

FINAL REPORT

TASK FORCE ON ASSISTANCE TO FAMILIES OF AVIATION DISASTERS



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October 29, 1997

Excerpts from letters that were sent to family members by airlines pre-legislation:

"The cemetery does not permit the use of titles or nicknames; only legal names are allowed, and we would be grateful if you could follow that format".

"The ... Funeral Directors Association, along with cemetery staff, conducted this burial... We understand a non-denominational service was conducted but we were not asked to participate. At the time and under the circumstances, we decided not to notify families of this interment or hold another service, to spare you of additional pain"

"The decision not to notify the families of this interment was based on a number of reasons. The primary one was that the majority of the families were conducting their own memorial services and/or funerals, and we did not wish to disrupt those plans or intrude on their privacy. There were conditional concerns as well. The passengers on this flight represented a wide variety of ethnic, religious and cultural backgrounds. The customs and practices of each are different and we were sensitive to this issue. Accommodating those differences in this situation would have been very difficult".

Excerpts from testimonials by family members of pre-legislation aviation accidents:

"I have never been called about the loss of my son from anyone at [the airline]. I know that my son's wife was at the airport waiting to pick up her husband that night. It does not excuse them from calling me and at least giving their condolences. I think it has been as if I don't exist".

"To this day, no one to my knowledge, in my family has ever received a phone call or letter from anyone of any executive level at [the airline] extending their sympathies".

"Immediately after the crash, my family and I were looking for answers to all sorts of questions. What do we do now? What comes next? What happens down the road? Who can we turn to for answers? Of course, the first people we wanted answers from was [the airline]. Why? How? What happened to cause this? They had no answers, and even if they had, I realized it wasn't very likely they would tell us".

"It is astounding that the FAA & NTSB can have teams on site or enroute within hours of a plane crash. They can take apart and reassemble this piece of machinery to find the cause, but nothing is done to reassemble the lives of the people left behind".

"On several occasions I asked my airline representative for help in getting in contact with the other families that were interested in receiving emotional support from one another. Some of us at a very early stage felt the need to share our grief. She said that she heard this request from several families, but that the airline policy would not facilitate this contact. I realized that when the airline's self

interest conflicted with that of the crash families' interests, the crash families' interests would not be served".

"At 2:30 a.m. seven hours after the plane went down I received a phone call. Even though they know immediately when they arrived at the site that there were no survivors. I should have been informed immediately and in person".

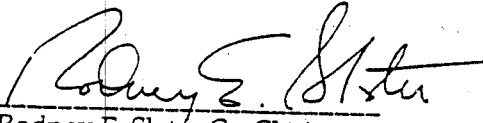
"I decided to try to call the 800 number on the screen. I tried for two hours - it was busy. I called the airport directly, but no one would give me information. Then finally around 10:30 I got through [to] the number. I was told all information on the flight had been pulled from the computer - that they would get back to me as soon as the passenger list was released. They took my name and number and told me they would call me back. Around 1:00 a.m. I received a call from [the airline] - my husband had been confirmed to be on the flight...and there had been no survivors. No I'm sorry, just a frank answer".

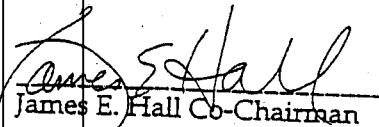
"I was never told there were counselors waiting to help the families. I was told to stay home and not go to the airport. I cannot believe I was kept away from people me and my family needed to talk to. My counselor called me everyday for about 3 or 4 days. He said that I could go to a psychologist - one that was recommended by my doctor. Do you know what? The insurance company paid for two of my four visits. They paid for three visits for my children. I guess they felt two visits should have done it for me. I ended up paying half of the therapist's bill".


"If the airline feels it is so important to refund [the price of the ticket] then at least have the decency to do so in a more personal matter; not in the same way all refunds are issued with the wording of please fly with us again".

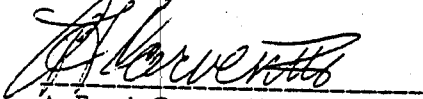
"The night of this tragedy, [the airline] could not even get it right in their notification to my family whether my father was a passenger on the plane or not. It began with me calling their 800 number and finally getting someone around 9:00 p.m. who said that he would call right back. Well, no one called after an extended wait, I drove an hour to the airport. I had to then wait until 11:30 p.m. before being provided with a passenger list, in a very matter-of-fact manner, and then found out the bad news and returned home. Finally at 3:00 .am., keeping in mind that I already have the news, [the airline] representative finally called to inform my family what we unfortunately had found out on our own. But wait the tragedy continues. At 4:00 a.m., another [airline] representative called to inform us that my father was not on the plane. I then had to repress that flicker of hope and state that we believe my father was on the plane".

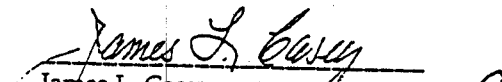
In compliance with the Aviation Disaster Family Assistance Act of 1996, the undersigned present the report of the Task Force.


Rodney E. Slater Co-Chairman

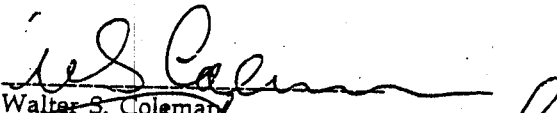

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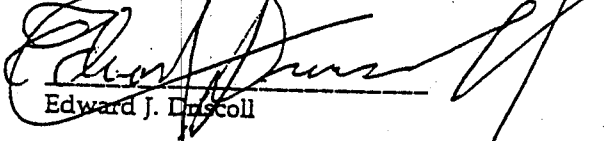

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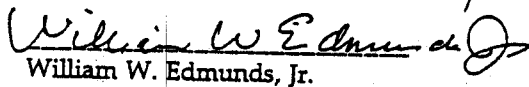

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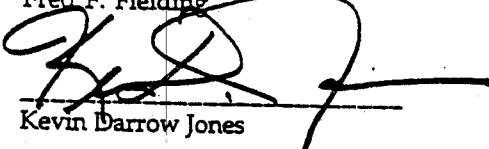

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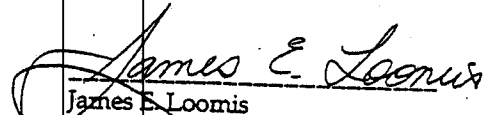

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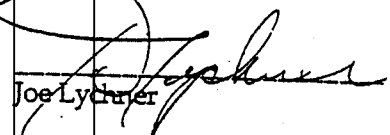

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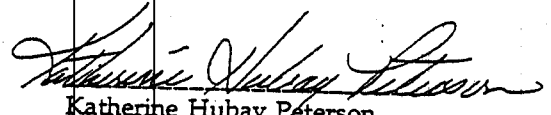

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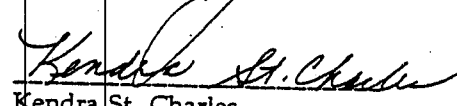

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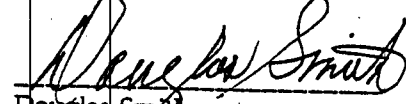

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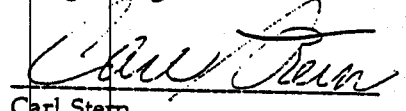

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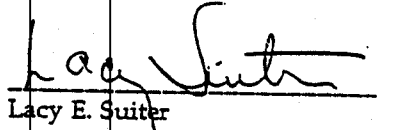

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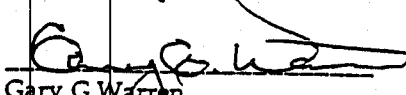

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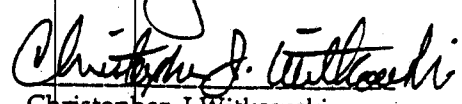

Christopher J. Witkowski

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INTRODUCTION

"Working together, we can make things better."

These words spoken by Joe Lychner, a family member of TWA 800, at one of the first meetings of the Task Force on Assistance to Families in Aviation Disasters have served as the Task Force's North Star.

Federal and state government officials, airlines and their employees, lawyers, members of the media, and, most importantly, a survivor of an aviation disaster and the families of the victims of aviation disasters worked together for eight months to find ways to improve the treatment of families by the government, the airlines, the legal community, and the media. This report containing 61 recommendations is the culmination of that effort.

The 61 recommendations -- nearly all of them unanimous -- will help improve the treatment received by survivors and family members. The recommendations cover a broad area, from the manner in which the airlines notify the family members of an aviation disaster to the process of the accident investigation itself. The Task Force confined itself to matters involving the treatment of families. Issues of aviation safety and security are, of course, critical. The Task Force urges the Federal Aviation Administration of the Department of Transportation, and National Transportation Safety Board to continue to seek the insights of those represented on this Task Force and to remain vigilant in their oversight of aviation so that the recommendations in this report will never have to be put to use. The Task Force also did not address explicitly the treatment of the families of civilians involved in an aviation disaster on government aircraft. However, the Task Force believes that many of the recommendations outlined in its report apply to these families as well. The Department of Transportation currently leads a government-wide review on this subject, and will incorporate the work of the Task Force in its review.

In total, this report serves as a blueprint for the proper treatment of families by all those involved following an aviation disaster. The report directs its recommendations to all those involved in an airline tragedy -- airline carriers, the government, and the American Red Cross. Guidelines are set out for the airlines on responding to aviation disasters to address many of the basic but vexing issues that have hampered effective response to previous disasters. Timely, sensitive notification of family members has been the most ambitious issue of all. The Task Force lays out a plan for airlines to deal with this challenging responsibility, including a recommendation that airlines change their practice of withholding information until the passenger manifest is verified. The Task Force also tackled such difficult issues as the use of DNA in identification of victims' remains, return of passengers' personal effects, and making public the information from the cockpit voice recorders.

The report also addresses the role of federal government agencies – the National Transportation Safety Board and the Department of Transportation, the Department of State, and the Department of Defense – and makes specific recommendations on how they can better assist family members. The report further addresses actions by members of the media and the legal profession, which can profoundly affect a family member's experience in the immediate aftermath of a disaster.

The work that is already underway is, in many ways, as significant as this set of recommendations itself. Training is being improved. A pamphlet has been published. The NTSB and DOT have disaster plans from every air carrier. And airlines have agreed to continue the mission of this Task Force with family members.

It is this Task Force's hope that this focused attention and the desire to make a meaningful change does not end with the release of this report. Implementation of the recommendations can and should be done swiftly. Legislation or regulatory changes are needed in some instances. But most recommendations can be achieved without government action. The Task Force has full confidence that the Vice President, who chaired the White House Commission on Aviation Safety and Security, the Secretary of Transportation, who established the Task Force, his Task Force co-chair, NTSB Chairman Jim Hall, and the Congress that called for the creation of this Task Force, will all work to ensure that these recommendations become a reality.

The diversity of the Task Force brought different perspectives to this effort. Although not all members agree on each and every issue, what clearly emerged from the Task Force's deliberations is a better understanding of what is needed to best assure consideration and dignified treatment following an aviation disaster. The entire work of the Task Force demonstrates that when we all work together with a common purpose – the government, family members, and industry – we can make a difference.

ABOUT THE RECOMMENDATIONS

The Final Report of the Task Force contains 61 recommendations to improve the assistance provided to the families of aviation disasters. The recommendations are presented in 15 sections. The first section, containing six individual subsections (1.1-1.6), concentrates on the needs of the families in the immediate aftermath of an aviation disaster. The remaining nine sections (2-10) each focus on the role of a specific organization's interaction with the assistance provided to family members.

Each section begins with an introduction on the issues covered under that section, and concludes with the recommendations. Some of the explanations require further explanation; those recommendations are followed by further discussion.

Many of these recommendations are directed to the airlines. In some instances, a specific recommendation (e.g., 3.1) is made to the airlines and third parties providing services on behalf of the airline. These recommendations, such as the training for those who interact with family members, should be read to apply to third parties providing the service on behalf of the airline. Further, the airlines should consider a third-party contractor to provide services recommended in this Report (e.g., 1.3.1), if the airline believes a third party can provide better service.

RECOMMENDATIONS

1. Guidelines to assist air carriers in responding to aviation disasters

1.1 Definition of "family member" for purposes of notification and provision of airline services

In developing guidelines for air carriers¹ to follow in the event of an aviation disaster, the Task Force discussed at great length the proper definition of "family member" for the purposes of airline notification of passengers' families, support services for family members, including transportation to the family assistance center and subsequent memorial services, and post-aviation disaster communication between family members and all other interested parties.

Either a broad or narrow definition of family member can cause continuing problems from the onset of the disaster. With incomplete knowledge on the part of the airlines or the government regarding the identity of the primary next of kin, attempts to notify the appropriate family member about an accident can be complicated by competing claims of next of kin status. Once notification is accomplished, family member must often be defined to determine eligibility for airline-furnished travel to the family assistance center and room and board once there, as well as for any subsequent travel to a memorial service.

The Task Force recognizes the difficult situation in which the airlines are placed with regard to providing these services to family members. Today's families often do not have traditional boundaries. In the past, airlines have received claims for logistical support from as many as 10 family members or more for each victim. Individuals such as fiancées, step-children, partners and cousins often claim "family" status, even though the law may not recognize these individuals as the primary next of kin, or even as a relation to the victim. Airlines generally define family member in broad terms.

Airline personnel testified that in the immediate aftermath of a disaster, the airline will be flexible in defining family member, and will fit the definition of family member to the circumstances of the moment. Airlines will often provide travel to the accident site for more than just the legally-defined next of kin. (In contrast, the U.S. Department of State defines the next of kin for purposes of communication in the aftermath of an aviation disaster to be the spouse of the passenger, the spouse's designee, or the next blood relative.) For example, there were 300-400 family members of 230 victims at the TWA

¹ For purposes of this report, the terms air carrier and airline are interchangeable.

800 family assistance center, and 125 family members of the 29 victims at the Comair 3272 family assistance center. Nevertheless, the airlines can not always accommodate all who claim family status. Accordingly, the question of who among the family members should serve as the contact point for each family or who should be afforded the status of family member for purposes of airline-provided travel can become a difficult issue to resolve, particularly in cases in which different factions exist within one family and information is not shared among them.

With regard to the less cost-intensive issue of communication between the National Transportation Safety Board (NTSB) and family members, currently all communication between the NTSB and family members is made to everyone who asks to be placed on the family list. For example, 80 names exist on the NTSB family list for the 29 Comair accident victims.

RECOMMENDATIONS

1.1.1 The airlines, in choosing a definition of "family member" for the purposes of notification and assistance for travel to and accommodations at the site of the crash or memorial services, should recognize that today's families may not have traditional boundaries.

