

Battle Over Aviation Safety

This summer, a tour helicopter collided with an airplane near the Statue of Liberty in New York. Nine people died. In the aftermath, the National Transportation Safety Board (NTSB) and the Federal Aviation Administration (FAA) - two federal agencies responsible for aviation safety - battled over turf. When it was all over, it was the flying public who lost out.

The NTSB's job is to investigate every aviation accident that happens on U.S. soil and to figure out what regulatory changes are required to prevent the same type of accident from happening again. Accident prevention is the NTSB's only reason for being. The NTSB itself, however, has no power to make a new regulation, regardless of how urgently one might be needed. That's the FAA's job. All the NTSB can do after an accident is to offer the FAA a recommendation for change.

But there's a problem. The FAA's mandate is not just to regulate aviation, but to "encourage" it as well. If that sounds like a built-in conflict of interest, it is. When the NTSB makes a regulatory recommendation that might crimp an aviation industry, the FAA is free to ignore it. And that's exactly what the FAA does. As one might imagine, that leads to a bit of frustration over at NTSB headquarters.



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One industry sector that has drawn the NTSB's attention over the years is helicopter tour operations. In the last two decades, helicopter tours have become big business. Helicopters crowd the skies, not just over the Statue of Liberty, but over the Grand Canyon, the glaciers of Alaska, the volcanoes of Hawaii - in fact, over just about any spot with tourists and something to look at. The helicopter tour business now generates more than a billion dollars per year in this country. But its safety record has from the outset been very poor. As the industry has grown, that record has only become worse.

Since the 1980s, the NTSB has thoroughly investigated dozens of fatal tour crashes across the country. As a result of what it learned from those investigations, the NTSB has recommended that the FAA increase its surveillance of helicopter operators to catch unsafe piloting practices. It has asked the FAA to require better maintenance programs for those operating tour helicopters. And, as recently as 2002, it has asked the FAA to promulgate new regulations that would separate helicopters from airplanes in high-traffic areas near points of scenic interest.

Few pilots argue with the last recommendation. Simply put, helicopters and airplanes don't mix well. Helicopters fly slower than airplanes. They maneuver unpredictably. They have a small cross section that makes them hard to spot - especially when viewed from behind. In fact, because it is so difficult for airplane pilots to see and avoid helicopters, regulations require helicopters to "avoid the flow of fixed-wing traffic" or, in other words, they must keep out of the way of airplanes. But existing regulations apply only near airports. Having been promulgated before the explosive growth of the air tour industry, the current regulations don't ad-

dress the skies over scenic features, even though scenic features now attract more air traffic than many airports do.

Without a doubt, updated regulations would largely put an end to the dangerous free-for-all in which the helicopter tour industry regularly operates. While the new regulations suggested by the NTSB would promote safety, they wouldn't "encourage" the air tour industry. Rather, they would tend to restrict it. So, sadly, the FAA simply ignored the NTSB's recommendations.

In the days following the Hudson River crash, the NTSB was handed a golden opportunity to tell its story of warnings gone unheeded. No air tour accident in history had drawn more public attention. The country demanded to know how such an accident could ever have happened, and the media allowed the NTSB to hold center stage for weeks. The NTSB could have explained how this accident would have been prevented, had the FAA acted on its longstanding recommendations. It could have pointed out that the accident will perhaps be repeated elsewhere unless the FAA now takes action industry-wide.

But the NTSB didn't do those things. Instead, the NTSB took aim at one of the FAA's air traffic controllers. The controller, working the Teterboro tower, was on a personal call with a girlfriend when he was supposed to be giving his full attention to his duties. That was just too fat a target for the NTSB to resist. The NTSB blamed the controller for failing to warn the airplane pilot that he was on a collision course with the helicopter. The NTSB's condemnation came with stunning speed - only days into the NTSB's investigation.

The only problem was that the condemnation was completely unfounded. In truth, the helicopter did not appear on the controller's radar screen until after the controller told the airplane to switch to a different controller's frequency. By then, it was too late for the Teterboro controller to advise the doomed pilot of anything. The NTSB had placed blame where it didn't belong.

When the radar data became public, and the NTSB's misfire was exposed, the NTSB wouldn't let it go. Instead, it leveled new charges against the FAA's controller. The NTSB claimed that the controller erred by failing to recognize that the airplane pilot was about to switch to the wrong frequency, and by failing to correct the pilot's mistake. As a result of the pilot's confusion, the pilot never communicated with the next controller, whose radar display *did* depict the collision course. But even that allegation appears to have been unfounded. Nothing in the audiotapes suggests that the Teterboro controller should have been aware that the frequency the airplane pilot was about to change to was the incorrect one.

The NTSB's frustration with the FAA is certainly understandable. But its attack on the FAA controller is not. In trying to pin the accident on



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the controller, the NTSB abandoned its longstanding recommendations, rushed to a judgment contrary to the facts, and ended up looking to all observers like just another foolish government bureaucracy exercising its muscle. The NTSB badly damaged its credibility with the American public.

The FAA has announced that, as a result of the Hudson River accident, it will indeed promulgate a few new regulations. In fact, the new regulations go into effect this week. But the new regulations will apply in the Hudson River corridor only. To keep helicopters and airplanes apart, the FAA will require helicopters operating along the corridor and near the Statue of Liberty to fly at lower altitudes than those occupied by airplanes. To a large extent, the problem over the Hudson is now solved. However, make no mistake about it, the FAA and NTSB have not reconciled. In announcing the new regulations, the FAA noted that it did not consider the NTSB's recommendations at all - it came up with the changes entirely independently.

The new FAA regulations will certainly make safer the crowded skies above "the Lady." But the same dangerous situation that existed over the Hudson River will continue to exist in many of the tour industry's other venues across the country. Why should the lessons "learned" as a result of the midair collision over the Hudson not be applied elsewhere?

The flying public deserves more from the agencies entrusted with their safety.

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