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MILITARY INVESTIGATIONS AND REPORTS OF AIRCRAFT ACCIDENT

BY COLONEL CHARLES BURTON†

TWO MAJOR investigations which will be described—aircraft accident investigations and collateral investigations—are conducted for two distinctly different purposes, and, accordingly, the manner in which each is conducted is different.

The regulation¹ under which the Aircraft Accident Investigations are conducted states that their purpose is to determine, solely in the interest of flying safety, all factors having a connection with the accident. The reports and attachments can not be used: (1) as evidence or to obtain evidence for disciplinary action, (2) as evidence in determining misconduct of any personnel, (3) as evidence before flying evaluation boards, (4) as evidence to determine pecuniary liability, or (5) as evidence to determine liability in claims against the U.S. government.

It is the function of the collateral investigation to cover the latter aspects. We are prohibited within our own department from using the Aircraft Accident Investigation report in the defense of lawsuits or claims.

Every effort is made in Aircraft Accident Investigations to persuade the individuals involved, including personnel of the military departments and representatives of manufacturers, to make full and accurate disclosure of all relevant data which they may possess, even though the source of the information may be embarrassing to the individuals or their firms or constitute self-incrimination. Full and free disclosure is essential to the success of these investigations. In order to achieve the desired freedom of disclosure, assurance must be given that statements made will not and cannot later be used in civil, criminal or administrative actions.

It is obvious that an individual will be extremely reluctant to admit his own negligence if he fears that his statement may later be used against him. In addition, certain other information pertinent to these investigations can be obtained only on a pledge not to disclose its source. For example, the vast knowledge of the technical representatives of the manufacturers whose products are involved in aircraft accidents is fully utilized by the military departments in these investigations.

These technical representatives could hardly be expected to speak with candor and find their companies at fault if their reports could later be released to the prejudice of their employers or used in litigation against their firms. Furthermore, knowledge that the reports are subject to use in litigation might influence the investigators to soften their reports and to

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¹ Air Force Regulation 127-4.

hesitate unduly before assessing blame. So much for policy and philosophy.

The investigation of an aircraft accident is divided into five phases:

(1) *Orientation and Examination*, (2) *Collection of Data*, (3) *Analysis of Data*, (4) *Conclusions* and (5) *Recommendations*.

(1) *Orientation and Examination*

At the outset, an accident investigation board is appointed by the appropriate commander. The board is then oriented along areas of responsibilities and a complete review is conducted of all known aspects of the accident, such as: material, personnel, weather, records, medical and support facilities, wreckage location, condition, etc.

(2) *Collection of Data*

Data must be consolidated into useful form and includes all information acquiring and substantiated by statements, charts, maps, diagrams and photographs. This is usually accomplished at or near the scene of the accident (usually the nearest Air Force installation).

(3) *Analysis of Data*

After all data has been collected, it must be analyzed by the experts. Their individual analyses and reports are then presented to the Aircraft Accident Board for composite evaluation.

A careful and complete analysis of the data compiled during the previous phases is required to establish the cause of the accident.²

(4) *Conclusions*

The factors which have been established then form a basis for the conclusions and recommendations relative to the accident.

(5) *Recommendations*

The ultimate phase in the investigation of an accident is the recommendation for corrective actions for the prevention of further accidents.

The Aircraft Accident Investigation is designed to determine all contributing factors of an aircraft accident and to obtain related information which can be used as a basis for arriving at corrective action for preventing similar accidents. When the causes of accidents are known, positive preventive action can be taken. The entire Aircraft Accident Report is limited to one purpose—*accident prevention*. We believe that by our accident analysis, aircraft accidents can be avoided; lives can be saved. This purpose is in marked contrast with the purpose of the collateral investigation which is to permit the Air Force to properly assess the accident to answer questions which are not solely concerned with accident prevention. Because the two investigations are conducted for separate and distinct purposes, different procedures for eliciting the testimony of witnesses are applied.

One matter of administration may be of interest. All aircraft accident investigations are monitored by the Director of Aerospace Safety. On the other hand, collateral investigations are monitored by the Staff Judge Advocate of the major commands concerned (*i.e.*, MAC, SAC, TAC, and ADC).

In the Collateral Investigation, the regulations prescribed that certain

² CH 13, AFM 127-1.

rules be followed, recognized, and safeguarded. When these requirements are met, many legal consequences can follow based on this one report which might otherwise require a new proceeding. Some of the more important requirements include the right of respondents to be informed of the allegations made against them, or to be informed that their conduct is or may be subject to investigation; to be present during the proceedings; that upon request they will be furnished military counsel to represent them; to cross-examine witnesses; to introduce evidence in their own behalf and to make argument at the conclusion of the presentation of the evidence.