Airlines recognize as family members those who might not be considered family members under federal or state law. Therefore, the Task Force is reluctant to define "family member," since doing so could result in the narrowing of the existing airline practice. At the same time, any definition of family member should take into consideration that many individuals consider themselves to be the family of the victim, even though the law does not formally recognize the relationship, such as in the case of a fiancée or long-time companion.

1.1.2 When airlines make initial notification to a family that a loved one was a passenger on an aircraft involved in an aviation disaster, the airline should inquire if there is another family member who should also receive formal airline notification. These secondary contacts would be notified after initial notification to families of all passengers.

Such a practice may eliminate any confusion or resentment that may arise when only one family member is informed and others are left to their own devices. Further, it might serve to expand the definition to include those the law would not necessarily recognize as a family member, since the original family member notified would be free to choose whomever else should be notified.

1.1.3 Families should designate a contact point for purposes of information sharing in the aftermath of the disaster.

While it may be necessary for families to have more than one contact point with the airline, the families should do their best to limit the number of contact points per family. Such action should provide sufficient flexibility in situations in which there are different "factions" of a family that do not share information with each other, as well as to allow the airlines to use their personnel to notify as many families as possible. The Task Force believes that all families – even those in which there are factions – have the responsibility to work together in the difficult times following an aviation disaster.

1.2 Guidelines for the initial notification of family members by the air carrier in the immediate aftermath of an aviation disaster, including the use of third parties to assist in the notification process

The Aviation Disaster Family Assistance Act (ADFAA) requires the Task Force to make recommendations to improve the timeliness of the notification provided by air carriers to the families of passengers. (The Act is contained in Appendix E of the Report.) The Task Force strongly believes that the moments following an aviation disaster are the most crucial for the families of victims of aviation disasters. As Task Force member Kendra St. Charles stated, "Family notification is the key issue, because it is the start of the process and sets the tone for how families are treated." The Task Force recommends that air carriers improve their notification systems in order to provide family members with more information in shorter time periods.

Air carriers have systems to handle family members calling the airlines to inquire about a family member who may have been a passenger on an aircraft involved in an aviation disaster. Air carriers are spending considerable time and effort to train individuals to work on these programs. At the same time, however, the Task Force finds that important issues continue to exist with the current notification system, including:

- family members' calls sometimes do not get through to the airline, given the high volume of calls following an aviation disaster;
- because of their policy of not releasing information prior to the verification of the manifest, airlines do not provide information to family members at the time the family members make initial contact with the air carrier, or even when the airline has information that is known (i.e. that the person had reserved a seat on the flight) and is immediately available; and,
- in some instances, the airlines have not provided information quickly to family members, or even returned the family members initial phone calls.

Solutions to these problems exist short of federal legislation and regulation.²

The ADFAA requires air carriers to submit plans to the Department of Transportation (DOT) and the NTSB to address the needs of the families of passengers involved in aviation disasters. These plans are required to include things such as the publication of a toll-free telephone number and provision of staff to handle calls from the families of passengers.

The Task Force is concerned that although all air carriers have filed plans containing the elements required under the Act, many air carriers may not have adequate staff to carry out such a plan. For example, following the TWA 800 crash, it was reported that TWA received nearly 60,000 phone calls within the first few days of the crash. The Task Force believes that certain air carriers, specifically small air carriers that fly large jets, might not be able to meet the requirements of the ADFAA. (Such air carriers may have fewer total employees than the number of passengers on one flight.)

The Task Force strongly believes that each air carrier that has filed a family plan must be in a position to carry out the assurances it has provided. If an air carrier does not believe it can meet its responsibilities under the ADFAA, the air carrier should explore other means to ensure that the air carrier can implement the plan, such as by contracting with a third-party to provide the necessary services.

The following is the most common procedure used by airlines to notify a person that a family member was a passenger on an aircraft involved in an aviation disaster:

The airline publicizes a toll-free number to solicit phone calls from persons who believe a family member might have been a passenger on that flight. The purpose of the toll-free number is solely to elicit information from those individuals calling the airline, which is used in conjunction with information that the airline has available. The Task Force recognizes that under the present system, individuals who phone the toll-free numbers are not provided with any information concerning passenger status during the initial contact with the airline. The airline asks callers for the full name of the potential passenger and

² Section Three addresses possible revisions to the ways in which airlines maintain passenger manifests. The Task Force recognizes that the passenger manifest systems put into place pursuant to the recommendation may not provide the airline with contacts for all passengers. Accordingly, the airlines will still need to rely upon incoming phone calls following an aviation disaster as a primary means to identify some of the families of passengers involved. Further, the Task Force recognizes that any regulatory requirement will take time to implement, while these changes can be implemented immediately.

why the caller believes that he or she was on the flight. At the end of the call, if the airline employee has determined that the caller has sufficient reason to believe that a family member may have been a passenger on that flight, the airline will take the caller's name and number. The person who received the phone call will forward that information to the airline "command center."

Simultaneously, the airline will attempt to verify the initial manifest by comparing it to the "ticket list" collected at the time of boarding. The air carriers are working to shorten the time it takes to verify the manifest. For example, during emergency drills conducted by one airline, this process has taken the airline one-and-one-half hours to complete. However, the Task Force does not know if all airlines can verify information that quickly.

While awaiting a contact concerning a passenger, airline employees review the airline's internal records, including the manifest of that flight and the passenger name records (PNRs) of the individuals listed on that manifest, to try to ascertain a point of contact.

This process often occurs on a "rolling" basis. That is, upon verification from the ticket list, the airline contacts that person's family as soon as it determines a point of contact. The airline will not release any information prior to verifying whether the passenger has boarded the aircraft, even if it has a point of contact with the passenger's family. For example, if a family member asks the airline if their loved one had a reservation on the flight in question, the airline will not provide the answer to that question. The airlines have stated that they have adopted this practice because they do not want to disseminate unverified information.

RECOMMENDATIONS

1.2.1 Airlines should establish systems and procedures to establish communication with family members as soon as possible.

Following an aviation disaster, an airline determines a family contact for each passenger and communicates with them, either directly through information the airline had prior to the accident (such as a phone number left by the passenger at the time of booking the flight), or through information received from persons who contact the airline to inform the carrier that a loved one may have been a passenger on the flight. Under either scenario, the airline should establish contact with the families as quickly as possible.

Recommendation Three explains how an airline establishes a family contact for each passenger prior to the accident. The Task Force recognizes that under the current system, and even with the advent of a passenger manifest

requirement, the airlines need to improve their methods of obtaining information on passengers. This section details guidelines on how to improve the process of collecting information.

1.2.1.1 Airlines, through changes to their procedures, as well as with the assistance of the media, should take measures to limit the phone inquiries to the airline following an aviation disaster through the use of public service announcements, media broadcasts, and Internet sites.

Many of the problems family members face center on the difficulty in contacting the airlines due to the volume of phone calls received following an aviation disaster. The Air Transport Association (ATA) stated that TWA received nearly 60,000 such phone calls after the July 17, 1996, loss of Flight 800. Such a call volume in a short time can severely tax an airline's resources. In response, some airlines recently modified their procedures to better insure that incoming calls are limited to those who can provide information to the carrier about the passenger. The ADFAA, moreover, calls for air carriers to have a plan for publicizing "a reliable, toll-free telephone number," and for providing staff to handle calls from the families of passengers.

The Task Force urges the airlines to take steps to alleviate the number of incoming phone calls. The following might be implemented in an effort to reduce the number of calls:

- When disseminating the toll-free number, the airlines should ask the media to publicize that only those individuals who have reason to believe a family member was a passenger on the flight, or who can provide information on a passenger, should call the toll-free number. (The Task Force recommends that either the DOT or the NTSB produce a Public Service Announcement aired in the immediate aftermath of an aviation disaster that would contain this message.)
- The media notice should emphasize that initial phone calls to the airline are to: provide a point of contact with the airline, provide basic flight information to the caller, and gather information so that the airline may obtain points of contact for each passenger.
- The "message" heard by callers on hold should urge anyone who does not have reason to believe that a family member was a passenger, or is unable to provide the airline with relevant information on the passenger, to please clear the line.

- Each air carrier should adopt a "call home" program, or other such program that will limit the number of phone calls by the families of airline employees to the airline in the event of an aviation disaster. Airlines should have a policy that each employee calls home upon learning of an aviation disaster to inform their family that they were not aboard that flight. The airlines estimate that a significant number of phone calls are from the families of their employees inquiring if they were a passenger on the flight.

Further, having basic information available on the airline's Internet website could reduce the number of phone calls to the airline from non-family members. An airline might also include on its website a message urging only family members, or those who can provide relevant information, to call the airline's toll-free number. Media broadcasts of toll-free numbers should likewise cite the airline's web site as an alternative information source.

1.2.2 Once an airline determines a point of contact for a passenger, the airline should establish and continue contact periodically with that family, even if it is just to inform the family that the airline has no new information to provide.

Airlines have not always provided information to the family members who succeed in getting through to the airline. Some family members who have contacted the air carriers following accidents and left their name and phone number never received a return phone call. The Task Force recommends that when an airline receives a phone call from a person who has information that would lead the airline to believe the caller's family member was a passenger on the flight, the airline should contact the family member as quickly as possible, even if the airline does not have any information to provide at that time.

1.2.3 Air carriers should consider contracting the notification process to a third-party if the air carrier cannot meet those needs on its own.

In submitting accident plans to the DOT and NTSB, each air carrier provided assurances that it has the staff and resources to meet very demanding logistical and human needs. The Task Force recommends that each air carrier closely review its resources to determine if it can meet those needs. The DOT and NTSB should work with airlines to ensure the carriers' understanding of these requirements under the Act.

Jerome M. Hauer, the director of the Mayor's Office of Emergency Management of the City of New York, testified before the Task Force on plans for the Center for Aviation Disaster Information (CADI). In the aftermath of

TWA 800, the City of New York, in conjunction with the NTSB, began to establish CADI, which will assist airlines in meeting both the human needs of the families and the logistical demands placed on the air carrier.

CADI will serve as the primary notification and information center for the families of air disaster victims. CADI is to be managed by a board of directors comprised of the participating airlines. Both U.S. and foreign air carriers can become a member of CADI.

Activation of CADI will occur within an hour of a confirmed air crash and will be staffed for the first 12 to 24 hours by a large team of local public safety personnel until designated personnel arrive at the site. Each participating airline would have the option of determining who would staff CADI. The personnel will be trained to deal sensitively with individuals suffering from a traumatic incident. CADI staff will also be prepared to contact family members to notify them of the aviation disaster once an emergency contact becomes known.

Ed Driscoll, President of the National Air Carrier Association (NACA), stated that the presentation by Mr. Hauer highlighted the need for the creation of such a system so that airlines with limited resources can respond more effectively to the families' needs.

1.2.4 Air carriers should provide family members with all passenger information that they have as quickly as possible. Congress should consider amending the ADFAA, if necessary, to carry out this goal.

The rule for reporters, according to Task Force member Carl Stern, is "Go with what you've got when you've got it." He asks, "Why should that not be the rule for the airlines in their dealings with the family members?" Currently, airlines do not provide information prior to confirming that an individual had boarded the aircraft.

The Task Force heard testimony that such a policy causes needless grief for family members in the immediate aftermath of an aviation disaster. Task Force member Judy Lindstrom stated that following the news of the USAir 427 crash, she phoned the airline to find out if her husband had a reservation on the flight. The airline refused to provide her with that information, even though such information was readily available to the airline. Rather, the airline followed its policy -- which appears to be the policy of all major air carriers -- of not providing any information until confirming that Mr. Lindstrom had boarded the aircraft.

During the period of time between learning of the air disaster and being notified that her husband had indeed boarded the aircraft, Ms. Lindstrom searched in vain to determine if her husband had a reservation on the flight.

She called his office and travel agents in the hope of getting an answer to her question. Unfortunately, she could not find out that information on her own, and it was hours before the airline contacted her to inform her that her husband was a passenger on flight 427.

Dr. Raquel Cohen, the Director of the Children's Center of the State Attorney's Office in Miami, Florida, and an internationally-known expert on the mental health needs of disaster victims, in her testimony before the Task Force stated that the need for information is a basic human need and that people should be told as much as possible, especially during difficult times. Dr. Cohen was presented with the following two scenarios and asked for her expert opinion.

1. A family member asks the air carrier representative whether her husband was a passenger on the flight. The air carrier replies that it does not have that information at this time. The family member then asks if her husband had a reservation on the flight. The air carrier states that it will provide passenger information only upon confirmation of the manifest.

2. A family member asks the air carrier representative whether her husband was a passenger on the flight. The air carrier replies that it does not have that information at this time. The family member then asks if her husband had a reservation on the flight. The air carrier states that her husband did have a reservation on the flight, but at this time the carrier does not know if the person actually boarded the aircraft.

Dr. Cohen stated that air carriers should follow Scenario Two, even if it turns out that the family member did not get on the flight. According to Dr. Cohen, "Knowledge is the key issue." Dr. Cohen added that "the human spirit is always hopeful." Provision of preliminary and limited, but accurate information, *i.e.*, that a family member had a reservation on the flight, is better than no information in terms of helping the family to cope with the news of the disaster. This is true even if it turns out the person did not board the flight.

Nineteen of the 22 members of the Task Force believe that family members should have access to this passenger information. If the airline has a point of contact with a family, and the airline has information indicating that the family member had a reservation on the flight in question, the airline should provide the family member with that information, if the family so desires. The airline should indicate that only a lifted ticket would confirm that the person boarded the flight, and the review of the ticket lift was still in progress.

Jim Casey, representing the Air Transport Association (ATA), stated that people have an expectation of accuracy when provided with information by the airline. The Task Force concurs, and does not advocate that inaccurate information be provided to family members. Telling a person that a family member had a reservation on a flight is not providing a person with "unverified" information, even if it turns out that the family member did not board the aircraft.

Three of the 22 Task Force members (Jim Casey, Walt Coleman representing the Regional Airline Association (RAA), and Ed Driscoll representing NACA) do not concur with this recommendation. Mr. Casey stated that the airlines recognize the need to provide family members information about the status of their loved ones as soon as possible after an accident. They realize any delay in releasing such information is undesirable. Consequently, airlines have been working to accelerate the release of verified information to families. However, they remain concerned about the possibility of disseminating erroneous information. For that reason, they do not support providing information, such as reservation record information, that has not been reconciled with tickets lifted. Instead, airlines believe that they should continue to concentrate their efforts on shortening the verification and notification process. The airline representatives added that a reservation does not necessarily mean that a person boarded the flight due to the practice of multiple reservations for one trip, no-shows, and last-minute flight changes.

Concerns were raised that the air carrier might be liable if it told a family member that a loved one had a reservation on a flight, but it turned out that person did not board the flight. By requiring the air carrier to provide the family members with this type of information through legislation, the "limitation on liability" provision of the ADFAA should provide protection to the air carrier in such a circumstance.

