

POST-ACCIDENT FLIGHTCREW REPRESENTATION
in a Nutshell

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ALPA Policy

ALPA Administrative Manual Section 80, Paragraph G

Pilot Testimony in Accident Cases

SOURCE - Board 1982; AMENDED - Executive Board May 1987

1. In cases involving airline accidents, members of ALPA shall not commit themselves orally or in writing, and shall refuse to give statements or testimony to or before so-called fact-finding committees, boards, and operating officials of respective airlines or any agency or agencies of the Federal or State Governments including the National Transportation Safety Board, unless and until they are represented (by) any ALPA Staff Attorney from the Representation Department.
2. Members of ALPA should not give testimony in accident cases orally or in writing to or before any organization, court or Federal agency unless such member has consulted with an ALPA air safety representative or an ALPA staff attorney.

Post Accident Drug Testing

Appendix I to Part 121--Drug Testing Program

Paragraph II: *Definitions*. For the purpose of this appendix, the following definitions apply:

Accident means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage.

V. *Types of Drug Testing Required*

D: *Post-Accident Testing*. Each employer shall test each employee who performs a function listed in Section III of this appendix for the presence of marijuana, cocaine opiates, phencyclidine (PCP), and amphetamines or a metabolite of those drugs in the employee's system if that employee's either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The employee shall be tested as soon as possible, but not later than 32 hours after the accident. The decision not to administer a test under this section must be based on a determination, using the best

information available at the time, that the employee's performance could not have contributed to the accident. The employee shall submit to post accident testing under this section.

Post-Accident Alcohol Testing

14 CFR Part 65 **CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS**

Section 65.46a Misuse of Alcohol

(e) *Use following an accident.* No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety sensitive function at or near the time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post accident test under Appendix J to Part 121 of this chapter, or the employer has determined that the employee's performance could not have contributed to the accident.

14 CFR Part 121 **CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT**

Section 121.458 Misuse of Alcohol

(e) *Use following an accident.* No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety sensitive function at or near the time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post accident test under Appendix J to Part 121 of this chapter, or the employer has determined that the employee's performance could not have contributed to the accident.

Appendix J to Part 121--Alcohol Misuse Prevention Program

I. General

C. Definitions.

As used in this appendix--

Accident means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage.

III. Tests Required

B. Post-Accident

1. As soon as practicable following an accident, each employer shall test each surviving covered employee for alcohol if that employee's performance of a safety-sensitive function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the employer's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.

2. (a) If a test required by this section is not administered within 2 hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following an accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FAA upon request of the Administrator or his or her designee.

3. A covered employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain required assistance in responding to the accident or to obtain necessary emergency medical care.

Title 49 - TRANSPORTATION
Chapter VIII - National Transportation Safety Board

Part 831 -- AIRCRAFT ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

Section 831.7 **Right of representation.**

Any person interrogated by authorized representative of the Board during the field investigation shall be accorded the right to be accompanied, represented, or advised by counsel or by any other duly qualified representative.

Title 49 - TRANSPORTATION
Chapter VIII - National Transportation Safety Board

Part 845 -- RULES OF PRACTICE IN TRANSPORTATION; ACCIDENT/INCIDENT
HEARINGS AND REPORTS

Section 845.10 **Determination to hold hearing.**

The Board may order a public hearing as part of an accident investigation whenever such hearing is deemed necessary in the public interest: *Provided*, that if a quorum of the Board is not immediately available in the event of a catastrophic accident, the determination to hold a public hearing may be made by the Chairman of the Board.

Section 845.13 **Designation of Parties.**

[a] Parties shall be represented by suitable qualified technical employees or members who do not occupy legal positions.

Section 845.24 **Right of representation.**

Any person who appears to testify at a public hearing shall be accorded the right to be accompanied, represented, or advised by counsel or by any other duly qualified representative.

Section 845.25 **Examination of Witnesses.**

[a] Witnesses shall initially be examined by the board of inquiry or its technical panel. Following such examination, parties to the hearing shall be given the opportunity to examine such witnesses.

[b] Materiality, relevancy, and competency of witness testimony, exhibits, or physical evidence shall not be the subject of objections in the legal sense by a party to the hearing or any other person. Such matters shall be controlled by rulings of the chairman of the inquiry on his own motion. If the examination of a witness is interrupted by a ruling of the chairman of the board of inquiry, opportunity shall be given to show the materiality, relevancy, or competency of the testimony or evidence sought to be elicited from the witness.

