



# Attitude

The aviation safety community is justifiably proud of what it has accomplished in the past decade or so. Swimming uphill against a thought stream that held few changes were needed since flying was already safe, safety specialists established a completely new threat-targeting paradigm, using data from accidents, incidents and events to predict where efforts should be focused.

This evolved the idea of “just culture” in an organization, holding that encouraging the flow of information is more important than punishing those who make mistakes. Two authors in this issue of *AeroSafety World* describe very clearly the benefits that flow from such an approach in a safety culture.

But governments have struggled with the conflicting imperatives of the accident investigation process and the criminal justice system. In the United States, policy and practice — more than rules — protect the process. While analyses and accident reports produced by the National Transportation Safety Board by law cannot be used in criminal or civil courts, the factual information gathered by investigators is fair game for the courts, and investigators can be called to participate in criminal cases.

Courts have shown an inclination to protect the investigation process, ruling against those seeking NTSB-developed information, widening the prohibition against the introduction of NTSB analysis to cover the release of other types of information.

Jim Hall was NTSB chairman in 2000 when, in a speech, he described one such ruling: “During oral arguments, the chief judge indicated that it was the court’s desire to allow the board to do its job and to keep it out of litigation. Using a few choice words, he said that ‘we are trying very hard to keep lawyers from screwing that up with this agency.’ Unfortunately, given the litigious nature of our society, such challenges to our procedures and authority may continue.”

It is no more than a matter of U.S. Department of Justice (DOJ) policy that individuals are not prosecuted after an accident; criminal charges generally are reserved for investigations that turn up evidence of aggravated corporate misbehavior. This policy keeps information flowing in U.S. investigations.

But that is just a policy, and policies change. Should that happen — and we’ve lately seen previously unimaginable things coming out of DOJ — who in their right mind would reveal information that

might be turned against them in later legal proceedings?

But, so far, it remains part of the U.S. culture that accident survivors and participants are not charged with a crime.

Exactly the opposite is true in many countries, where the requirement to prosecute is part of the culture, written into laws and even national constitutions.

This is why the battle against the criminalization of aircraft accidents is going to be so much more difficult than other recent challenges, such as the effort to reduce controlled-flight-into-terrain (CFIT) accidents. The fight against CFIT is a logical effort of hardware and procedures that does not confront issues of tradition, culture and emotion. Those of us who see the clear benefit of prosecutorial restraint need to temper our attitude with an appreciation for the gravity of the changes we are advocating.

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

*J.A. Donoghue*  
Editor-in-Chief  
AeroSafety World