1.2.5 Airlines should strongly consider adopting policies to ascertain the financial needs of families in the immediate aftermath of aviation disasters, and provide assistance as appropriate.

A lump sum payment by an airline could be made to families within weeks following the disaster to offset any immediate outstanding expenses that the family may incur in the aftermath of the crash. This would not only benefit the families, it would also benefit the airline. In the words of Tom Whalen, aviation defense attorney who advocates this practice, "What an airline does in the first 30 days after the crash shapes its relationship with the families." Some airlines currently do this on a case-by-case basis; however, the responsibility generally lies with the family to inform the airline of its needs. A statement could accompany the payment indicating it is not an admission of liability by the airline. Further, the amount might also be deducted from any final damage awards or settlements. Airlines are encouraged to develop

programs for immediate assistance in appropriate circumstances on a case-by-case basis. (ATA noted that airlines have traditionally paid for certain out-of-pocket expenses of family members and, under the U.S. legal liability system, a lump-sum payment could be regarded as an admission of liability before any legal determination has been made.)

1.2.6 Notification by the airline to family members of their loved one's death or injury should be followed promptly by a person-to-person contact from either the airline, the American Red Cross, or an official entity, if requested by family members.

Notifications to family members that a loved one was a passenger on an aircraft involved in an aviation disaster are done by telephone. The Task Force concurs with the provision of the ADFAA stating a family should be notified "to the extent practicable, in person." Task Force member Judy Lindstrom stresses that air carriers should strive to provide the information as quickly as possible and should not delay notification for any reason. While the Task Force recognizes that it may not be the best policy from a timeliness of notification standpoint for the airline to notify family members in person, this fact does not preclude an in-person follow-up notification, either from the airline or a local authority.³ This follow-up visit (if the family wants one) should be discussed with the family member during the phone call and a bereavement visit arranged at a time convenient for the family member. Task Force member Doug Smith, speaking for the group, stated that this type of contact adds dignity to the process. The Task Force recognizes that airlines do not have unlimited personnel, and that having airline employees make the in-person notification may take them away from performing other family-assistance related functions. Accordingly, this may be a function better left to the American Red Cross (ARC), or some other entity.

1.2.7 Upon notification, the airline should advise family members that the name of their loved one will not be publicly released by the airline until the family has personally notified other family members.

Upon notification by the airline that a family member was involved in an aviation disaster, the family of the passenger should be provided time to personally notify other family members of the situation. The Task Force recommends that airlines adopt a policy of asking family members how

³ This type of notification does not constitute certification of death. The initial notification of the next of kin is not to be confused with a positive identification by the coroner or a determination of death by the coroner. In-person notification that a loved one was a passenger on the aircraft should not wait until the coroner/medical examiner has issued the death certificate of a passenger killed in an airline disaster. After an aviation disaster, in some instances it may be weeks until the coroner or medical examiner has issued the death certificate of a passenger killed in an airline disaster.

much time is needed to notify other family members of the disaster. Some airlines have a policy of not releasing the names of the passengers involved in an aviation disaster without the consent of the passengers' next of kin.

1.3 Airline assistance to family members with travel to and accommodations at accident sites and memorial services

The ADFAA does not explicitly require air carriers to provide transportation to the location of the aviation disaster or to subsequent memorial services. Rather, an air carrier must "assist" the family of a passenger in traveling to the location. The Task Force recognizes that it is the general practice of air carriers to provide transportation to the accident site as well as to memorial services. However, the personal experiences of family members as related to the Task Force raised concerns that when providing these benefits, the air carriers are not always mindful of several important considerations. The following recommendations are presented to the air carriers for improvement of the voluntary assistance provided to families.

RECOMMENDATIONS

1.3.1 If an airline chooses to provide transportation and accommodations to the family assistance center or any memorial service, the airline should endeavor to provide transportation and accommodations in the most timely manner possible, even if another airline must provide the transportation.

"The human spirit is always filled with hope," as Dr. Raquel Cohen stated in her testimony. In the immediate aftermath of even the worst aviation disasters, the family members of the passengers are hopeful that their loved ones have somehow survived the disaster. Airlines need to recognize this fact when arranging for the travel of the family members to the accident site, as even under the worst scenario, family members still have a need to get to the site as quickly as possible.

Following the TWA 800 disaster, Task Force member Joe Lychner was informed that TWA would provide transportation to Mr. Lychner from his home in Houston to New York City, but that since TWA's morning flights to New York City were full, TWA would not be able to provide him transportation to New York City until later that afternoon. Mr. Lychner's need to get to the accident scene as quickly as possible resulted in his arranging his own transportation to the accident site.

The Task Force recommends that airlines enter into agreements with one another so that in the event of an aviation disaster, the airline with the earliest flights to the site of the aviation disaster will be able to provide transportation to the families of the victims of aviation disasters. Consistent with the policy of most U.S. air carriers, when transportation is provided on

another air carrier, at a minimum that carrier should consider providing the transportation at the lowest discounted fare, waiving any advance purchase requirements.

1.3.2 If an airline chooses to provide transportation and accommodations to the family assistance center or to any memorial service, the airline should offer such assistance to more than one person per family.

In the event that an airline's definition of "family member" results in only one person being defined as a family member for purposes of providing transportation and accommodations to the family assistance center or a memorial service, the airline should permit that family member to select someone to accompany him or her to the accident site or memorial service. At this traumatic time, a person should not have to go through the experience on their own.

For instance, a family member on the Task Force traveled to the memorial service unaccompanied because the individual had no "family" as defined by the airline for purposes of airline-provided transportation. The reason the Task Force member had no airline-defined family members is because his spouse and children were killed in the aviation disaster.

1.4 Guidelines for training of air carrier personnel who interact with family members

The ADFAA recommends that the Task Force develop guidelines to assist air carriers in responding to aircraft accidents. The Task Force strongly advocates that any assistance plan developed by the airlines for this purpose must include a training component. Implementation of a comprehensive training plan for its employees who will interact with family members is a key component in making the airlines' disaster response plans as effective as possible.

Aviation crashes are sudden, unexpected, catastrophic events. Survivors and family members of those killed typically experience a crisis reaction that may include physical manifestations, such as shock, disorientation, and numbness, as well as emotional components, such as anger or rage, frustration, confusion, self-blame, grief, and sorrow. In the first 12 to 48 hours after the crash, the traumatic reaction typically includes disbelief and difficulty focusing on and understanding the event. The extent to which information is available and supportive care is immediately provided has been found to impact the long-term capacity of survivors and family members to heal and regain a sense of control of their lives. Conversely, misinformation and insensitive or unhelpful responses can re-traumatize the very people in most need of help. For example, a survey of 78 passenger-survivors of airline accidents revealed that "[s]urvivors' dissatisfaction with post-accident

responses [by the airlines] was [a factor] in more cases of PTSD [post-traumatic stress disorder] and major depression."⁴

Personal stories of insensitive treatment or mistreatment of family members and a call for the appointment of a disinterested third party were instrumental in leading to the passage of the ADFAA. While the ARC has been chosen the independent third party responsible for the mental health concerns of the families in the immediate aftermath of an aviation disaster, the airlines are still primarily responsible for family notification and all aspects of victim and family logistical support. Properly trained airline personnel, teamed with mental health and crisis response professionals, can be a valuable resource to the families during the first critical period following a crash. Airline personnel should be trained to provide:

- accurate information delivered in a sensitive, timely, and effective manner
- concrete logistical help
- emotional support (although they should not provide mental health care)

The ADFAA outlines airline responsibilities following an aviation disaster. These include: 1) method of initial notification, 2) return of remains and personal effects, 3) assistance for those wishing to travel to location of accident, and 4) working with the independent organization on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident, and providing reasonable compensation to such organization for its services.

The NTSB's Federal Family Assistance Plan for Aviation Disasters further details airline responsibilities. In recognition of the importance of sensitive interaction with the families, the NTSB plan goes beyond the federal legislation by specifying that airline personnel chosen for these tasks must be "trained in crisis response and death notification." Thus, a critical part of the air carrier's required plan should include an assurance that all employees chosen as responders will be properly trained.

Moreover, it is essential that prospective emergency management offices or information centers developed by local or state authorities to serve as notification and information centers for families of air disaster victims, such as CADI, coordinate with airlines and the ARC in developing uniform

⁴ Coarsey-Rader, C.V., "Survivors of U.S. Airline Accidents Shed Light on Post-accident Trauma," *Flight Safety Digest*, October 1993.

training plans. This will ensure that third-party providers of service receive the best possible training for family treatment.

RECOMMENDATIONS

1.4.1 Congress should amend the Aviation Disaster Family Assistance Act to require airlines to submit to the Department of Transportation and the National Transportation Safety Board an assurance that appropriate airline employees, or third-party contractors, will be adequately trained to meet the needs of survivors and family members in the event of an aviation disaster.

The Task Force finds that properly trained airline personnel, teamed with mental health and crisis response professionals, are crucial to providing proper assistance to families during the critical period following a crash. Accordingly, adequate training should be a part of any aviation disaster assistance plan.

The Task Force recommends that such a training program include a component for dealing with survivors' and family members' emotional states, and the method of instruction for how to train the airline employees.

1.4.1.1 There should be an emotional awareness component to the training curriculum.

The minimal recommended objectives of this emotional component of the training curriculum are:

- An understanding of the range of physical and emotional reactions to trauma, including the possible long-term consequences such as post-traumatic stress disorder, and the benefits of an appropriate response;
- An understanding of the range of information needs of the survivors and family members and the skills needed to deliver clear and accurate information in a timely and sensitive manner;
- Skills to assist children, teenagers, adults, and elderly who congregate at the airport, both individually and as a transitory community bound together by disaster;
- The ability to maintain a caring, non-judgmental, and compassionate demeanor while assisting people who are suffering and at times can be extremely demanding and angry. This includes training in communications skills dealing with traumatized individuals and the capacity to deal with responders' own emotions, *i.e.*, to absorb uncomfortable feelings;

- The ability to recognize when an individual's response indicates a need for mental health counseling and assistance;
- Knowing how and where to find ARC support.

1.4.1.2 Airlines should consider utilizing various methods of instruction during the training process.

While the methods of training will vary depending on the curriculum chosen by the airline, the Task Force recommends the following:

- Small group role play for telephone notification, post-trauma response, and face-to-face communications skills;
- Use of survivors and family members telling their stories either in person or on video tape;
- Timeline of response from first hours to return of remains and personal effects and 1st anniversary;
- Introduction of representatives from regional offices of federal agencies and local ARC;
- Continuous evaluation of training components in terms of both employee comfort with new responsibilities and satisfaction of family members receiving assistance;
- Annual retraining sessions with periodic refresher courses, through the use of video tapes, audio tapes, or literature. Training and refresher courses should include an emotional component in the training curricula.

1.4.2 Airline training plans should include an assurance that the airline and the American Red Cross will coordinate on all training issues.

Pursuant to the ADFAA, air carriers must develop plans to address the needs of families of passengers involved in aircraft accidents, including providing assurances that the air carrier will work with designated organizations to obtain for families an appropriate level of services and assistance following the accident. The Act should also be amended to require that airlines provide an assurance that they will work with the ARC in developing training plans. The airlines and their employees should understand their role and interaction with the ARC at accident sites. Airline employees should then be in a position to brief families on the ARC plan for providing emotional support.

1.4.3 Airlines should continually work to improve overall training standards. Although airlines are free to develop their own individual training curricula, the Task Force recommends that all such training include, at a minimum, communication skills, logistical support, stress response, and the roles of the parties at the accident site.

The training curricula should include the following:

a. *communication skills*

Airlines must deliver clear and accurate information in a timely and sensitive manner. This is the most basic requirement; family assistance personnel should be chosen for their communication skills.

b. *logistical support*

Airlines must give families information on what they will pay for and arrange; how this occurs; the potential for the media and attorneys seeking access to the families; how and when families will be briefed; return of remains and personal effects; etc. The Task Force recognizes that these procedures may vary for different airlines depending on resources available.

c. *stress response*

Airlines need to develop a uniform understanding of traumatic stress and how people respond to catastrophic news; the need to deliver telephone notification in a timely, accurate, sensitive, and supportive manner; face-to-face communication skills, including the impact of words and actions; the importance of diverse cultural, ethnic, and religious practices with regard to mourning; the stages of crisis response and grieving; and how to recognize mental health concerns that require services of a trained counselor.

d. *roles of all parties*

Airlines and their employees who interact with family members must understand the roles of the local, state, and federal governments – who they are and what they will do for survivors and family, as well as who is entitled to their services. Airline employees should then be able to advise families of the roles of the following entities:

- the ARC
- the NTSB
- the DOT
- Departments of Justice, Health and Human Services and State

The Task Force believes that this information is effectively communicated in the "Aviation Disaster Assistance Guide," which it developed and which the NTSB will distribute. (The brochure is contained in Appendix E of the Report.)

1.4.4 A team comprised of airline employees, family members and survivors, the federal government, the American Red Cross, and mental health professionals should be created to develop protocols standardizing training content for airline employees.

The overall training recommendations provide basic information that should be contained in airline training courses. The Task Force believes that a more comprehensive review of training practices should be undertaken by the aviation industry, and that the results of this review should be shared with all U.S. and foreign air carriers. In particular, this team should review the training given to those who provide initial notification.

1.4.5 All airline training programs should include information for managers about employee stress and the need for critical incident debriefing for family assistance personnel.

Employees who respond to a crash site and/or work with survivors and family members should be monitored for at least six months and their schedules modified as needed to allow for rest and recovery from their own trauma. Moreover, mental health representatives need to be pre-screened to determine whether they are qualified and prepared to assist families in the aftermath of a disaster.

1.5 Return of personal effects (property) to the family members by the airline

Prior to the passage of the ADFAA, many problems existed with the return of the personal effects of both survivors and deceased passengers in the aftermath of an airline disaster. Depending on the nature of the crash, articles and effects may be badly damaged, thereby making the identification of the effects difficult. Further, many personal effects of a nondescript character can be difficult to trace to an individual victim. While the Task Force recognizes that the identification and association of personal effects is difficult, families often have a need for the last articles of clothing the passengers wore or the purses or wallets that the victims carried to be returned to them, as such effects are the last association or connection with their loved one.

Recognizing this need, the ADFAA requires airlines to make assurances to the government that the families will be consulted about the personal effects of the passengers, that the airlines will return personal effects to families

unless retained for accident or criminal investigation, and that any unclaimed possession will be retained by the carrier for 18 months.

The NTSB has outlined a plan for return of personal effects to families of victims. Personal effects are divided into two categories: associated and unassociated. Associated personal effects are those personal items that can be identified with a specific individual, such as rings or earrings found on the victim, articles in a wallet or carry-on bag such as driver's license and credit cards, or other items with a person's name. Unassociated personal effects are items that are not identifiable to a specific person, such as a necklace or earrings found near, but not on, a victim, or clothing that has spilled out of a suitcase.