**NATIONAL TRANSPORTATION SAFETY BOARD
INVESTIGATION MANUAL - AIRCRAFT ACCIDENTS AND INCIDENTS**

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General Outline of Policy Relating to Coordination Between the National Transportation Safety Board and the Federal Aviation Administration in Aircraft Accident Investigation

2. Procedural Coordination Between NTSB and FAA in Major Accidents

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b. The FAA shall provide a principal representative, designated as the FAA coordinator and such other representatives as deemed appropriate by the FAA or the Board's Investigator-in-Charge. The Coordinator shall work with the Investigator-in-Charge in coordinating their activities.

g. Additional facts or exhibits pertaining to violation of the Federal Aviation Regulations or other matters not deemed essential to the objectives of the NTSB Investigation shall not be deemed essential to the objectives of the NTSB investigation, shall be obtained by FAA personnel only as a separate function outside their participation as members of the NTSB team. The FAA coordinator shall consult and make definite arrangements with the Investigator-in-Charge in connection with the separate activities of the FAA in obtaining additional information. In obtaining such facts, FAA personnel shall make it clear that they are not acting under NTSB direction.

h. The Investigator-in-Charge, or NTSB Group Chairman, may request FAA representatives to withdraw during interviews with crewmembers or other persons when their presence may restrict the gathering of information or statements because of the fear of enforcement action.

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ATTACHMENT A

NATIONAL TRANSPORTATION SAFETY BOARD
Bureau of Accident Investigation

OPENING STATEMENT OF INVESTIGATOR IN CHARGE AT ORGANIZATIONAL MEETING

1. Opening of Meeting
 - a. Call meeting to order.
 - b. Introduce IIC
 - c. Ascertain that no members of the news media, attorneys, insurers, or persons representing claimants are present. Excuse them (if news media are present establish a time for a press briefing.)

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ATTACHMENT D

NATIONAL TRANSPORTATION SAFETY BOARD

INFORMATION FOR THE GUIDANCE OF THE PARTIES TO THE INVESTIGATION OF AIRCRAFT ACCIDENTS.

2. Role of Parties to the Investigation

... No participating organization will be permitted to be represented by a person whose interest lie beyond the safety objective of the accident investigation.

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Investigation Outline- Operations

...If there is a live crew, the Investigator-in-Charge will make the decision whether the Operations Group and/or the Human Factors Group will interview them and who will attend.

a. Flightcrew Interviews

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These interviews are conducted by the Operations Group and should cover fully and definitively all questions related to the relevant history of the flight. Whether Human Factors Group members actually participate in these interviews or not, the following Human Factors-related information should be developed:

- (1) Seatbelt and shoulder harness security before and after impact
- (2) Difficulty releasing restraints
- (3) Seat adjustment (position)
- (4) Seat security after impact
- (5) Difficulties during escape
- (6) Aided Flight Attendant/passengers
- (7) Meals taken in last 24 hours
- (8) Off-duty activities in last 24 and 48 hours
- (9) Description of injuries and how they were sustained

A determination should be made also concerning who will interview the crew's families.

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Investigation Outline - Witness Investigation

A. General

The philosophy of questioning witnesses to aircraft accidents is based on the "interview" rather than the "interrogation." "Interview" connotes a meeting where the interviewer approaches the interview on a cooperative and neutral basis. The cooperation of the interviewee is sought, and he is encouraged to tell his story freely and informally (rather than through intimidation).

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Interview statements should be obtained as soon as feasible after arriving on the scene. Long delays between observations and relating the observation are conducive to inaccuracies. The experienced investigator realizes also that bits of seemingly insignificant information may take on great importance when combined with investigative findings in other areas.

B. Procedures

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5. Successfully interviewing the aircraft accident witness is primarily an application of common sense. Show the witness the same courtesy and consideration that you would appreciate if the situation were reversed. Encourage the witness to tell his story in his own way without questions, comments, suggestions, or interruptions from the interviewer. Periods of silence, by the interviewer, while the witness collects his thoughts, have been found to encourage the witness to expound more fully and avoid omissions. The interviewer's ability to be a good listener and keep the witness talking is essential to this phase.

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6. Note-taking by the interviewer during the initial narration of the witness is advisable. The note-taking should be done only with the consent of the witness and should not be done to the extent that it is distracting to the witness. Explain to the witness that the notes are used to remind you of areas in his narration that may require further amplification.
7. A tape recorder is a very valuable tool and can be used effectively but should be used only with the consent of the witness.
8. After the witness has completed his narrative, you usually will have some specific questions to ask him relative to areas you have in your notes. In forming your questions keep them simple and avoid aviation jargon or terminology that could be foreign to the witness. Questions from witness group personnel subsequent to the narration of the witness should be channeled through the designated group spokesman. The advantages of this procedure far outweigh the disadvantages.

9. Following the interview, ask the witness to prepare or permit you to prepare for him a written statement including all the pertinent information elicited during the interview. Occasionally it will be beneficial to suggest to the witness that his observations follow a chronological sequence. Encourage the witness to use drawings, sketches, or photographs to supplement and complement the written statement. Permit the witness to add omissions at the end of the statement rather than rewrite the entire statement. If a witness refuses to sign a statement, don't press the issue. Indicate on the statement that it was made in the presence of (those present) and the witness did not wish to sign it.
10. Courtesy is also important in concluding the witness interview. Thank the witness for his cooperation and time in providing you with information and the signed statement. The investigator should leave a phone number and address where he can be reached should the witness recall additional information that he failed to include in his statement.
11. In questioning injured witnesses under a doctor's care, always obtain permission from the attending physician prior to the interview. In these cases limit questions to those considered essential under the given circumstances. During these interviews keep the witness group small. In all cases, if possible, insure that you are accompanied by at least one member of the witness group.
12. In addition to obtaining the information the witness should be qualified regarding his aviation or related experience.

