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# Criminalization of Aviation Accidents

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# Establishing and Preserving a Just Culture

- ✈️ Landmark studies in Medicine in the 1980's, after realizing reporting only of errors they can't cover up: 2% - 3% of major errors reported.
- ✈️ "To err is human, to report it is not." Create an active learning environment where safety professionals can openly discuss errors without fear of reprisals.
- ✈️ "It is 'front line' employees such as air traffic controllers, pilots, flight crew, maintenance personnel and other who can provide key information about safety problems and potential solutions. In order for these workers to come forward and report errors or mistakes, an organizational climate conducive to such reporting must exist – Just Culture."

*GAIN working Group E*



- ✈️ "The need for a culture that encourages honest reporting is not yet reconciled with the judicial system and legislators." The situation may get worse if no immediate action is taken.

*EUROCONTROL SAFREP Task Force 2006*





# Establishing and Preserving a Just Culture

## October 2006 Joint Resolution Regarding Criminalization of Aviation Accidents

- Royal Aeronautical Society
- Flight Safety Foundation
- Académie Nationale de l'Air et de l'Espace
- Civil Air Navigation Services Organisation



 Resolution declares that “the paramount consideration in an aviation accident investigation should be to determine the probable cause of and contributing factors in the accident, not to punish criminally flight crews, maintenance employees, airline or manufacturer management executives, or air traffic controllers.”

 Criminalization not effective “absent acts of sabotage and willful or particularly egregious reckless misconduct (including misuse of alcohol or substance abuse).”

# Increasing Frequency of Criminalization: Teterboro Corporate Jet Crash

- ✈️ Injures 11 people; February 2, 2005.
- ✈️ Challenger CL-600 failed to lift-off; crashed into warehouse.
- ✈️ Co-founders, Manager, Director of Charters, Maintenance Director, and Pilot of now defunct charter company indicted January 23, 2009.
- ✈️ Charges include conspiracy, fraud, and endangering the safety of aircraft for falsifying flight logs and overloading planes with fuel.
- ✈️ As of March 18, 2009 Co-founders and Pilot have pled not-guilty.



# Increasing Frequency of Criminalization: 2000 Air France Concorde crash

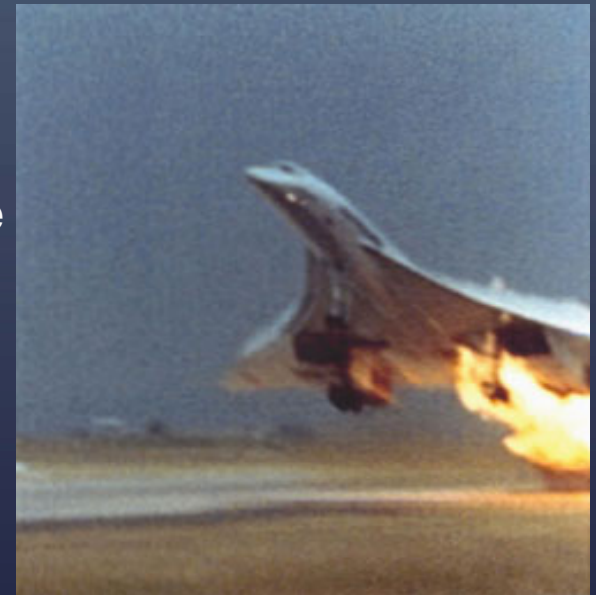
✈ All 109 aboard, as well as four on ground, perish during take-off at CDG.

✈ BEA conducted four year investigation:

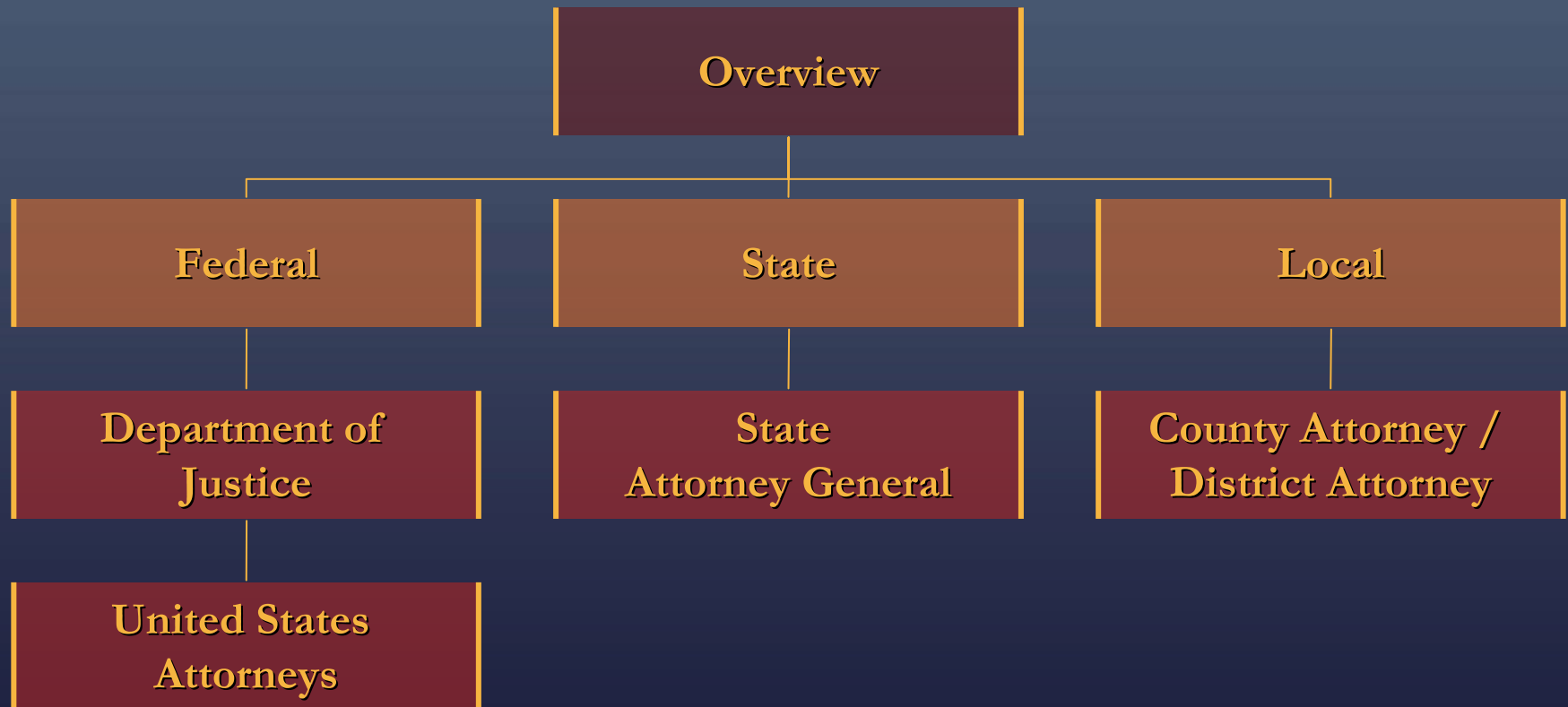
- December 2004 report found likely cause was fallen titanium strip from thrust reverser of CO DC-10 that departed moments before Concorde
- CO subjected to investigation in 2005; vice president appeared in France for a seven-hour hearing

✈ In July 2008, French Judge ordered CO and five individuals to stand trial:

- Charges of involuntary manslaughter
- Trial scheduled to start February 2, 2010



# Levels of Prosecutors Can Vary in the U.S. and Elsewhere





# Who Can Be Targeted in an Investigation?

- ✈️ Line Employees
- ✈️ Middle Management
- ✈️ Executive Team
- ✈️ Board
- ✈️ Company



# How Prosecutors Decide Factors?

- ✈️ Isolated incident
- ✈️ Intent
- ✈️ Number of Victims
- ✈️ Cover-up
- ✈️ Mitigation
- ✈️ Nature of the Target/Corporate Culture











# How to Respond

- ✈️ Know local laws and precedent in jurisdictions in which you operate.
- ✈️ Include response to criminal inquiries in your accident/emergency contingency plans.
- ✈️ Hire experienced counsel, preferably in advance, and consider individual counsel.
- ✈️ Consider insurance notification and reservation of rights to pay for criminal defense.
- ✈️ Ensure individuals and company do not misrepresent or try to “alter” facts.
- ✈️ In initial communications to employees, instruct everyone to preserve documents and emails--do not destroy or hide documents.
- ✈️ Conduct your own privileged investigation.
- ✈️ Open a dialogue – cooperate within reason.



# Unique Aspects of Corporate Investigations

-  Corporate Liability
-  UK Corporate Manslaughter Act.
-  Differences between targets and subjects.
-  Understand scope and limitations of attorney-client privilege
  - Belongs to the company, not any individual.
  - Allows the company to investigate itself and protect its own information.
  - Crime/fraud exception.
-  Cooperation
-  International coordination

# Organizational Guideline Factors

- ✈ Involvement in or tolerance of criminal activity
- ✈ Prior history
- ✈ Violation of court order
- ✈ Obstruction of justice
- ✈ Effective compliance program
- ✈ Self-reporting, cooperation, and acceptance of responsibility



# Discussion

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