Generally, associated personal effects found on a deceased victim are returned to the family along with the remains. Prior to return, the personal effects are cleaned, and an inventory list is completed to track receipt and transfer. Sometimes these personal effects are retained by authorities if needed as evidence or as part of the investigation. Once the retained items are no longer needed by authorities, the items are returned to the victim's family.

Associated personal effects recovered from the cargo hold and aircraft cabin and those items that cannot be identified to a specific person are generally processed at a later time. All recovered items are stored in a secure area. The airlines or their representative will then contact the victim or victim's family and ask them how they would like the recovered items returned. The party then carries out the desires of the victim or family.

The process for the return of unassociated personal effects is deliberate and time consuming, as it is difficult to determine ownership of thousands of items. To do this correctly, all items are first inventoried, numbered, and photographed. Once this process is complete, a photo catalogue is produced and sent to all victims or their families. Instructions are provided on how to claim an item. Once all victims or families have responded, items claimed by only one person are returned per their instructions. Claims by more than one party must be substantiated and proven by pictures, invoices, or other means. The item is returned once ownership is determined.

RECOMMENDATIONS

1.5.1 The airlines should make available to all families in a readily accessible manner the unassociated personal effects from an aviation disaster, as quickly as possible.

In order to allow survivors and families to review the unassociated personal effects in an attempt to identify them, airlines should either provide a readily accessible visual display of the personal effects of the victims at the crash site,

or provide a photograph album or video, allowing the families of the victims to view it at their convenience. With regard to the use of a catalogue to display the items, the airlines should first ask families if they are interested in viewing the photographs of the personal effects of their loved ones, and notify the families in advance before delivery of the catalogue. Airlines should place the emotionally disturbing and/or graphic photographs toward the back of the catalogue, set off from others photographs by a divider, indicating the nature of the photos behind it. If a visual display of the personal effects is provided at the crash site, airlines should provide transportation and accommodations for the families. These items should be cleaned and made "presentable."

1.5.2 The airlines should strongly consider utilization of a third party with experience in return of personal effects associated with aviation disasters.

For those personal effects not being held as evidence for purposes of a criminal or accident investigation, the airlines should consider contracting out the responsibilities for identification and return of personal effects to a private company. Done properly, associating and returning personal effects is a time-consuming and resource-intensive undertaking. Consideration should also be given to protecting airline employees from re-experiencing the crash and possible future psychological and physical health effects.

1.6 Guidelines for airline and American Red Cross interaction in assisting the victims of aviation disasters

The ADFAA requires the Chairman of the NTSB to designate an independent nonprofit organization, with experience in disasters and post-trauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident. The NTSB has designated the ARC as this organization.

The NTSB, in its Federal Family Assistance Plan for Aviation Disasters, has outlined the ARC's responsibilities as follows:

- 1) Provide a liaison officer to the joint family support operations center to coordinate with other members of the operations center staff the ARC-related issues and family requests for assistance.
- 2) Coordinate and manage the numerous organizations and personnel that will offer their counseling and support services to the operation, as it is important to monitor and manage this area so that families are not outnumbered and overwhelmed by well-intentioned organizations and individuals.

- 3) Employ an accounting system to accurately record data on ARC costs for specific cost categories for later reimbursement.
- 4) Activate local, state, and national ARC personnel to provide crisis and grief counseling to family members and support personnel. This includes coordinating with the airline to contact and, if appropriate, set up an appointment with family members who do not travel to the site.
- 5) Assess the needs and available resources of other agencies and coordinate with them to ensure ongoing emotional support for workers during the operations and provide debriefings before departure.
- 6) Establish a joint liaison with the airline at each supporting medical treatment facility to track the status of injured victims and to provide assistance to them and their families.
- 7) Coordinate with the airline to establish locations for families to grieve privately.
- 8) Coordinate on-site child care services for families that bring young children.
- 9) Arrange a suitable non-denominational memorial service several days after the crash, and a memorial service for any future burial of unidentified remains.
- 10) Provide families, at their request, referrals to mental health professionals and support groups that are in the family member's local area.

The Task Force understands that the role of the ARC at the crash site is a developing one, but it is important that it be clearly defined for the benefit of families and airlines. Interaction should occur between the airlines and the ARC, facilitated by the NTSB, to define the roles of the parties, individually and collectively.

RECOMMENDATIONS

1.6.1 The airlines and the ARC, at both the national and local levels, should meet to understand their respective roles and interactions in the aftermath of aviation disasters.

1.6.2 The NTSB should sponsor a working group to meet at least semi-annually, comprised of airlines, families, ARC, Department of State, and Department of Health and Human Services, to develop and update the operational plans describing the responsibilities of each party at the accident site.

1.6.3. All mental health personnel utilized by ARC in the aftermath of an aviation disaster should be trained following the same principles as outlined in Task Force Recommendation 1.4.1.1.

2. Recommendations to ensure that families of non-U.S. citizens involved in an aviation disaster receive appropriate assistance from both the airline and the U.S. government

The ADFAA recognizes that the notification of families of foreign victims can present difficulties that may not exist in the notification of the families of United States citizens. Specifically, the families of foreign-citizen victims may not be in the United States and thus not be aware (due to varying time zones, etc.) of a disaster in the United States as quickly as families of U.S. citizen victims. The families of foreign-citizen victims may also have difficulty in establishing contact with the airline involved. On the other hand, a citizen of another country may be a long-term resident of the United States, and, if involved in an aviation disaster, be in a position which is virtually indistinguishable from that of a U.S.-citizen passenger. It is the role of the State Department to inform the families of U.S. citizens residing abroad that their family member has died, as well as to assist foreign governments in the notification of the families of non-U.S. citizens who are killed in the United States. Accordingly, the critical factor is not the nationality of the victim, but whether the victim's family is in the United States. In instances when the victim's family resides in the United States, foreign citizen victims should be treated in the same manner as the United States citizen victim whose family is also in this country. When, however, the foreign victim's family is outside the United States, special measures as recommended here should be employed.

The problem of notifying the foreign families of victims by the U.S. Department of State would likely be most acute when a U.S. or foreign carrier experiences an aviation disaster within the United States or its territories. The recent Korean Air crash in Guam is a prime example. Experience has demonstrated, however, that it is not unusual for a "purely domestic flight," such as Comair 8272, to be carrying one or more foreign citizens whose families may be present in the United States.

There is clear legal authority in international treaties, to which the United States and other governments are parties, which establish a governmental role in assisting when the nationals of one country are killed or injured in another country. Articles 5 and 37 of the Vienna Convention on Consular Relations, to which the United States is a party, outline the obligations of the host country and rights of the sending country with respect to assisting foreign nationals.

RECOMMENDATIONS

2.1 Upon receipt of notification that a foreign citizen victim was involved in an aviation disaster occurring within the United States or its territories, the State Department should assist in establishing an appropriate liaison between the airline and the foreign government of the victim.

Upon learning of the foreign nationalities of victims, the airline should contact the Department of State liaison who, working with the foreign embassy and consulate, will ascertain a point of contact and make the information available to the airline so that direct communication may be established between the airline and the foreign government's point of contact. From that point on, the foreign government will be expected to use its own in-country resources (e.g. police, etc.) in completing the notification process. In some instances, particularly if the foreign victims' families choose to travel to the disaster site, the Department of State will want to encourage the foreign government to have its own representatives also present at the disaster site. The Department of State will also wish to advise the appropriate American Embassy abroad of the treatment being accorded victims of foreign nationality and their families so that the Embassy may brief the foreign government concerned.

2.2 Initial notification of any of the families of foreign citizen victims who reside in the United States should be carried out by the airline.

In cases where families of foreign citizens live in the United States, there is no need to delay or complicate the notification process on the basis that they are not United States citizens. Nonetheless, it may be advantageous to inform the foreign governments that their citizens were victims of an air disaster. Consequently, following notification of the family, the airline should notify the Department State of non-U.S. citizens aboard the aircraft, for notification of the victim's government. That will allow the Department of State to assist the government of the foreign national with travel arrangements to the United States of the victim's family members not residing in the United States.

2.3 The Department of State should assist directly when an airline advises that it is having difficulty notifying the family of a U.S.-citizen victim because that family resides, or is currently located, outside the United States.

The State Department already passes emergency messages to U.S. citizens residing and traveling abroad when family members are unable to do so through the usual channels. This would be merely an extension of that service in the context of an aviation disaster.

2.4 When the airline publicizes a toll-free number for contacting the airline following an aviation disaster, it should also publicize a non-toll-free number for use by persons calling from outside the United States.

In most instances, persons calling from outside the United States are unable to reach a party on a toll-free line. In order to allow family members abroad to establish that critical first contact with the airline, the airline should take reasonable steps to publicize a non-toll-free number which such persons can call from overseas to obtain information about their loved ones.

3. Recommendations to improve the passenger manifests (or other systems) used by the airlines to establish points of contact with families of passengers

The ADFAA requires that the Task Force make recommendations to improve passenger manifests. Currently, there is no formal mechanism to allow passengers to share emergency contact information with airlines, although a passenger can always give a contact telephone number if asked by the agent for a phone number. Although passengers and crew members can communicate travel plans with their families and loved ones outside any formal process, many things can happen to change travel plans at the last minute. In the aftermath of an aviation disaster, families and loved ones of passengers want to be in contact with the airline as quickly as possible to determine the status of their loved one.

The problem of prompt and accurate family notification first gained widespread public notice after the tragic bombing of Pan Am Flight 103 over Lockerbie, Scotland. The problem continued, in various forms, in most subsequent international and domestic airline crashes, including the TWA 800 disaster. In the immediate aftermath of an aviation disaster, the airline's first task with regard to family assistance is to obtain an accurate passenger manifest and establish a contact for each passenger's family or other loved ones. After determining who is on the flight, the airlines have to weave together various threads of information in order to determine what family members or loved ones should be notified of the incident. In addition, apart

from the initial notification, there are many important communications that need to take place in the hours and days after a crash.

It is usually very difficult and time-consuming for families and loved ones to get through to the airline after the crash. There is usually a huge volume of incoming calls. In addition, when a person finally does get through, the airline generally does not provide any information, but merely takes information from the caller. Further, there is no existing process by which the airline can determine who it can contact without having to rely on family members to contact the airline.

These recommendations should make it easier and faster for airlines to determine the emergency contact for a passenger, and then contact that person in a simple and cost-effective manner. The recommendations center on improvements in the data elements collected as part of the "passenger manifest".⁵

At the Task Force meeting held on September 19, 1997, the ATA offered a plan whereby each ATA member carrier would incorporate into that manifest the full name of each passenger and contact phone number. Each airline would be required to offer the passengers the opportunity to provide the information, but the passenger would not be required to do so. Since eighty percent or more of the reservations on the ATA member carriers are made through travel agents, this type of process could also require legislation or regulation that would require the travel agents and tour operators to provide passengers with the opportunity to provide this information, as well as to require the travel agents and tour operators to present the collected information to the air carrier that is providing the service to the passenger.

⁵ A passenger manifest is the document immediately available to the airline in the aftermath of an aviation disaster. For domestic flights, the only data elements pertinent to family notification that are currently contained in the passenger manifests are the last name of each passenger, and some portion of the passenger's first name, ranging from the full first name to simply the initial of the first name.

Most larger air carriers also have a passenger name record, or PNR, for each passenger. The PNR generally contains the name of the passenger, as well as a phone number for the passenger. This phone number can be the phone number for the travel agent, the office phone number of the passenger, and/or the home phone number of the passenger.

RECOMMENDATIONS

3.1 The Task Force recommends that airlines have readily available for every flight, either in a passenger manifest or through the use of "contact cards," the following data: the full name for each passenger, a contact phone number for each passenger, and a contact name for each passenger. Implementation of these data elements into the passenger manifest, or through some other system, should be required through legislation and/or regulation. This same requirement should extend to a travel agent or tour operator who books the flight.⁶

While most airlines and travel agents collect the full name (first and last name) of passengers at the time of purchase of the ticket, many "passenger manifests" only contain the initial of the first name of passengers, or only the first few characters of the passenger's first name. As the passenger manifest is the document most readily available in the immediate aftermath of an aviation disaster, the Task Force believes the full name of every passenger, including children under two years of age, should be included on the manifest.⁷ Such a requirement should speed the notification of the families of the passengers involved in an aviation disaster.

The Task Force as a whole agrees that, in conjunction with the passenger's name, a contact phone number would do the most to increase the speed with which notification is made to the families of the passengers. In the event of an emergency, it is more important for the airline to have a phone number than to simply have a name with no phone number attached to it.

Having a contact name, in addition to a contact phone number for each passenger, would aid the notification process. If an airline has only a phone number with which to contact a person to inform them of the aviation disaster, awkward situations could result that could make notification difficult and time consuming.

Task Force member Jim Casey of the ATA, supported by Task Force members Walt Coleman and Ed Driscoll, stated that if an airline were required to request a contact name from each passenger, this would result in an increase in the processing time for each passenger, as a request for a contact name would invite dialogue from the passengers. This increase in the processing time translates to increased costs for the airlines. Further, they stated the

⁶ The U.S. Department of Transportation abstained from voting on the Recommendations 3.1 through 3.3, as the Department has a rulemaking in progress to address this issue.

⁷ The ATA and NACA took no position on whether children under two who do not have a ticket but who instead fly on a passenger's lap should be included for purposes of this recommendation.

collection of a contact name with the phone number would only marginally decrease the time it takes to notify the families, as the notification process cannot begin until the manifest is verified. With the airlines improving the process to obtain information from family members (see Recommendations 1.2.1 and 1.2.2), by the time the manifest is verified, the airline should already have many of the emergency contact names.

3.1.1 Airlines should be provided the option of collecting this information either through an automated process or a manual process.

The Task Force believes that a computerized passenger manifest system is preferable to a manual system. The Task Force recognizes, however, that some air carriers would not be able to afford the costs of such a system. A manual system for collecting passenger manifest information can serve the same purposes as an automated system, without the costs of automation. For example, non-computerized airlines and travel agents could include a "contact card" with each ticket they issue. The "contact cards" can include a space for full name of the passenger, name of a contact, and the contact's phone number.

Under such a system, the "contact cards" should be conspicuously available at airports, such as at curbside baggage check, the main airline counter, the gate, and at the jetway or boarding point. The air carrier utilizing such a system must inform the passengers that the cards are available. Airlines could collect the "contact cards" at the jetway or boarding point for each flight.

3.2 Each passenger should be encouraged to provide the information that air carriers and travel agents would be required to request under any improved passenger manifest system.