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Crewmember Rights

Under Part 831.6 of the Board's Procedural Regulations, "Any person interrogated by an authorized representative of the Board during the field investigation ... shall be accorded the right to be accompanied, represented, or advised by counsel or any duly qualified representative."

Interviews of crewmembers during a field investigation should not be unnecessarily delayed. At the time that postaccident interviews are scheduled, the investigator should communicate these crewmembers' rights through their association or employer, so as to expedite the investigation.

In the event a flight attendant or other crewmember appears for an interview and is unaccompanied by counsel or other representative, the individual will be advised of his/her right to such representation.

HUMAN FACTORS INVESTIGATION

PREFACE

The Human Factors group will be responsible for developing and documenting information regarding: (1) impact and occupant dynamics, (2) evacuation and survival, (3) search and rescue, (4) collecting and reviewing reports from agencies and parties to the investigation, (5) aircraft exterior configuration, (6) crew medical records, (7) post-mortem examination and toxicological analyses of fatalities, (8) possible foul play or sabotage, (9) crash injury and survivability aspects of the accident, (10) crew or other key persons' histories, especially their activities in the previous 24 hours or so, (11) family interviews relative to crew or other key members, (12) man-machine or man-environment interface problems involving human performance.

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D. DETAILS OF THE INVESTIGATION

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2. Crew Information

2.1 Cockpit Crew

Flightcrew Interviews

These interviews are conducted by the Operations Group. Coordinate with them to develop the following Human Factors-related information whether we actually participate in these interviews or not:

- (1) Seatbelt and shoulder harness security before and after impact
- (2) Difficulty releasing restraints
- (3) Seat adjustment (position)
- (4) Seat security after impact
- (5) Difficulties during escape
- (6) Aided Flight Attendant/passengers
- (7) Meals taken in last 24 hours
- (8) Off-duty activities in last 24 and 48 hours
- (9) Description of injuries and how they were sustained
- (10) How crew evacuated aircraft
- (11) Use of eyeglasses and headset
- (12) Recent illness or time away from job
- (13) Name of hotel(s) while on trip
- (14) Questions concerning human performance if required; refer to human performance checklist

2.1.1 Medical and Professional Histories

Outline crewmembers medical and professional histories

- a. The following chart presents data relative to crew medical certification:

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Name	DOB	Social Security No.Cert.	Class Medical AME	Date of Last Physical Company	EKG	Last Limits
Capt.						
F/O						
S/O						
OBS						

- b. Most recent hospitalization.
- c. Most recent time off flight status due to illness. Length of absence.
- d. Known to be taking medication (physician, medication, reason).
- e. Request medical records from Company and CAMI's Medical Records Branch (8) 749-4821 (FTS) (405) 686-4821 (Comm.) Coordinate this with Operations Group.
- f. Airman information should be obtained from Operations Group Chairman or request files from CAMI's Airman Records Branch (8) 749-2205 (FTS) (405) 686-2205 (Comm.).
- g. Information on last proficiency line checks and emergency training (Ref: 14 CRR 121.417 Crewmember Emergency Training) should be obtained from Operations Group or Company Training Records.

2.1.2 Rest and Duty Time

Briefly summarize the hours of flight, duty and rest time of individual crewmembers.

- a. The following information should be obtained in cooperation with the Operations Group as reference data.

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	The Preceding 48 Hours				The Preceding 24 Hours			
	Trips	Flight Time	Duty Time	Off Duty	Trips	Flight Time	Duty Time	Off Duty
Capt.								
F/O								
S/O								
OBS.								

Reference 14 C.F.R. 121.471 Flight Time Limitations: All Flight Crewmembers

- b. Previous experience with this particular flight, trip segment, approach (captain, F/O, S/O OBS)
- c. Termination of last flight, i.e., off-duty time/rest/sleep/prior to flight.

2.1.3 Background

Summarize in detail the off-duty activities of the flightcrew for the previous 48-hour period and when warranted discuss pertinent human performance aspects of the investigation.

- a. Conduct interviews with associates, family, and friends if necessary to develop information previously outlined, especially in the case of a deceased crew or crewmember.

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7. Survival Aspects

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7.2 Evacuation

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7.2.1 Cockpit Crew

Describe the crew's involvement in the evacuation process.

- a. Outline flightcrew's duties and responsibilities during evacuation.
- b. Description of crew's efforts to assist passengers during evacuation.
- c. Flightcrew's account of how and when they egressed the aircraft.
- d. Flightcrew's observations of CFR and passengers.