.

Political price for just culture is the primary penal liability of enterprises for negligence

- SWR 1326 / SWR 202W case showed many organisational mistakes in the Skyguide entity of Zurich Airport and a negligent surveillance of FOCA of safety
- Such misbehaviour should be penalized
- Delimitations:
 - Deliberate intention and
 - Gross negligence excluded