CHAPTER FOURTEEN

NATIONAL TRANSPORTATION SAFETY BOARD (NTSB)

A. Safety Investigation

The objective and purpose of the NTSB is aviation safety. That is also the objective of the FAA, yet the two agencies have different functions. Investigations by the NTSB include how well the FAA performs its safety role. The NTSB can only make safety recommendations, while the FAA can make and enforce air safety rules and regulations. The NTSB cannot mandate changes or enforce those recommendations. The Administrator of the FAA ultimately decides which changes to make and enforce, sometimes to the frustration of the NTSB.

The NTSB has five members serving five-year terms appointed by the President with the advice and consent of the Senate. The President appoints one of the five members to be chairman for a two-year term. The chairman is the chief executive and administrative officer. The chairman appoints the NTSB’s employees, makes assignments and manages the budget. The NTSB’s functions are:

1. to find the probable cause of aircraft accidents;
2. to study air safety problems;
3. to make a census of aircraft accidents;
4. to evaluate the efficiency of Government agencies in examining accidents;
5. to evaluate safeguards in transportation of hazardous materials;
6. to represent the United States in foreign aircraft accident investigations pursuant to the International Civil Aviation Convention, Article 27; and
7. to evaluate the efficiency of responses to accidents involving hazardous materials.

From the practicing lawyer’s point of view, the NTSB is of great interest because it, like the courts, examines the evidence relating to accidents in order to discover the cause of accidents. The great difference between examination by the courts and by the NTSB, however, is that the NTSB looks for the probable cause of an accident in order to prevent it from happening again, whereas the court seeks the proximate cause in order to compensate the claimants for damages suffered. Both efforts have deterrent effect, and the evidence used is essentially the same. The public, including lawyers, benefits greatly from gaining access to the expert accident investigation of the NTSB. Most aviation lawyers greatly respect the accident
investigation by the NTSB and learn how to use its collection of evidence for their negligence cases before the courts.

The NTSB can investigate accidents on short notice. A “go-team” is always ready to be at the scene of an accident on 24 hours notice. The go-team consists of an NTSB investigator-in-charge accompanied by several experts. Assisting the NTSB team are the FAA and several experts from industry serving under the supervision of the NTSB. The participation of private parties is justified by their expertise, that is, they are assumed to have special knowledge that may contribute to finding the probable cause of the accident. Aside from the FAA, none of these parties have a legal right to participate. In spite of their expertise, the NTSB has to recognize that the airlines, the aircraft manufacturers, and the air traffic controllers are all potential litigants. Occasionally the NTSB finds that it must dispense with the expertise of one of these parties because of their prevailing litigation interest. For example, the NTSB excluded the air traffic controllers’ union from participating in a 2009 accident investigation regarding a collision of a helicopter and a sightseeing plane over the Hudson River when the union too vociferously protested NTSB fact finding in that investigation. In that case, the air traffic controllers’ union decided it had to disregard its promise to abide by the NTSB accident investigation rules.

The NTSB assumes that litigating lawyers do not possess knowledge that may contribute to finding the probable cause of the accident. The NTSB also assumes that lawyers may delay its accident investigation because of their primary concern for protecting their clients. Private lawyers are therefore not permitted to participate on an investigation team. In *Graham v. Teledyne*, 805 F.2d 1386 (9th Cir. 1986), the executrix of the estate of the pilot sought interlocutory and permanent injunctive relief giving her representatives the right to attend the manufacturer’s teardown analysis of the two engines of the airplane piloted by her husband. She alleged irreparable harm would ensue from destruction of evidence. The court of appeals denied the injunction, stating that the NTSB’s statutory function is to determine the probable cause of the accidents, not to determine civil liability. The executrix had no special mechanical knowledge and, therefore, could not contribute to the NTSB’s determination of the probable cause whereas the manufacturer knew how to tear down the engine and could contribute to the finding of the probable cause of the accident.


The NTSB issues an accident report stating its conclusions about the probable cause of the accident. The accident report is publicly available. However, 49 U.S.C. § 1154(b) prohibits introduction of the report as evidence in a court proceeding seeking to determine the proximate cause of the accident for the purpose of