MALAYSIA 370: NEW CLUES & THEORIES EMERGE

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CONQUERING CROSSWINDS

NEW RULES FOR TRAFFIC PATTERNS UNLEADED AVGAS: BAD NEWS





Could Your Plane Wind Up Snitching On You?

Most modern avionics have at least some kind of data recording capability. If you damage an airplane, investigators could use it to track you down. Here's the solution.

et's imagine a scenario where a pilot goes out, flies an aircraft, and does damage to the aircraft during their flight. They make it back safely but don't report that damage to anyone. The next user of the aircraft experiences a major structural failure caused in part by the previous pilot's actions. It results in the subsequent pilot's death. Is the first pilot potentially liable?

I know that if I went out with a hammer and purposefully caused damage to a pilot's aircraft that resulted in their death, in most states I could be subject to prosecution in some varying degree of homicide.

But what if it wasn't intentional? Most states have laws that allow for criminal prosecution in cases of negligence that result in the injury or death of another party. These are commonly utilized in cases such as drunk driving as vehicular manslaughter. But what about an aircraft? I don't think it is a far

stretch to think that these laws could be applied to a pilot who met a legal test for knowingly causing a condition that results in a similar outcome.

I am not an attorney. I have never played one on TV, and I didn't stay at a Holiday Inn last night. But it doesn't take much for a rational person to make the mental leap and imagine that if a pilot does something negligent while flying an aircraft that results in the death of another person that they may be held liable, potentially criminally. Especially if they knew there was damage and the pilot didn't report it, and it resulted in the death of the subsequent pilot.

"Let me be as blunt with this statement as possible. If you fly an aircraft and damage it in a way that that causes a future failure that results in injury or death, it is possible that you could be charged criminally."

Even more so if the operation **under which** they are flying has established procedures for those who use the aircraft to report any potential damage to an aircraft. Not doing so when there are established **procedures** represents a willful effort to hide a potential **danger** to future users of the aircraft.

But how would anyone know that my flying the airplane previously had caused the damage that led to the subsequent crash? In the olden days, unless you self-reported, it was likely that nobody would have found out until it was too late.

But the olden days are gone, at least to some degree, so welcome to the modern age of digital electronics in our aircraft. Round gauges couldn't track anything more complicated than tach time, so they were no help.

The olden days, however, are largely gone, and modern aircraft—or older airplanes with modern panels—have much more data reporting capability built into their avionics packages. A glass panel aircraft may allow an owner to download highly specific flight data to include GPS location, G-loading, airspeeds, turn radii, and any number of other parameters. If you go out and play yank and bank games, overstress the aircraft, cause damage, and don't report it, it still may be trackable at a later date. For example, if the aircraft has a major structural failure due to previous overstressing and results in the death of the occupants, the data in that system may be able to be used to pinpoint what happens on a previous flight that was a factor in a later accident.

With this, the NTSB and other investigatory agencies have a much greater ability to determine if any previous flights may have had things happen during them that would cause a future accident. Onboard electronics are not the only tool that can be used. Even iPads or phones with flight

> tracking software can sometimes be used to help detail the parameters of an accident in modern investigations. Data allows investigatory agencies much more ability to track not only flight data from a flight that resulted in tragedy but many more flights prior to that also. Tracking what you have done in an aircraft is much more thorough and a normal part of flight operations in modern aircraft.

> That ability also allows courts to do the same thing. And in some cases, blame may be able to be assigned to a specific flight or pilot of an aircraft. Every state may be a little

bit different, but most have some sort of criminal law in place that would allow for prosecution of an individual who knowingly, or negligently, caused an action that resulted in the injury or death of another individual.

Let me be as blunt with this statement as possible.

If you fly an aircraft and damage it in a way that causes a future failure that results in injury or death, it is possible you could be charged criminally.

The threshold for charges isn't that hard to meet. For example, in one reference I found, in the state of Florida, proof of guilt for an involuntary manslaughter charge need



only have the prosecution submit evidence in support of the three following items:

- · That your actions resulted in the death of someone else;
- That the actions you took were inherently dangerous to others;
- That you knew or should have known that your actions represented a direct threat to the lives of others.

To some degree a discussion of whether there is a "Duty to Care" also applies here. It gets pretty legalistic, but there would also need to be a reasonable expectation that a user had a duty to protect other users from the result of their own actions. This gets easier to prove when there are established procedures in place to do this that an operator adopts. It gets even easier to prove this exists when these procedures are in place and they are not followed.

I can easily imagine a prosecutor making the case that hiding damage to an aircraft you knew happened that subsequently resulted in the death of a future user of the aircraft easily, and reasonably, meets all of these tests.

Think it wouldn't happen? Well, aircraft accidents, especially high profile ones, make news. A prosecutor who thinks they can get a conviction related to an accident like this might find it very appealing politically to be the prosecutor who put the person in jail who causes the death of some unknowing user of an aircraft. At a bare minimum, even if criminal charges aren't filed by an enterprising prosecutor, it would not mean that a civil suit for damages would necessarily be avoided.

We have entered a new era of aviation. One in which even lighter aircraft have highly capable electronics systems that track numerous flight parameters. These parameters could be used to lay blame in an aviation accident in ways that were never possible in previous generations of aircraft.

So, what's the risk that can be mitigated here? Well, it comes down to limiting personal liability and responsibility if you think you may have damaged an aircraft. You can do this by reporting something if a potential problem was experienced.

It is embarrassing to have to admit to a boss, an operator, a rental aircraft provider or an owner that you may have done something that broke their aircraft. But, and especially in situations where maintenance discrepancy reporting procedures are in place, not doing so could potentially constitute a future liability civilly or criminally. If that isn't enough for you, just the thought of whether you might want the death of someone else on your conscience should cause some pause.

Avoiding this potential risk can be easy. Everyone makes mistakes. If you break something, report it. In the best-case scenario, it gets fixed, and even if you wind up having to pay for the repair, that's a responsibility we should all accept as pilots.

But in the worst of cases, not reporting potential problems, even little ones, can start a chain of events that could result in deaths and potential civil or criminal ramifications for previous aircraft users who may have damaged an airplane in ways that caused a future accident. And no one wants that on their conscience or their record. **PP**

Want to learn more about the challenges, risks and opportunities of flying aircraft at "middle-altitudes?" Jason just released a new book that goes much more in depth, "An Aviator's Field Guide to Middle-Altitude Flying - Practical skills and tips for flying piston-powered aircraft at 10.000–25.000 feet MSL," published by Aviation Supplies & Academics (ASA).