While not all passengers may wish to provide contact information, all passengers should do so. Passengers who do not provide such information place a burden on the entire airline notification system and adversely affect the families of other passengers. For instance, if a passenger does not supply the information, airline employees will be required to search through various records to attempt to discover a contact for that passenger. Further, that passenger's family will likely have to call in on the toll-free number to provide information to the airline, which also burdens the system.

The Task Force has concerns that failure to furnish such information might result in conflict at airport gates if airline personnel were required to refuse passengers boarding when passengers do not provide contact information. The Task Force also recognizes the possibility that passengers could supply false information if the passenger did not want to provide a contact. At the same time, many Task Force members believe that if the information were

required, the passengers would become accustomed to providing such information, as passengers of U.S. airlines today are accustomed to providing photo identification to airline personnel.

3.3 Information provided to the air carriers, travel agents, and tour operators for passenger manifest reasons must only be used in the case of an emergency.

Passengers who provide contact information should do so with the expectation that it would only be used in the case of emergency. It would be inappropriate for the information to be used in other ways, such as part of marketing campaigns or to compile passenger databases. Any legislation or regulation on this subject should limit the use of this information to emergency situations. Although the Task Force has been focusing on airline crashes, the information could be relevant in some other emergency situations such as medical crises.

FINDINGS ON THE COSTS OF IMPLEMENTING A PASSENGER MANIFEST SYSTEM⁸

INTRODUCTION

The ADFAA specifically requires that the Task Force review the costs of implementing a passenger manifest system, as well as other implications of requiring a passenger manifest system.⁹

⁸ The Air Transport Association, Regional Airline Association, and National Air Carrier Association take no position on the conclusions, particularly the economic assessments, expressed in this section.

⁹ The ADFAA requires that the task force develop recommendations on methods to improve the timeliness of the notification provided by air carriers to the families of passengers involved in an aircraft accident, including the following:

- (A) An analysis of the steps that air carriers would have to take to ensure that an accurate list of passengers on board the aircraft would be available within one hour of the accident and an analysis of such steps to ensure that such list would be available within three hours of the accident;
- (B) An analysis of added costs to air carriers and travel agents that would result if air carriers were required to take the steps described (A);
- (C) An analysis of any inconvenience to passengers, including flight delays, that would result if air carriers were required to take the steps described in (A); and
- (D) An analysis of the implication for personal privacy that would result if air carriers were required to take the steps described in (A).

The Task Force considered the costs and implications of a passenger manifest system in developing the Recommendations 3.1 through 3.3. The following are the findings of the Task Force in formulating its recommendations:

A. AN ANALYSIS OF THE STEPS TO ENSURE AN ACCURATE LIST OF PASSENGERS ON BOARD THE AIRCRAFT IS AVAILABLE WITHIN ONE HOUR VERSUS THREE HOURS

Two issues need to be addressed concerning the steps required by an airline to ensure that an accurate list of passengers is available within a set time period. The first issue is to define what an "accurate list" would include. A review of the costs associated with a manifest consisting of passenger full name and contact name and phone number is presented in section B, below. The second issue is to determine how quickly a manifest can be "verified." An analysis of that process is contained herein.

For airlines that have an automated passenger manifest system, an initial manifest is always available to the airline. The question is how quickly the airline can "verify" the initial manifest to derive a "verified manifest."

Currently, the larger airlines "verify" the manifest by comparing the manifest to the "ticket lift," which consists of the tickets collected by the gate agent at the time the passengers board the aircraft. (If a passenger has an electronic ticket, often referred to as an e-ticket, the gate agent will have a document indicating that the passenger boarded the aircraft. For purposes of this section, "ticket lift" will include this documentation as well as paper tickets.) In the event of an aviation disaster, the "station" from which the flight departed will collect the tickets presented to the gate agent. The station will then phone the location that has been designated by the airline as responsible for verifying the manifest (generally referred to as the command center) and informing it of the tickets collected at the station. The ticket lift is then compared to the initial manifest. Once this task is completed and any discrepancies are resolved, the manifest is considered "verified." Usually during this verification process, people call the airline to inquire about family members, and the airline is compiling information on potential family contacts based on those calls, as well as on the information the airline may have on the passenger from its frequent flyer records or the passenger's PNR (Passenger Name Record, i.e. the reservation record) for that flight.

Task Force members have witnessed two separate drills to determine how quickly the verification process can take place. In both instances, the airline (a major carrier) was able to verify the manifest in under two hours. (These

49 U.S.C. § 41113 note (1997).

drills, however, were conducted with the station having placed the ticket lift in a readily accessible location.) Smaller air carriers have indicated in comments to the Department that it would take them much longer to verify a manifest, perhaps a minimum of six hours.

For an airline to have an accurate list of passengers on board the aircraft within three hours of the accident under non-ideal conditions, the airline would have to have ticket lifts readily available in the event they were required to verify the initial manifest. Further, the airline would need to have a plan in-place prior to any such disaster to ensure that personnel at all of the airline's stations would know the proper procedures for verifying the manifest. Finally, airline personnel need to be well-practiced in the proper procedures for verifying the manifest -- perhaps through regular drills to ensure that the verification process. The Task Force believes this can and should be accomplished, certainly by the larger air carriers.

Based on available experience, it does not seem practicable or beneficial for an airline to have an accurate list of passengers on board the aircraft "verified" within one hour of an accident. In order for the verification of the manifest to occur within one hour of the disaster, the verification process would need to take place for every flight immediately following the departure of every flight. The costs of "verifying" each flight by airline personnel stationed at the airport would be much greater than the costs of doing the verification off-site, as is currently the practice.

B. AN ANALYSIS OF THE ADDED COSTS TO AIR CARRIERS AND TRAVEL AGENTS THAT WOULD RESULT FROM A PASSENGER MANIFEST REQUIREMENT

The analysis of the costs to air carriers and travel agents for implementing an improved passenger manifest system is based on a passenger manifest information requirement containing the following three elements: full passenger name, contact name, and contact phone number.

1. Passenger Manifest Data Elements Collected through a Computer Reservation System

For airlines which would collect the required data elements for use in a computer reservation system ("CRS"), or for travel agents that collected the information for the air carrier, the costs would be incurred, primarily, in the additional time it would take airlines or travel agents to collect the information each time a reservation is taken. Given that there were a total of 358.5 million origin-to-destination trips taken within the United States in

1995¹⁰, and that roughly two reservations are booked for each trip taken, even the slightest increase in the amount of time expended by airline employees or travel agents for each reservation could add up quickly.

Full name for each passenger is usually collected today by air carriers, and this is often true for travel agents. A phone number is also generally requested of each passenger. The primary additional costs would be incurred by air carriers and travel agents in obtaining an emergency contact name and telephone number (which would possibly be different than the home phone number now collected) from each passenger and entering it into the CRS, assuming that the airline reservation agent and travel agents already enter into the CRS the full name of the passenger and a phone number for each passenger. If the air carrier is to ask each passenger for an emergency contact name and telephone number, a dialogue between the passenger and the reservation agent concerning the need for such information could take place. In surveys of passengers by ATA-member airlines, it was found that adding collection of passenger contact name to the collection of passenger contact telephone number was likely to lead to such a dialogue. This dialogue is more likely to occur, however, in the initial stages of the implementation of a requirement.

The Task Force does not have specific data on how long it would take for the collection of such information, and thus cannot determine a specific figure for the added costs that would result to air carriers and travel agents if such information were collected. Moreover, the task force does not have specific data on what additional costs air carriers would incur to modify their CRSs to accommodate the additional information.

The DOT, however, in its advance notice of proposed rulemaking (ANPRM) on Domestic Passenger Manifest Information (Docket OST-97-2198) calculated the additional annual costs of a domestic passenger manifest information requirement based on air carriers and travel agents taking 40 and 60 additional seconds to collect additional passenger manifest information. (It is noted that based on surveys by seven of its member carriers, the Air Transport Association of America has said that it would take up to two minutes [120 seconds] at the time of both reservation and check-in to collect four elements of passenger manifest information -- the three elements of passenger manifest information listed above plus passenger social security number or date of birth.) It was assumed by DOT that air carriers and travel agents would solicit all passengers for information at the time of reservation, and that for those passengers that did not provide information at the time of reservation, air carriers would collect it at the airport. No provision was

¹⁰ These trips were taken aboard the nine Major carriers, 21 National air carriers, 12 Large Regional air carriers, and 132 Medium Regional air carriers that serve the U.S. domestic market.

made for passengers who booked reservations and then, subsequently, did not board the flight. The additional annual costs for 40 additional seconds were: air carriers, \$19-38 million, and travel agents, \$13-26 million. The additional annual costs for 60 additional seconds were: air carriers, \$28-57 million, and travel agents, \$20-39 million.

In calculating air carrier costs in the ANPRM, none was included for air carriers modifying their computer systems (individual computer reservation systems and departure control systems and the development of inter-carrier system interfaces) because it was assumed that most of these computer system modification costs would be incurred in order to implement an international passenger manifest information requirement, a proposal which is farther along in the regulatory process. In DOT's notice of proposed rulemaking (NPRM) on International Passenger Manifest Information (Docket OST-95-950), it was estimated that airlines would incur a one-time cost of about \$30.5 million for the modification of computer systems to accommodate a passenger manifest information requirement.

If a system were in-place so that passengers did not have to give additional passenger manifest information every time a reservation was made, such as through an air carrier frequent flyer program, the collection costs could be reduced. Passenger manifest information that resides in a passenger's frequent-flyer records would need to be updated regularly, however.

2. Passenger Manifest Data Elements Collected through a Manual System

While a computerized passenger manifest system is preferable to a manual system, the Task Force recognizes that some air carriers do not use CRSs and would not be able to afford the costs of such a system. A manual system for collecting passenger manifest information can serve the same purpose as an automated system without the costs of automation. For example, a "contact card" could be included with each ticket they issue. The "contact cards" could include spaces for full name of the passenger, name of an emergency contact, and the contact's phone number.

A system based on contact cards, or even having a place on the back of airline tickets with a space for passengers to write down their full name, the name of a contact and the contact's phone number, would involve few out-of-pocket costs to the air carriers and their travel agents, other than the printing of the cards. Dan McKinnon, CEO of North American Airlines, testified that his airline currently uses such a system, and he did not report significant costs incurred in implementing such a system.

C AN ANALYSIS OF ANY INCONVENIENCE TO PASSENGERS, INCLUDING FLIGHT DELAYS, THAT WOULD RESULT IF AIR CARRIERS WERE REQUIRED TO IMPROVE PASSENGER MANIFESTS

The Task Force examined the implications for passengers of a passenger manifest requirement, including flight delays, in making its recommendations on the subject. Generally, the higher the percentage of the passengers who provide the information "upstream," the less impact there will be on actual airport operations. If travel agents (who book over 80 percent of passengers) and airlines collect passenger manifest information during the reservation process, and the information is placed into the PNR portion of the CRS where it will be available throughout the passenger's trip, this could greatly reduce any flight delays. Providing the passenger with a contact card at the time the reservation is made, which would need to be collected at the airport, would have some impact on airport operations.

D. AN ANALYSIS OF THE IMPLICATIONS FOR PERSONAL PRIVACY THAT WOULD RESULT IF AIR CARRIERS WERE REQUIRED TO PROVIDE CONTACT NAME AND PHONE NUMBERS

All passengers may not wish to provide contact information. Personal privacy considerations dictate that as little information as possible be collected to meet the goal of providing timely notification to the families of passengers involved in aviation disasters. Accordingly, the Task Force recommends that the only three data elements collected for any passenger manifest be the passenger's full name, and the name and phone number for the emergency contact of each passenger. Information such as date of birth or social security number is not needed for notification purposes.

The Task Force also understands that a person might not want to provide a contact name and phone number. However, all passengers should be encouraged to provide contact information, as passengers who do not provide such information place a burden on the entire airline notification system when not providing this information. Any concerns regarding personal privacy are outweighed by the burden a person who refuses to provide such information would place on the system by not providing information. Further, the Task Force believes that the personal privacy of each passenger can be protected by either legislation or regulation.

4. Recommendations on uniform guidelines for medical examiners and coroners on the identification of the remains of victims

The White House Commission on Aviation Safety and Security requested that the Task Force develop uniform guidelines for victim identification.

Following an aviation disaster that results in the death of passengers, the family members want their loved ones to be positively identified as quickly as possible. Accordingly, when the medical examiner or coroner positively identifies the victim and associates all possible remains to that person, the family of that victim is notified. The identification of the remains of victims is typically done by conventional means, such as through the use of fingerprints or dental records. In some instances in which conventional means are not successful, DNA testing has been used in an attempt to make a positive identification.

Although victims' families desire to have their family members' remains returned as quickly as possible, severe fragmentation or extensive burning of the remains may occur in an aviation disaster, making identification a time-consuming process. In circumstances in which a body is not found intact, a victim may be positively identified based upon a portion of the remains. In these instances, there is the possibility that the remains used to identify the victim will be returned to the family, only to have the medical examiner or coroner find and associate additional remains belonging to the victim. In that case, the family risks the additional trauma of being informed that there are additional remains after the ceremony for the victim has been conducted. Further, in aviation disasters there will often be "unassociated remains"¹¹ once all passengers and crew have been identified, due to the violent nature of such disasters.

As the medical examiner or coroner makes the final determination as to whether DNA testing should be used as well as how it is to be employed, Congress should consider whether the following recommendations can be implemented through legislation.

RECOMMENDATIONS

4.1 The victims of an aviation disaster should be positively identified.

¹¹ An "unassociated remain" is a remain that cannot be identified through conventional means, such as through the use of dental records or fingerprints. For example, although a positive identification may be made only by a fingerprint from a severed hand, the process of identification does not stop at this point. The medical examiner will continue to search the data base for remains that can be associated with the hand. If a severed right hand is identified from an African-American male, age 45, a search through a data base of unidentified remains will be made to look for remains missing a hand, and then narrowing the scope by race, sex, age, and right hand. Possible matches are reviewed by such specialists as forensic pathologists and anthropologists, and if the hand can be associated with other large portions of remains they are placed together until all possible associations are made. Only then are the remains transferred to the family's control. Any remains that are not identified through this process are "unassociated remains."

4.2 DNA testing should be utilized by medical examiners or coroners to identify the victims of an aviation disaster who cannot otherwise be identified through conventional means.

4.2.1 All extensive conventional efforts should be employed to identify the victims and associate all separated remains. It should not be required that DNA testing be utilized to identify unassociated remains. Any unassociated remains should be interred in a proper ceremony coordinated in conjunction with the families of the victims and the American Red Cross.

4.2.2 When extensive conventional efforts have failed to identify all victims of an aviation disaster, DNA testing should be utilized in an effort to identify those victims still unidentified. DNA testing should not be mandatory, however, for associating remains to victims previously identified. Any unassociated remains should be interred in a proper ceremony coordinated in conjunction with the families of the victims and the American Red Cross.

