Crime, Punishment and Safety

MANY IN OUR INDUSTRY JEERED AT Brazil’s imprisonment of American ExcelAire pilots after the Sept. 29, 2006, midair collision over the Amazon that killed 154. Many of the same people cheered when the U.S. Department of Justice recently announced arrests and criminal charges in connection with the Feb. 2, 2005; crash of a Challenger at Teterboro.

So, why do the same people have different reactions to these two events? Is it OK for our government to arrest people after an accident, but not OK for other governments to do the same thing? There is an important difference between these two events that has nothing to do with national pride. Brazil never argued that the 2006 midair occurred due to any fraudulent or intentional act by the pilots. But allegations of fraud were crucial to the indictments against the former Platinum Jet Management, LLC management team and one of the pilots.

The U.S. Department of Justice and the DOT Office of Inspector General worked together to produce the Platinum Jet indictments. In a recent press release, Ned Schwartz, DOT OIG special agent in charge in New York, stated: “This case demonstrates that ensuring the safety of the nation’s air transportation system remains a high priority for the Office of Inspector General and the Department of Transportation. Working with the United States Attorney’s Office and our other law enforcement colleagues, we will continue our efforts to uncover fraudulent activities that could compromise the integrity of the DOT’s safety programs.”

The Platinum Jet indictment included allegations that echo earlier enforcement actions taken by the FAA and DOT. The indictment includes charges that the “conspirators” operated Platinum Jet as an on-demand commercial jet charter company without having an FAR Part 135 certificate. It alleges that from November 2002 until the following November, the conspirators lied in contractual documents faxed from state to state to charter brokers about Platinum Jet’s illegal regulatory and safety status. The indictment claims that the defendants operated more than 85 commercial flights during this period in violation of federal safety regulations for more than $1 million in compensation.

But the Platinum Jet indictment goes much further. As part of the conspiracy, the government alleges a dangerous and fraudulent “tankering” scheme, whereby the defendants, in order to cut costs and take advantage of less-expensive fuel contracts at different locations including Teterboro, would over-fuel aircraft to an extent that their centers of gravity were too far forward for safe takeoff. The defendants would then falsify FAA-required weight-and-balance graphs.

Acting U.S. Attorney Ralph J. Marra stated, “The fuel loading was the primary contributing factor in the crash. It is astounding — and criminal — that owners and operators of jet aircraft would repeatedly engage in such a dangerous game with passengers and airplanes loaded to the brim with jet fuel. What this indictment alleges is an anything-goes attitude by the defendants to get their planes in the air and maximize profits without regard to passenger safety or compliance with basic regulations.”

The indictment clearly charges that these weren’t merely mathematical errors in computing weight and balance. In the vast majority of FAA enforcement cases, the FAA does not have to prove or even discuss the issue of intent. An incorrect answer or statement on a required FAA form is typically a violation. A pilot who puts an incorrect answer on an FAA medical application has not committed fraud if the pilot simply did not understand the question. However, the pilot may still receive a suspension for the innocent mistake. But a suspension doesn’t compare to the consequences for falsifying a form, which start with revocation of all certificates and can end with jail time.

Sometimes a fraud allegation is straightforward. In 2007, a pilot pled guilty to four counts of making false statements to a federal agency because he failed to report his diabetes and dependence on insulin injections. The charges stemmed from a February 2002 incident in which the pilot, Ronald Crews, suffered a diabetic seizure while conducting an air taxi flight from Vineyard, Mass., to Hyannis for Massachusetts-based Cape Air. One of the four passengers on board the twin-engine Cessna 402 air-taxi flight was a student pilot, who subsequently took control of the aircraft and landed gear up with no injuries and minimal damage to the airplane. Crews was ultimately sentenced to 16 months in federal prison and two years of supervised release.

No one in the industry cried foul when Crews went to jail, or when the Platinum Jet individuals were arrested. It is a good thing that we didn’t cry out against these criminal cases, because if we did, we would lose credibility with the non-flying public and with a media that already finds too many faults with our segment of aviation.

But we need to be wary. We cannot stand by quietly if the Department of Justice begins issuing criminal indictments for negligence. Worse yet would be trumped up charges of fraud where innocent mathematical mistakes led to tragedy. Pilots don’t have a constitutional right to fly. We exercise a privilege granted by the administrator, and therefore we don’t have any constitutional rights if the FAA seeks to suspend or revoke our flying privileges. But if we are facing criminal charges, the legal landscape changes dramatically and the pilot’s exercise of his or her right to remain silent will deprive the NTSB and the rest of us from the most vital safety data available.