The Aircraft Accident Investigation, in contrast, is conducted in accordance with procedures prescribed in Aircraft Accident Prevention and Investigation.³

These procedures are based on the experience and accepted practices of agencies engaged in aircraft investigations. One of the most distinguishing features of this investigation is that the testimony elicited from witnesses is "privileged." This means that a witness appearing before an aircraft accident board is afforded complete protection against having his testimony used against him in any proceeding of a criminal nature. In practice the safeguard is applied so that the report itself cannot be used as a basis of information for subsequent disciplinary proceedings of any kind. There is a confidential relationship between the witness and this investigation board which is preserved within the Aircraft Accident Report—a privileged document protected as a matter of policy.

After the accident board has been appointed, the commander must make a decision as to the necessity for conducting a Collateral Investigation of the aircraft accident.

A Collateral Investigation must be conducted if:

1. The accident results in an estimated damage of at least \$20,000 to private property not on the aircraft; or it results in death or injury to any of the following:

"(a) Nonmilitary persons, except United States Civil Service employees whose deaths or injuries are compensable under the Federal Employees Compensation Act.⁴

"(b) Military personnel off the military reservation and not performing military duties at the time of the accident (all military passengers are considered to be performing military duties).

"(c) Foreign military personnel undergoing training in the United States under the auspices of the U.S. government, except when their international travel orders absolve the United States of all blame and financial responsibility for injuries received in such training."

2. The commander considers it necessary in those cases where the accident or incident may lead to criminal prosecution, disciplinary action or imposition of pecuniary liability against military personnel.

3. Directed by an appropriate commander. Once a decision is made to conduct a Collateral Investigation, a single officer or a board is appointed. This board may include a legal advisor. Technical advisors are appointed to assist the board when needed. These technical advisers usually include highly qualified pilots, maintenance personnel and operations specialists.

³ AFM 127-1; AFP&I (September 1963).

⁴ 5 CSC 751, *et seq.*

Members of Collateral Boards are thoroughly briefed on their duties by the base Staff Judge Advocate. They are instructed not to mingle with members of the Aircraft Accident Board and not to examine the Board's privileged materials. This precludes attending the proceedings of the Accident Investigation Board, using or reviewing, in whole or in part, testimony or statements taken by the Accident Board, asking any member thereof to divulge privileged testimony or his own opinions concerning the accident; or being made aware through any source of the Accident Board's findings and recommendations.

Usually the Accident Board will have no information as to the cause of the accident; however, if a respondent is to be named, the aircraft commander is generally the logical one to be selected. The Collateral Board then collects all pertinent documents (maintenance records, photographs, aircraft and crew records such as DD Forms 175, AFTO Forms 781a, AF Forms 5 and training records).

The Board then interrogates witnesses thoroughly and all relevant documentary evidence is introduced. Witnesses interrogated by the Accident Investigation Board may be called to testify before Collateral Boards, but only after they have been released by the Accident Investigation Board. Other evidence obtained through the independent efforts of the Collateral Board may be used by the Collateral Board. In most instances the witnesses who have knowledge of the incident or who have information material to the inquiry will be available for interrogation by both bodies even though the testimony will be elicited in a different atmosphere and under altogether different circumstances.

After all evidence has been received, the Collateral Board will deliberate and make its findings and recommendations. In this connection, you should understand that there is no attempt on the part of the Collateral Board to duplicate the efforts of the Aircraft Accident Board, that is, to determine the cause of the accident. While it is hoped that one of the by-products of the Collateral Board will be a reduced accident rate, the appointment of the Collateral Board is not for the purpose of accident prevention.

There is a third type of investigation that may be conducted, which I shall describe briefly. When an aircraft accident occurs, the Claims Officer at the nearest Air Force base is notified immediately. Portions of the Claims Officer's report may be required in both the Accident Board Report and the report of the Collateral Board.

The investigation conducted in compliance with the "Claims Manual"⁵ is commenced, even though it is known that a collateral investigation will be required.

The Claims Officer generally examines the scene of the accident or incident soon after the mishap occurs, and in some cases he is accompanied by a claims team. The damage is photographed and inspected by experts if such inspection is warranted. Witnesses are interviewed and their state-

⁵ Air Force Manual 112-1.

ments are taken. Injured potential claimants are interviewed, if their physical condition permits. As soon as possible after the accident, if it appears warranted, they are examined by a government physician. This investigation by the Claims Officer is not intended to be a duplication of any other investigation. The Claims Officer's only interest is in compiling evidence which may be used in the settlement of claims arising out of an aircraft accident.

In summary, after every aircraft accident the United States Air Force may conduct three investigations: an Aircraft Accident Investigation, a Collateral Investigation, and a Claims Investigation. The purpose of each type is entirely different and no duplication of effort is intended.