The Task Force believes that DNA testing should not be mandatory if: (1), all of the victims of an aviation disaster have been identified; (2), all conventional efforts have been made to associate portions of the victims' remains; (3) the families, if they choose, have been informed of what is being returned and the condition of the remains; and, (4) each family has been given the option of being notified later if other remains are later recovered and identified (through conventional means). The unassociated remains not identified should be buried in a memorial service that all families will be invited to attend.

The Task Force has considered various issues in coming to this most difficult decision. Asking a family if they want to participate in DNA testing after their loved one has already been identified will put that family under a great deal of stress. Should the family delay the funeral in the possible event further remains are identified? Should they reopen the casket if further remains are identified? Also, unassociated remains are going to have to be buried at some point in time. Should one family who wants all unassociated remains to undergo DNA testing be in a position to delay the memorial service for all other families?

Further, while costs for DNA testing should not be the principal consideration, the Task Force did take into account the cost of a policy which would allow every family member to have the unidentified remains DNA-tested. Currently, the Office of the Armed Forces Medical Examiner cost for nuclear DNA testing is \$505.00 per person. If there were 240 fatalities, and there were 222 bone and soft tissue samples from which DNA could be extracted, and one of the 240 families requested DNA testing be done on each

of those 222 remains, it would cost \$112,110 to satisfy the request of that one family.

4.3 If there is a possibility of additional remains being associated with a victim following identification, the family should be informed of such a possibility at the time the remains are returned. (For example, a victim might be identified during the early stages of the recovery effort. Additional remains of that victim might then be identified by conventional means in later phases of the recovery effort.) Families should be given the opportunity to decide whether they want to be informed of additional remains being identified as belonging to their family member. The medical examiner or coroner should honor that decision.

5. Findings on the extent to which military experts and facilities are used to aid in the recovery efforts and subsequent identification efforts following an aviation disaster

The ADFAA requests that the Task Force make recommendations on the extent to which military experts and facilities can be used to aid in the identification of passengers involved in an aircraft accident. Following passage of the Act, and pursuant to a directive issued by President Clinton on September 9, 1996, the NTSB developed a Federal Family Assistance Plan for Aviation Disasters. In developing that plan, the NTSB entered into a Memorandum of Understanding (MOU) with the Department of Defense (DOD) that addressed the extent to which military experts and facilities can be used to aid in the identification of passengers involved in an aircraft accident, along with other ways in which the DOD could assist the NTSB following an aviation disaster.

The MOU between the DOD and NTSB became effective April 1, 1997. The MOU establishes a cooperative arrangement between the two entities concerning U.S. Government assistance to families affected by aviation and other non-DOD transportation disasters.

Pursuant to the MOU, the NTSB may request DOD assistance through an interagency order following an aviation disaster, and DOD will provide such assistance. This assistance includes:

(1) Assets from the U.S. Navy's Supervisor of Salvage (SUPSALV) for the purpose of offshore search and salvage, recovery of non-military aircraft wreckage, and associated technical assistance when these services cannot be provided by locally available sources. SUPSALV may provide divers, manned and remotely operated submersibles, and/or other sophisticated underwater systems. SUPSALV will also provide advice to NTSB and will coordinate resources to support NTSB underwater search, salvage and

recovery efforts. When requested, SUPSALV will provide information on alternative search and recovery techniques which may be employed, and preliminary cost estimates for each.

(2) Personnel from the Armed Forces Institute of Pathology (AFIP) of the Office of the Armed Forces Medical Examiner (AFME) to assist in the identification effort of human remains and also conduct appropriate DNA comparison testing on specimens submitted by the medical examiner.

(3) Mortuary support at agreed upon military installations.

(4) Medical and dental records and x-rays of military personnel fatalities that are active duty, retired, veteran, or reserve.

(5) Additional pouches and transfer cases for human remains.

The NTSB agrees to reimburse DOD for any assistance provided through the issuance of an Economy Act Order authorizing DOD's services. In addition, military operation requirements will have priority in use of DOD assets.

FINDINGS

5.1 The Task Force fully supports the Memorandum of Understanding (MOU) entered into between the Department of Defense and the National Transportation Safety Board, and finds that this MOU outlines the extent to which military experts and facilities can be used to aid in the recovery efforts of victims and subsequent identification efforts following an aviation disaster.

6. Recommendations to ensure that state mental health licensing laws do not act to prevent out-of-state mental health workers from working at the site of an aviation disaster or other sites to assist survivors, family members, and those involved in the recovery effort

The ADFAA requires that the Task Force develop recommendations on methods to ensure that state mental health licensing laws do not act to prevent out-of-state mental health workers from working at the site of an aircraft accident or other related sites.

The random, dynamic, and infrequent nature of aviation disasters presents significant difficulties for any locality in the United States to develop and maintain a cadre of mental health practitioners experienced, knowledgeable, and skilled in the provision of timely and appropriate mental health services to impacted family members, survivors, and response personnel. Immediately following such incidents, in many communities, especially

those not in major metropolitan areas, experienced mental health practitioners are needed to manage service delivery activities and provide knowledgeable, professional guidance to service delivery personnel. The ultimate goal is to remove any restrictions within individual states as to the recruitment, deployment, and use, as necessary, of aviation-response qualified mental health professionals.

To establish a desired level of public trust and acceptance, and to reinforce a desired set of practitioner qualifications, educational requirements, practice standards and a code of ethics, many disciplines have sought and received government and legal sanctioning for practice in the form of state government licensing and certification. In general, the discipline or its professional association develops or recommends model legislation or recommends modifications of license laws to state legislatures, which in turn draft and pass legislation later signed by the governor. Modifications to licensing laws are also generally proposed periodically by the professional association.

The ARC recently completed a survey of all state mental health licensing laws. There is a great variation in mental health license and practice requirements among the states.

- All current state license laws speak to the practice of non-residents within the state. A frequent clause is that a licensed professional from another state may practice within a state for up to thirty days per year without having to become licensed in that state. There are, however, many variations. Some states will stipulate a number of days per month that an out-of-state practitioner may function. Some require that licensed professionals from another state must fulfill all the course work requirements needed for licensure in their state.
- There are twenty states in which non-resident licensed mental health workers may serve at disasters. In these states there is either an emergency clause or a time restriction that is liberal enough not to interfere with the time frame of emergency disaster assistance. Ten additional states restrict psychologists only. The remaining states have restrictions on the use of multiple professions.
- Governors in two states have signed time limited waivers allowing out-of-state ARC Mental Health workers in their states for disaster response regardless of license law limitations. In all except one instance, this has occurred on federal declared disasters. (A waiver has been required in one state four different times.) Aviation disasters have not been federally-declared disasters.

To ensure the highest level of service quality and consistency, the ARC Disaster Mental Health Services (DMHS) program uses only licensed mental health professionals from the following disciplines: psychiatry, psychology, social work, counseling, marriage and family therapy, and psychiatric nursing. This ensures that the individuals have received credentials from a state licensing board to practice based on pre-determined criteria of knowledge and experience. In addition to their professional background, these licensed professionals are trained and certified through ARC's disaster mental health training and other disaster response instruction, which provides them the background and knowledge needed to effectively practice in the non-clinical setting of a disaster site.

These varied requirements and restrictions can increase the difficulty and delay in deploying experienced and knowledgeable supervisory and management level licensed mental health professionals following an aviation disaster. It also frustrates attempts to effectively use, augment, and support as many local mental health resources as possible in meeting the emotional needs arising from the incident. Such delays can have a major negative impact on the quality of initial services provided. It has been noted during several incidents that it is very difficult to undo the damage done by either inappropriate or non-existent services immediately following aviation disasters.

RECOMMENDATIONS

6.1 Congress should closely examine ways to provide uniform licensing waivers that would allow licensed out-of-state ARC Mental Health workers in a state where an aviation disaster occurs to work on disaster response teams for a period of time. Congress, cognizant of federalism issues, should review whether states have implemented this recommendation.

6.2 Professional associations should ensure that the ADFAA as it pertains to family support services is understood by appropriate state licensing authorities.

6.3 The section of the ADFAA as it relates to prohibiting states from impeding the ability of the NTSB, including the director of family services, should be clarified with appropriate mental health licensing boards and professional associations on the national and state levels.

7. Recommendations on methods to improve the treatment of families by the legal community, including methods to ensure that attorneys do not intrude on the privacy of families of passengers involved in an aviation disaster

The ADFAA requests that the Task Force make recommendations on methods to ensure that attorneys do not intrude on the privacy of family members of passengers involved in an aviation disaster. Solicitation by attorneys after airline disasters has created controversy both inside and outside the legal profession. Such solicitation can infringe on the privacy of families as well as adversely affect the profession's image. Due to the increasingly competitive legal market, attorneys have fully exercised their free speech rights to advertise by publicizing the availability of their services to family members of victims of aviation disasters or by sending letters through direct mail solicitation. Attorneys have also engaged in in-person solicitation or have sent representatives to accident scenes to speak with families of victims of airline disasters.

The United States Supreme Court has defined the scope of possible restrictions on attorney advertising under the First Amendment. The government may restrict in-person solicitation of clients who are accident victims (or their families) because the attorney may "exert pressure and often demands an immediate response."¹² The Court has permitted the direct mail solicitation of potential clients by attorneys, reasoning that direct-mail advertising poses less of a risk of undue influence than in-person solicitation.¹³ However, the Court declared constitutional a thirty-day prohibition by the Florida Bar on direct-mail solicitation of accident victims and their families by attorneys.¹⁴

The ADFAA, however, prohibits unsolicited communication by all parties. "In the event of an accident involving an air carrier, . . . no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney or any potential party to the litigation to an individual involved in the accident, or to a relative of an individual involved in the accident, before the 30th day following the date of the accident."¹⁵

The Task Force recommendations strive to achieve a balance between the rights of attorneys to practice law and the rights of the family members to be afforded sufficient time to make decisions regarding prospective legal action. Gerry Sterns, aviation plaintiff attorney, testified that a conflict exists because some families desire advice and information concerning their legal rights,

¹² Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 457 (1978).

¹³ Shapero v. Kentucky Bar Ass'n, 486 U.S. 466, 476 (1988).

¹⁴ Florida Bar v. Went-For-It, Inc., 515 U.S. 618, 635 (1995).

¹⁵ 49 U.S.C. § 1136(f)(2) (1997).

representation of clients should be given with an indication that standards vary among the states.

7.2 The solicitation prohibition clause in the ADFAA should be amended to include the solicitation by an attorney's agent, and to extend the solicitation prohibition moratorium to 45 days.

7.2.1 The ADFAA should be amended to include solicitation by an attorney's associate, agent, representative, employee, or "runner."

The ADFAA may prohibit unsolicited communication only by an attorney. John McIntosh, Deputy Attorney General of South Carolina, testified that in one case the solicitation of families occurred at the crash site by "runners," or non-lawyer representatives hired by the attorneys. Juanita Madole, aviation plaintiff attorney, testified that in the USAir 427 crash, over 60 families were called by an attorney's representative posing as a survivor of prior airline crashes and advocating the attorney's work. To ensure that the statute encompasses all circumstances in which attorneys solicit airline accident victims and their families, the Task Force recommends that the Act be amended.

7.2.2 The ADFAA should be amended to extend the direct solicitation prohibition, (including in-person, mail, and phone solicitation, among others) from 30 to 45 days.

Currently, the ADFAA prohibits unsolicited communication by plaintiff and defense counsel for 30 days following the airline disaster. However, the family members on the Task Force stated that 30 days may not be enough time for families to make legal decisions in the aftermath of the aviation disaster. Family members may not be emotionally prepared to begin dealing with a legal case, and would prefer not to hear from attorneys for a longer period of time. For example, some TWA 800 families were either still in New York, or had just left the family center, 30 days after the accident. However, it is important to emphasize that the statute, as it stands, only prohibits contact by an attorney. Family members remain free to initiate contact with counsel as early as they desire, and may well do so after receiving advice from bar associations or through a brochure. The extension of the time period for direct solicitation enables the family member more time to consider their options. Further, a longer moratorium for attorney contact can serve the best interests of the families, yet advise that a waiting period of two months could cause difficulties in view of short statutes of limitations or notice of claim requirements as against certain municipalities or government entities. Congress should

review whether the extension of the 30-day moratorium would adversely affect plaintiffs due to state statutes of limitations.

Task Force member Carl Stern believes that a two-part solicitation ban would better serve family members. According to Mr. Stern, a 30-day prohibition on all forms of direct solicitation (in-person and mail), and an additional 30-day ban on in-person solicitation, would allow families to receive unsolicited information beginning 30 days after the accident, but would not subject them to the more intrusive personal solicitation until 60 days after the accident.

7.2.2.1 Congress should consider enacting legislation ensuring that the representation was not obtained by wrongful solicitation.

To deal with lawyers taking cases by referral and "closing their eyes" to the manner in which the referring attorney obtained the case, legislation should require that any lawyer signing a complaint in air crash litigation is deemed to have certified that the representation was not obtained by solicitation in violation of any statute or rule of attorney conduct.

7.2.2.2 The Department of Justice should inform all United States Attorneys about the solicitation ban and recommend that they fully prosecute if unlawful solicitation occurs in their district.

7.3 The ADFAA should be amended to allow families a period of time to revoke contractual agreements regarding legal representation or settlement in an effort to protect families from making premature decisions in the weeks following the aviation disaster.

In a similar vein, further steps to shield families from the confusion of the legal process and over-zealous attorneys might include a right of families to rescind or revoke retainer or contractual agreements (including settlements or releases) within a period of time after the agreement is signed without any risk to them. Families may seek counsel and enter into contractual agreements without taking enough time to consider the ramifications of their decision. Implementation of a provision in all agreements that allows the client the right to rescind an agreement protects the family from entering into legal obligations when they may have been in a distressed mental state or otherwise may not have been able to exercise reasonable judgment at the time of entering into such agreements. Richard Kessler, an attorney whose wife died aboard ValuJet 592, recommends that the revocation period should last three years when it can be shown that the contractual agreements were entered into by the families because of undue influence, duress,

misrepresentations, fraud, breach of ethics, or other tortious actions or omissions of the party extracting the contract.¹⁶ The Task Force did not take a position on the appropriate length of time for such a period. Congress should review the length of time the families should have to invoke such a right.

Clients have the right to fire their lawyers at any time, subject to a *quantum meruit* claim by their lawyers. Steven Krane recommended that such an implementation should include the lawyer's forfeiture of rights to *quantum meruit* compensation, or services rendered, in the event a retainer agreement is rescinded.

7.4 A neutral panel of attorneys, established by the American Bar Association, should work in conjunction with representatives from state bar associations to disseminate non-biased legal information to families in the aftermath of the aviation disaster.

