

NTSB FACTUAL REPORT
ADMISSIBLE OR NOT?

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NTSB BASICS

- CFR – Code of Federal Regulation
- Title 49 Transportation
- Chapter VIII – NTSB – National Transportation Safety Board
- Commonly Cited to Regulations
 - 49 CFR 831.4-14
 - 49 CFR 835.2-4
 - 49 CFR 845.33
 - 49 CFR 845.32
- 49 CFR 845.51; 845.41

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49 CFR 831.4


- NTSB determines **facts**, conditions, and circumstances related to an accident or incident and the **probable cause**.
- Results used to ascertain measures that would best tend to prevent similar accidents.
- Field, report preparation, public hearing.
- **Fact finding proceedings** with nor formal issues and no adverse parties
- Not subject to APA and **not conducted for purpose of determining the rights or liabilities of any person**

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49 CFR 835.2 REPORTS


- **Board Accident report** means report containing Board's determinations, including probable cause of an accident, issued as a narrative report or in a computer format.
- **May not be admitted as evidence** or used in any suit or action for damages.
- **Factual report** containing results of investigator investigation *is not barred from admission*. Group chairman's factual reports are factual accident reports.



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*** 49 CFR 835.3 TESTIMONY ***


- **No opinion testimony is allowed.**
- May only testify as to information. *May testify about firsthand information not reasonably available elsewhere. Current board employees may not testify regarding other employees' reports, safety recommendations, safety studies, safety proposals, safety accomplishments, studies, or analysis reports. Briefs may not be admitted.*
- Not all material in factual report may be subject of testimony. Factual report may contain information and conclusions for which testimony is prohibited.



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49 CFR 835.4


- Board employees **may** use copies of factual report they prepared and may refer to and cite from that report during testimony.
- **May not** use Accident report for any purpose during testimony.



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49 CFR 845.51


- Investigation are *never officially closed* but are kept open for the submission of new and pertinent evidence by any interest person.
- If the Board finds that such evidence is relevant and probative it shall be made a part of the docket and where appropriate parties will be given an opportunity to examine such evidence and to comment thereon.



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49 CFR 845.41


- Petitions for reconsideration or modification of findings and probable cause may be filed by any party having direct interest and will be entertained only if based on discovery of new evidence or showing findings are erroneous.
- Petitions shall identify new matter, contain affidavits of prospective witnesses, documents, and explanation of why such substantiation is unavailable and state why new matter was not available prior to board's findings.



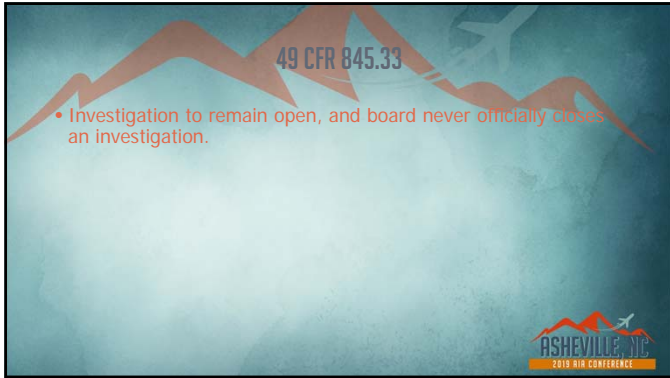
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49 CFR 845.32 - PETITIONS FOR RECONSIDERATIONS OR MODIFICATIONS OF REPORT

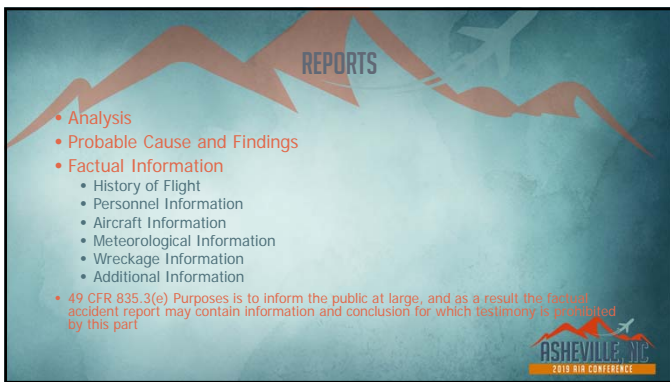
- Must be a party or person having direct interest in investigation. Made in writing addressed to NTSB chairman.
- Must be based on discovery of new matter, identify new matter, contain affidavits of prospective witnesses, authenticated documents state why new matter was not available prior to findings. Petitions based on claim of erroneous findings shall set forth in detail the grounds upon which the claim is based.
- Any party served with copy of petition may file comments no later than 90 days. Oral presentation may be permitted where shown that written petition is insufficient to present position.



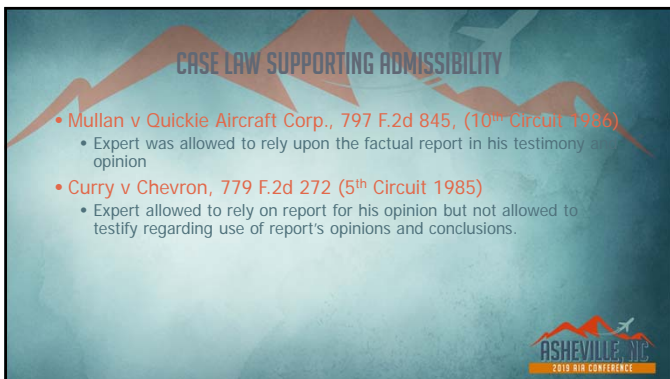
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CASES LAW EXCLUDING FACTUAL REPORTS