To ensure neutral dissemination of legal information in the aftermath of an airline crash, the NTSB established guidelines for the Young Lawyers Division of the American Bar Association to develop and formalize a disaster response team or similar committee comprised of a panel of lawyers to consult on an informal *pro bono* basis with family members having particular concerns or questions. The disaster response team should coordinate with state bar associations or have representatives from state bars on the panel depending on where the disaster occurs, as states have an interest in protecting clients within their jurisdiction, as well as informing clients what law applies. Some state bar associations are currently organizing such panels. For instance, the Association of the Bar of the City of New York Ad Hoc Committee on Disaster Planning (Committee) has prepared a draft report including a recommendation for the implementation of a Disaster Response Team. The panel, as suggested by the Committee, would mobilize to visit with families within a few days of the occurrence. The family members would be assured that team members and their law firms would not accept representations resulting from the disaster; therefore, families need not be concerned with solicitation as potential clients or the team members' motivation. The Committee would be "multidisciplinary" in nature, including attorneys knowledgeable in the areas of personal injury law, estates law, real estate law, consumer credit law, insurance law and regulation of the legal profession. In the recent TWA Flight 800 crash, the New York State Bar Association and the Association of the Bar of the City of New York jointly sent a team of lawyers to the TWA crash site area at the request of the Mayor of New York. The Bar Associations' purposes were to answer general legal

¹⁶ The three-year period parallels the three-year period for rescission in home equity loans under the Truth in Lending Act and Regulation Z when the financial institution fails to make the material disclosures.

questions from the family members, to monitor the actions of attorneys, to educate family members regarding the rules governing lawyers, and to protect against improper solicitation of clients. The New York State Bar has subsequently developed and formalized a Mass Disaster Response Team comprised of twenty lawyers and has implemented a Response Plan to outline the purpose and protocol of the Team in future disasters.

7.5 Congress should review the admissibility in Federal court of post-disaster statements made by victims or their families in the aftermath of the crash to protect families from inappropriate use of the statements by attorneys against their interests.

Legislation should be enacted to limit the admissibility in evidence of statements given by families of victims in the aftermath of disasters. There have been allegations that family members in a few instances have been asked irrelevant and inappropriate questions regarding the habits and lifestyle of the deceased, ostensibly for purposes of identifying the remains, or in the course of casual conversation. Questions relating to smoking, drinking, drug use, or sexual habits, which could be used against the family members in any wrongful death action in connection with the assessment of life expectancy and damages, are inappropriate in the aftermath of the accident (particularly when the family members are not represented by counsel) and should be inadmissible against the family members in any subsequent proceedings. This may serve as a disincentive to those who might otherwise pose the questions. The Task Force recognizes that not all mass disaster litigation is conducted in federal courts, and that a federal change will not necessarily affect state court litigation.

7.6 Congress should review whether contingency fees in aviation cases are exorbitant and provide an incentive for attorney misconduct and frivolous suits.

Currently, there is a wide range of contingent fee percentages charged by lawyers, and sometimes additional charges for trial counsel, local counsel, steering committee attorneys, and referring attorneys that eat into any ultimate settlements or recovery. Congress should review the contingency fees collected by attorneys in aviation disasters. For instance, setting a cap on the percentage of the recovery that could be charged to any one client by all of these lawyers in the aggregate would leave the fee division for the lawyers to work out among themselves, and may result in greater compensation for the families. While the Task Force limited its discussion to aviation disaster litigation, the Task Force was not presented with evidence that the issues regarding contingency fees in aviation disasters are different than the issues regarding contingency fees in other types of mass-tort litigation.

7.7 A study should be considered to review compensation received by the families following an aviation disaster.

The RAND Corporation in its 1988 study entitled "Costs and Compensation Paid in Aviation Accident Litigation" visited the issue of whether families received appropriate compensation in aviation disasters. An update of this report, the sole purpose of which is to assist families, would be useful to families in determining legal options after an aviation disaster. The Task Force further recommends that the Departments of Transportation and Justice participate in this study and that the aviation community, plaintiff and defense attorneys, and aviation disaster family groups be involved in the creation of the study parameters.

8. Recommendations on methods to ensure that representatives of media organizations do not intrude on the privacy of families of passengers involved in an aviation disaster

The ADFAA requires the Task Force to develop recommendations on methods to ensure that representatives of media organizations do not intrude on the privacy of families of passengers involved in aircraft accidents. In every discussion of problems faced by family members at the accident scene, one of the primary issues raised is the intrusiveness of the media and its often traumatic effect on family members and survivors. The media has the right to cover aviation disasters, and the media play an important role in assisting family members in learning about the facts surrounding the accident. Further, the great majority of the representatives of media organizations undertake this role while respecting the privacy of the families of the victims of aviation disasters. Unfortunately, in the past, a minority of the representatives of media organizations have not shown consideration for the privacy and the emotional well-being of the family members of the victims of aviation disasters. Accordingly, the Task Force is making these recommendations to the media, the NTSB, and the airlines in an effort to achieve a balance between the rights of the media (and the American public to learn about the circumstances of the disaster) and the rights of the family members.

Both families and the media indicate that the symbiotic relationship between the two must be protected. In the words of Don Phillips, a reporter for the *Washington Post*, family members of the victims of aviation disasters "put a public face on a tragedy that allows us to connect to the story." Joe Lychner added that the media was an important ally of the family members at the TWA 800 accident site. He believed the press served as a valuable tool to motivate the airline and the government to act in ways consistent with family desires. Mr. Lychner wants to ensure that families continue to interact with the news media when they wish.

The Task Force also heard anecdotal evidence of actions by the media that intruded upon the privacy rights of the families. Mr. Lychner recalled a member of the press who tried to pass herself off as a family member at the TWA 800 accident site. Ms. St. Charles told of the time a member of the media attempted to sneak into the burn unit at the hospital where she was recuperating in order to take her picture.

The Task Force also took into account the new role of the NTSB. Since the issuance of the President's Directive, the NTSB has incorporated into its disaster response plans ways in which the families will be shielded from media intrusion. The family assistance center, operated by the airline, will be an area open only to families and necessary officials. The press is stopped at the door. Additionally, at previous accidents occurring in the continental United States since the passage of the ADFAA, the NTSB has received the permission of the hotel housing the family assistance center to have the local police bar media interviews on hotel grounds. The police have been cooperative and virtually no media intrusion resulted. However, once families left the hotel, they were often surrounded by cameras, particularly when going to and from public events such as memorial services or site visits. The best that could be done was to keep the media at some distance and hope the press corps respected the solemnity of the events.

These recommendations balance the privacy concerns of family members with their desire to have access to the press, and accommodate the public's legitimate interest in learning about an aviation disaster.

RECOMMENDATIONS

8.1 The men and women of the media are in the best position to address instances of insensitive treatment that family members have received following an aviation disaster. The Task Force calls upon members of the media to respect the privacy of family members after an air crash. The Task Force also calls upon each media organization, as well as professional trade associations, to establish standards respecting the rights of families.

8.2 The NTSB should serve as a liaison between family members and the press during the initial days following an aviation disaster.

Following an aviation disaster, family members find comfort and regain control of their lives in many different ways. Some families desire privacy; others may wish to have involvement with the media. The choice of whether family members speak to the media should be made on family members' terms. Today, reporters must approach family members in order to determine if they want to speak to the media (although many often just confront people and ask questions). While the family member may decline a

request, at this stressful time the family member may feel an obligation to respond to questions. The Task Force recommends an alternative paradigm.

During its initial contact with family members, and then during its daily briefings with the family members in the days following the disaster, the Task Force recommends that the NTSB explain to each family member that it is their right not to talk to the media, but that they can do so if they choose. (The brochure developed by the Task Force for the NTSB also contains this information.) The NTSB could then work with the media to ensure that family members who wanted access to the press could have it.

8.3 The NTSB should work with the families and the media to appropriately limit media contact with the families so that families can decide in advance whether they wish to speak with the media. The NTSB should inform families that it is their choice if they want to interact with the media.

The airlines and the NTSB provide a "zone of privacy" for family members at the accident site. The NTSB press and family affairs staff should organize the press into a "stakeout" area and inform family members of the press' availability. However, the Task Force recognizes the limited size of the NTSB staff at the accident scene and the demands placed on their time. The Task Force is pleased to learn that the NTSB views its role as assisting in the provision of a secured sanctuary for families coming to the scene. The Task Force calls upon the media to respect this "zone of privacy" at all times.

To this end, the ADFAA calls upon the NTSB to brief family members about the accident or its causes prior to any public briefing. The Task Force believes the purpose of this section of the Act is to ensure that family members do not learn details or findings concerning the investigation from the media, but rather that the families be informed first by the government. Accordingly, the Task Force recommends that this statute be interpreted to mean that family members and the media should receive simultaneous briefings.

8.4 Family members of a victim should have time to cope with the tragedy prior to having the family member's name publicly released, and should be provided an opportunity to personally notify other loved ones of their family member's involvement in an aviation disaster.

While the Task Force recognizes that an aviation disaster is a newsworthy event, the families of the victims should not learn of the victim's involvement from media reports. The passenger manifest publicly released should not include passengers' names until those passengers' families have been notified. While the ADFAA prohibits the NTSB from releasing a victim's name, that prohibition does not extend to the airlines. The Task Force recommends that the airlines advise the families of the airlines' intent to release the name of the family member in a reasonable period. This period

of time should be sufficient to allow the family member time to notify other family members and loved ones.

9. Findings and recommendations on the availability of information from cockpit voice recorders

The White House Commission on Aviation Safety and Security requested that the Task Force review the availability of cockpit voice recorder transcripts to the family members of the victims of an aviation disaster. The Task Force reviewed the current availability of both the audio portion of the cockpit voice recorder recordings, and the process for releasing the transcripts of those recordings to the public.¹⁷ The Task Force debated this subject at great length, and recognizes the complexity of this issue and the strong beliefs of those concerned.

The Cockpit Voice Recorder (CVR) is an accident investigation tool designed to record conversation and ambient noises in the cockpit. Following an aviation disaster, the CVR is obtained by the NTSB. It is one of NTSB's primary accident investigation tools and is required on commercial aircraft. The voices recorded on the CVR include those of the flight crew, and others who are in contact with the flight deck. Occasionally, the CVR might record sounds from the passenger cabin.

When the CVR is under sole control of the NTSB, the audio is heard by a select few investigators, and access to the tape is closely restricted by the NTSB. This situation allows the NTSB to obtain as much information as it can while at the same time protecting the privacy of the individuals who have been recorded.

Federal law prohibits the release of the CVR recording by the NTSB. "The Board may not disclose publicly any part of a cockpit voice recorder recording or transcript of oral communications by and between flight crew members and ground stations related to an accident or incident investigated by the Board."¹⁸ The statute permits the NTSB to make public any part of a transcript the NTSB decides is relevant to the accident or the incident. The basis for this law is generally understood to be the right to privacy that exists for the flight crew in the final moments before the trauma of a crash, as well

¹⁷ The recommendations in this section do not apply to the availability of the CVR in litigation.

¹⁸ 49 U.S.C. § 1114(1).

as the rights of the surviving family members to be protected from such a release to the public.¹⁹

The only source of information the public has about the CVR recording is through transcripts released by the NTSB. These transcripts are often edited to exclude personal and non-pertinent information. The NTSB defines non-pertinent information to include information that is not relevant to the operation of the aircraft or to the accident investigation.

There have been attempts by the media, as well as by the families of deceased crew members and passengers, to obtain a copy of the recording in an effort to hear the last words of the flight crew, along with the sounds from the passenger cabin.

Once the accident investigation has been closed by the NTSB, the CVR is returned to the airline. One witness before the Task Force testified that in at least one incident, the airline has used a copy of the CVR recording for internal training purposes. This raised concerns about the amount of protection afforded the CVR recording by the airlines.

FINDINGS AND RECOMMENDATIONS

9.1 The right to privacy of those recorded on the audio portion of the CVR should not be violated for any reason, other than for its use as an accident investigation tool.

The CVR is an accident investigation tool, and the release of the statements (audio or written) of those recorded on the CVR infringes upon their privacy. At the same time, the Task Force recognizes the interests of the public and the families in learning what happened prior to the accident.

Twenty-one Task Force members believe the right to privacy of those recorded on the audio portion of the CVR should not be violated for any

¹⁹ The CVR is not subject to the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552. A study of case law under the FOIA with regard to the release of recordings of individuals illustrates the principles for the non-release of the audio portion of the CVR, and the redaction of the non-pertinent information from the transcript.

Under the FOIA, particularly sensitive, and often graphic personal details about the circumstances surrounding an individual's death may be withheld when necessary to protect the privacy interests of family members. Even information that is not particularly sensitive in itself may be withheld to protect the privacy of surviving family members if release of the information would cause a "disruption of their peace of minds." (See New York Times Co. v. NASA, 782 F. Supp. 628, 631-32 (D.D.C. 1991) (release of audio tape of Challenger astronauts' voices recorded immediately before their deaths is unwarranted invasion of families' privacy interests).

reason, other than for its use as an accident investigation tool. Twenty of the Task Force members believe that the current system of releasing to the public only a redacted transcript of the recording from the CVR balances the privacy interest of those recorded on the CVR and the rights of the public and the families to learn about the last moments before the disaster. One Task Force member, Judy Lindstrom, favored releasing the full transcript to the public. This release would better inform the public of all that was recorded by the CVR without releasing the sounds of the voices prior to the disaster. One Task Force member, Carl Stern, said CVR recordings and transcripts should be subject to the same access rules as other recordings in the government's possession. He reasoned that the Freedom of Information Act fully protects the privacy interests of air crews and their families, and the creation of a special exception for the CVR recordings and transcripts has unnecessarily generated mistrust and a lack of confidence in the completeness of investigatory findings.

The Task Force discussed whether the families of the flight crew should be permitted to listen to the audio portion of the CVR. Because of the multiple voices recorded on the CVR, 19 members of the Task Force do not believe that the family of one crew member should be permitted to hear the last words of all of the other crew members. Further, the families of all victims should be treated the same. Three members of the Task Force -- Kevin Jones, Judy Lindstrom, and Joe Lychner -- advocate the release of the audio to next of kin of the flight crew if it is determined that technology is readily available that can completely segregate the voices of crew members.

9.2 The NTSB should review its administrative policy of returning the CVR to airlines at the conclusion of the investigation.

The CVR is returned to an airline after the NTSB completes its investigation. The NTSB should review whether there is a basis for this policy. (ATA regards the tape as the property of the airline.) Regardless of who possesses the CVR, it should be carefully safeguarded to avoid unauthorized access to the recording. Access to the tape should be carefully limited. The audio should not be used by anyone for training purposes. In all respects, the tape should be treated with dignity.

10. Recommendations concerning the NTSB "party system" used during the accident investigation process

The White House Commission on Aviation Safety and Security requested that the Task Force review the accident investigation process utilized by the NTSB, and its potential impacts on families.

The NTSB conducts its accident investigations using the "party system." In this process, all relevant parties to the accident who have a necessary

technical expertise are included in the fact-gathering stage of the investigation. The NTSB limits its contact to those who can offer purely technical information. For example, neither the management nor the counsel for a party is permitted to participate in the investigation. The development of all facts is conducted under NTSB supervision and under no circumstances is any party involved in the analysis of data gathered.

Parties to an aircraft accident investigation will typically include the airplane and engine manufacturers, the airline, representatives of the pilots', mechanics' and flight attendants' unions, and, by law, the Federal Aviation Administration. Also often included are representatives of the airport if the accident occurred there, air traffic controllers, emergency rescue personnel involved in the accident response, local law enforcement, and weather specialists. Parties are permitted to offer submissions to the investigation that will be considered by NTSB investigators.

These groups are divided into areas of expertise and, in all cases, supervised by an NTSB investigator. The public interest is represented by the NTSB, as the NTSB serves as the "public's safety advocate." Family members, by NTSB practice and federal law, are kept fully informed of the progress of the investigation and are briefed either prior to or simultaneously with the press corps.

The representation of victims' families on the investigative team raises the concern of the relative level of expertise any family member. Further, the question would be raised as to who would select the family members to join the investigation and whether they would be representative of all the families. The NTSB has conscientiously served as the public's safety advocate, but will take into consideration the families' concerns about the "party system" and a role for the families in the process.

As for the concern that parties to the investigation are often potential litigants, the NTSB is aware of the possible problems and works to ensure no undue benefit is given to them. The security of the accident site and wreckage is monitored and no party member is left unattended. The issue that is often confused is the difference between probable cause as determined by the NTSB and the possible legal liabilities determined by a court. The NTSB's report is usually not admissible during trial under the rules of evidence and, therefore, the conclusion as to the probable cause of the accident is distinguishable from the determination of the legally responsible party or parties. For this reason, undue influence on the accident investigation, even if it occurred, would not likely have a direct effect on litigation. Still, many members of the Task Force are concerned that allowing parties to participate in the investigation leads to, at least, the appearance that "the fox is guarding the hen house," and therefore agreed that it is time for a review of the party system.

RECOMMENDATIONS:

10.1 The NTSB should continue to inform family members soon after the disaster that one of its primary tasks is to be their representative.

10.2 The NTSB should formally review the party system to make certain that potential litigants are not given an unfair advantage by their participation in the accident investigation and to ensure that the original intent of the party system has not been undermined. This review should include input from members of the aviation community as well as families of the victims of aviation disasters. The review should consider a formal role for the families in the process. The review should ensure that participation in the investigation is limited to parties who can provide technical expertise in an area relevant to the investigation.

APPENDIX A

RECOMMENDATIONS OF THE TASK FORCE

1. Guidelines to assist air carriers in responding to aviation disasters

1.1 Definition of "family member" for purposes of notification and provision of airline services.

1.1.1 The airlines, in choosing its definition of "family member" for the purposes of notification and assistance for travel to and accommodations at the site of crash or memorial services, should recognize that today's families may not have traditional boundaries.

1.1.2 When airlines make initial notification to a family that a loved one was a passenger on an aircraft involved in an aviation disaster, the airline should inquire if there is another family member who should also receive formal airline notification. These secondary contacts would be notified after initial notification to families of all passengers.

1.1.3 Families should designate a contact point for purposes of information sharing in the aftermath of the disaster.

1.2 Guidelines for the initial notification of family members by the air carrier in the immediate aftermath of an aviation disaster, including the use of third parties to assist in the notification process.

1.2.1 Airlines should establish systems and procedures to establish communication with family members as soon as possible.

1.2.1.1 Airlines, through changes to their procedures, as well as with the assistance of the media, should take measures to limit phone inquiries to the airline following an aviation disaster as much as possible through the use of public service announcements, media broadcasts, and Internet sites.

1.2.2 Once an airline determines a point of contact for a passenger, the airline should establish and continue contact periodically with that family, even if it is just to inform the family that the airline has no new information to provide.

1.2.3 Air carriers should consider contracting the notification process to a third-party if the air carrier cannot meet those needs on its own.

1.2.4 Air carriers should provide family members with all passenger information that they have as quickly as possible. Congress should consider amending the ADFAA, if necessary, to carry out this goal.

1.2.5 Airlines should strongly consider adopting policies to ascertain the financial needs of families in the immediate aftermath of aviation disasters, and provide assistance as appropriate.

1.2.6 Notification by the airline to family members of their loved one's death or injury should be followed promptly by a person-to-person contact from either the airline, the American Red Cross, or an official entity, if requested by family members.

1.2.7 Upon notification, the airline should advise family members that the name of their loved one will not be publicly released by the airline until the family has personally notified other family members.

1.3 Airline assistance to family members with travel to and accommodations at accident sites and memorial services.

1.3.1 If an airline chooses to provide transportation and accommodations to the family assistance center or any memorial service, the airline should endeavor to provide transportation and accommodation in the most timely manner possible, even if another airline must provide the transportation.

1.3.2 If an airline chooses to provide transportation and accommodations to the family assistance center or to any memorial service, the airline should offer such assistance to more than one person per family.

1.4 Guidelines for training of air carrier personnel who interact with family members.

1.4.1 Congress should amend the Aviation Disaster Family Assistance Act to require airlines to submit to the Department of Transportation and the National Transportation Safety Board an assurance that appropriate airline employees, or third-party contractors, will be adequately trained to meet the needs of survivors and family members in the event of an aviation disaster.

1.4.1.1 There should be an emotional awareness component to the training curriculum.

1.4.1.2 Airlines should consider utilizing various methods of instruction during the training process.

1.4.2 Airline training plans should include an assurance that the airline and the American Red Cross will coordinate on all training issues.

1.4.3 Airlines should continually work to improve overall training standards. Although airlines are free to develop their own individual training curricula, the Task Force recommends that all such training include, at a minimum, communication skills, logistical support, emotional support, stress response, and the roles of the parties at the accident site.

1.4.4 A team comprised of airline employees, family members and survivors, the federal government, the American Red Cross, and mental health professionals should be created to develop protocols standardizing training content for airline employees.

1.4.5 All airline training programs should include information for managers about employee stress and the need for critical incident debriefing for family assistance personnel.

1.5 Return of personal effects (property) to the family members by the airline.

1.5.1 The airlines should make available to all families in a readily accessible manner the unassociated personal effects from an aviation disaster, as quickly as possible.

1.5.2 The airlines should strongly consider utilization of a third party with experience in return of personal effects associated with aviation disasters.

1.6 Guidelines for airline and American Red Cross interaction in assisting the victims of aviation disasters.

1.6.1 The airlines and the ARC, at both the national and local levels, should meet to understand their respective roles and interactions in the aftermath of aviation disasters.

1.6.2 The NTSB should sponsor a working group to meet at least semi-annually, comprised of airlines, families, ARC, Department of State, and Department of Health and Human Services, to develop and update the operational plans describing the responsibilities of each party at the accident site.

1.6.3. All mental health personnel utilized by ARC in the aftermath of an aviation disaster should be trained following the same principles as outlined in Task Force Recommendation 1.4.1.1.

2. Recommendations to ensure that families of non-U.S. citizens involved in an aviation disaster receive appropriate assistance from both the airline and the U.S. government

2.1 Upon receipt of notification that a foreign-citizen victim was involved in an aviation disaster occurring within the U.S. or its territories, the State Department should assist in establishing an appropriate liaison between the airline and the foreign government of the victim.

2.2 Initial notification of any of the families of foreign-citizen victims who reside in the U.S. should be carried out by the airline.

2.3 The Department of State should assist directly when an airline advises that it is having difficulty notifying the family of a U.S.-citizen victim because that family resides, or is currently located, outside the United States.

2.4 When the airline publicizes a toll-free number for contacting the airline following an aviation disaster, it should also publicize a non-toll-free number for use by persons calling from outside the United States.

3. Recommendations to improve the passenger manifests (or other systems) used by the airlines to establish points of contact with families of passengers

3.1 The Task Force recommends that airlines should have readily available for every flight, either in a passenger manifest or through the use of "contact cards," the following data: the full name for each passenger, a contact phone number for each passenger, and a contact name for each passenger. Implementation of these data elements into the passenger manifest, or through some other system, should be required through legislation and/or regulation. This same requirement should extend to a travel agent or tour operator who books the flight.

3.1.1 Airlines should be provided the option of collecting this information either through an automated process or a manual process.

3.2 Each passenger should be encouraged to provide the information that air carriers and travel agents would be required to request under any improved passenger manifest system.

3.3 Information provided to the air carriers, travel agents, and tour operators for passenger manifest reasons must only be used in the case of an emergency.

4. Recommendations on uniform guidelines for medical examiners and coroners on the identification of the remains of victims

4.1 The victims of an aviation disaster should be positively identified.

4.2 DNA testing should be utilized by medical examiners or coroners to identify the victims of an aviation disaster who can not otherwise be identified through conventional means.

4.2.1 All extensive conventional efforts should be employed to identify the victims and associate all separated remains. It should not be required that DNA testing be utilized to identify unassociated remains. Any unassociated remains should be interred in a proper ceremony coordinated in conjunction with the families of the victims and the American Red Cross.

4.2.2 When extensive conventional efforts have failed to identify all victims of an aviation disaster, DNA testing should be utilized in an effort to identify those victims still unidentified. DNA testing should not be mandatory, however, for associating remains to victims previously identified. Any unassociated remains should be interred in a proper ceremony coordinated in conjunction with the families of the victims and the American Red Cross.

4.3 If there is a possibility of additional remains being associated with a victim following identification, the family should be informed of such a possibility at the time the remains are returned. (For example, a victim might be identified during the early stages of the recovery effort. Additional remains of that victim might then be identified by conventional means in the latter phases of the recovery effort.) Families should be given the opportunity to decide whether they want to be informed of additional remains being identified as belonging to their family member. The medical examiner or coroner should honor that decision.

5. Findings on the extent to which military experts and facilities are used to aid in the recovery efforts and subsequent identification efforts following an aviation disaster

5.1 The Task Force fully supports the Memorandum of Understanding (MOU) entered into between the Department of Defense and the National

Transportation Safety Board, and finds that this MOU outlines the extent to which military experts and facilities can be used to aid in the recovery efforts of victims and subsequent identification efforts following an aviation disaster.

6. Recommendations to ensure that state mental health licensing laws do not act to prevent out-of-state mental health workers from working at the site of an aviation disaster or other sites to assist survivors, family members, and those involved in the recovery effort

6.1 Congress should closely examine ways to provide uniform licensing waivers that would allow licensed out-of-state ARC Mental Health workers in a state where an aviation disaster occurs to work on disaster response teams for a period of time. Congress, cognizant of federalism issues, should review whether states have implemented this recommendation.

6.2 Professional associations should ensure that the ADFAA as it pertains to family support services be understood by appropriate state licensing authorities.

6.3 The section of the ADFAA as it relates to prohibiting states from impeding the ability of the NTSB, including the director of family services, should be clarified with appropriate mental health licensing boards and professional associations on the national and state levels.

7. Recommendations on methods to improve the treatment of families by the legal community, including methods to ensure that attorneys do not intrude on the privacy of families of passengers involved in an aviation disaster

7.1 A representative panel of attorneys and families should draft a brochure detailing how to proceed with legal causes of action, the standards of conduct of attorneys, and the laws governing representation of clients in the aftermath of an aviation disaster, to assist families in dealing with attorneys and answer questions regarding their potential legal case. Such a brochure, if approved by the NTSB, should be distributed by the NTSB.

7.2 The solicitation prohibition clause in the ADFAA should be amended to include the solicitation by the attorney's agent, and to extend the solicitation prohibition moratorium to 45 days.

7.2.1 The ADFAA should be amended to include solicitation by an attorney's associate, agent, representative, employee, or "runner."

7.2.2 The ADFAA should be amended to extend the direct solicitation prohibition (including mail and phone solicitation, among others) from 30 to 45 days.

7.2.2.1 Congress should consider enacting legislation ensuring that the representation was not obtained by wrongful solicitation.

7.2.2.2 The Department of Justice should inform all United States Attorneys about the solicitation ban and recommend that they fully prosecute if unlawful solicitation occurs in their district.

7.3 The ADFAA should be amended to allow families a period of time to revoke contractual agreements regarding legal representation or settlement in an effort to protect families from making premature decisions in the weeks following the aviation disaster.

7.4 A neutral panel of attorneys, established by the American Bar Association, should work in conjunction with representatives from state bar associations to disseminate non-biased legal information to families in the aftermath of the aviation disaster.

7.5 Congress should review the admissibility in Federal court of post-disaster statements made by victims or their families in the aftermath of the crash to protect families from inappropriate use of the statements by attorneys against their interests.

7.6 Congress should review whether contingency fees in aviation cases are exorbitant and provide an incentive for attorney misconduct and frivolous suits.

7.7 A study should be considered to review compensation received by the families following an aviation disaster.

8. Recommendations on methods to ensure that representatives of media organizations do not intrude on the privacy of families of passengers involved in an aviation disaster

8.1 The men and women of the media are in the best position to address instances of insensitive treatment that family members have received following an aviation disaster. The Task Force calls upon members of the media to respect the privacy of family members after an air crash. The Task Force also calls upon each media organization, as well as professional trade associations, to establish standards respecting the rights of families.

8.2 The NTSB should serve as a liaison between family members and the press during the initial days following an aviation disaster.

8.3 The NTSB should work with the families and the media to appropriately limit media contact with the families so that families can decide in advance whether they wish to speak with the media. The NTSB should inform families that it is their choice if they want to interact with the media.

8.4 Family members of the victim should have time to cope with the tragedy prior to having the family member's name publicly released, and should be provided an opportunity to personally notify other loved ones of their family member's involvement in an aviation disaster.

9. Findings and recommendations on the availability of information from cockpit voice recorders

9.1 The right to privacy of those recorded on the audio portion of the CVR should not be violated for any reason, other than for its use as an accident investigation tool.

9.2 The NTSB should review its administrative policy of returning the CVR to airlines at the conclusion of the investigation.

10. Recommendations concerning the NTSB "party system" used during the accident investigation process

10.1 The NTSB should continue to inform family members soon after the disaster that one of its primary tasks is to be their representative.

10.2 The NTSB should formally review the party system to make certain that potential litigants are not given an unfair advantage by their participation in the accident investigation and to ensure that the original intent of the party system has not been undermined. This review should include input from members of the aviation community as well as families of the victims of aviation disasters. The review should consider a formal role for the families in the process. The review should ensure that participation in the investigation is limited to parties who can provide technical expertise in an area relevant to the investigation.