- Case Law began to change in 1999
- Disputes in sharing of information and being party participants
- Some courts have allowed in parts of factual reports
- Some courts have excluded entire report



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CHIRON CORP. & PERSEPTIVE BIOSYSTEMS, INC. V NTSB
1998 F.3D 935 DC 1999


- Challenge to NTSB not sharing information obtained during investigation.
- Were Parties to the investigation and asked for copy of cargo list in lieu of concerns over liability to FedEx.
- Petitioners were afraid the factual portion of NTSB report may be admitted as evidence in a lawsuit by FedEx due to some circuit courts allowing the factual reports (investigators report) prior to amendments to the regulations. The Court rejected the concern while addressing lack of standing.
- Court held factual findings, are not NTSB Boards' but investigators reports and are not reports of the boards.



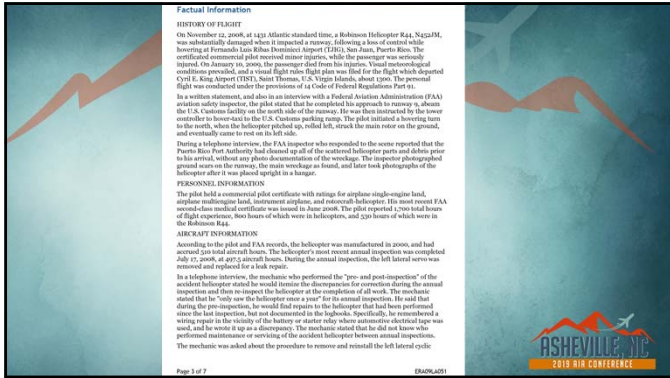
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SHEESLEY V. CESSNA AIRCRAFT CO.,
2006 US. DIST. LEXIS 27133

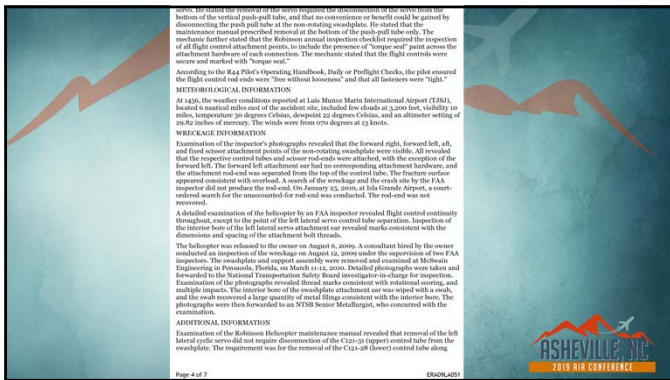
- Plaintiffs moved to exclude NTSB Factual Report at Trial
 - Unlike Accident report, is not barred from admissibility
 - Argued contained hearsay
 - Public records exception applies to NTSB factual
 - Only if the maker of document could testify
 - Toxicology not allowed in
 - Teledyne's & Honeywell's analysis was not allowed in
 - NTSB Metallurgy Report, admissible
 - Witness Statements – Out



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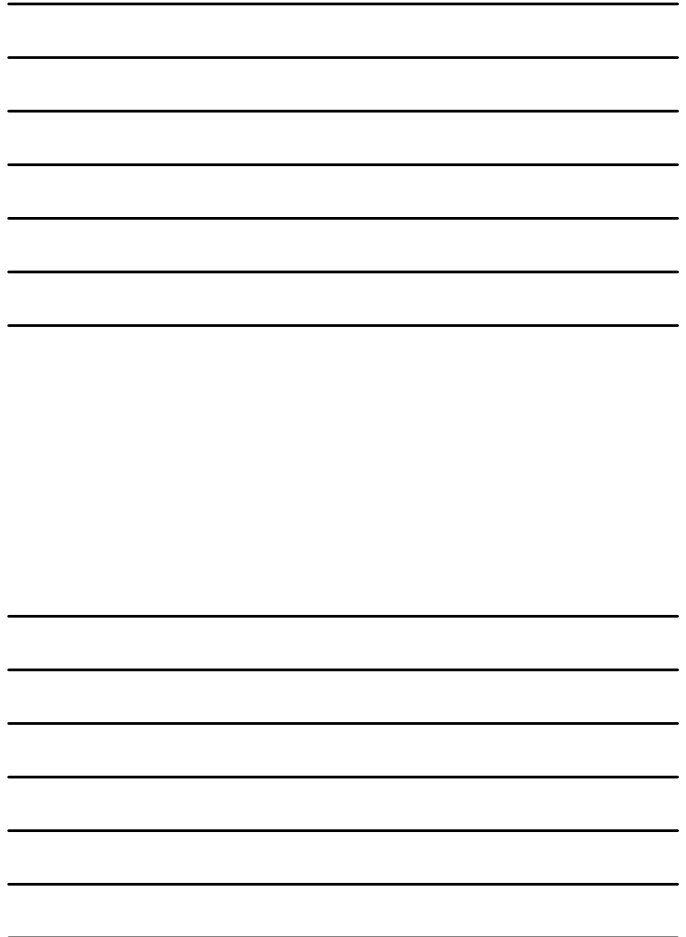
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ISSUES

- Weather – airport conditions or making a conclusion
- Pre-flight – fact or conclusion
- Hearsay – NTSB interviews are not transcribed but summaries
- Fact or Opinion ?
- NTSB interrogatories
- NTSB Depositions
- Questions or Discussion



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THANK YOU FOR COMING & LISTENING

- Enjoy the rest of AIA 2019

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