

High Crimes and Misdemeanors: Federal Criminal Aviation Cases From 2021

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Join Carlton Fields attorney Ed Page, former federal prosecutor and active pilot and flight instructor, as he discusses federal criminal aviation cases from the past year, including the main tools used by the Department of Justice to prosecute violations and key takeaways and trends in the aviation

industry.

Transcript:

Ted: Hello and thank you for joining us on Carlton Fields Podcast. Today's topic is Federal Criminal Aviation matters and today we are joined by Edward Page an attorney in the White Collar Crime and Criminal Investigation Practice Group at Carlton Fields, and a shareholder in the Tampa office. Ed, why don't you start by introducing yourself and your practice area.

Ed Page: Thank you Ted I appreciate the time. My name is Ed Page and I practice in the White Collar Practice Group in Tampa. I have been a shareholder here for many years at Carlton Fields. In my prior life, I was a state and federal special prosecutor for Ken Starr. I am an active pilot and flight instructor, FAA certificated flight instructor and so I devoted a good amount of my time to practicing aviation law. In my aviation law practice I handled a lot of FAA Enforcement matters including federal criminal aviation matters and so I keep up with what is going on in the federal criminal aviation world. My father was an Airline Captain and mother was a flight attendant and flying is in my family's genes. So, this is one of my favorite areas.

Ted: Great and today's topic we are talking about Federal Criminal aviation matters can you explain a little bit of what these are, where they come from and how they get started?

Ed: Certainly, so a Federal Criminal aviation matter is a serious matter. It is serious because the pilot, the airmen, the mechanic, the defendant in these can go to jail. They are to be distinguished from FAA enforcement actions where the FAA undertakes an enforcement action to impose a civil monetary penalty or to revoke or suspend the pilot or mechanics airmen certificate or medical certificate. No one goes to jail in a FAA enforcement action. It is simply monetary or I am going to take your pilot's license. Much like in a DUI I might take someone's driving license, that's the analogy. In federal criminal matters however, the person who is prosecuted in Federal Court risks going to jail. The imposition of fines and other sanctions and probation or home confinement which is jail at home. It's a much more serious matter and it's good to stay and avoid any federal criminal prosecution because it is not a good thing to get involved in, is the best way I can put it there. What I have done is looked at the repository of federal criminal aviation cases where I go to quite often. It's at the United States Department of Transportation's website and if you look there at the office of Inspector General you will see catalogued under the link titled investigations all the federal criminal prosecutions that have occurred for a long time. What I did was catalogue and go through these cases for calendar year 2021. That is what I wanted to cover during today's podcast.

Ted: So can these cases be categorized or grouped?

Ed: Yes, very easily and they get categorized or grouped by looking at the tool or the statutory violation that the office of Inspector General and the FAA investigated before they handed off the

federal criminal case to the United States Department of Justice for prosecution. So these cases occur across the country. We have 94 U.S. attorneys offices throughout the country and after the FAA or OIG as it is called, Office of Inspector General at the Department of Transportation investigates, gathers records, works these up and hands them off to a U.S. attorney's office where they can get further investigation and prosecuted. The tools that the Department of Justice uses are varied and many. And the tools that they use are found in i.e. Title 18 U.S.C. § 38 which is entitled Fraud Involving Aircraft Parts in Interstate or Foreign Commerce. It is actually much broader than simply focusing on Aircraft Parts. It prohibits falsifying or concealing a material fact concerning aircraft or other kinds of parts makes it a crime to materially make a fraudulent material representation concerning any aircraft and makes it a federal crime to use any materially false writing certification document record or the like concerning any aircraft. So that is one of the big tools and into which some of the cases, federal criminal aviation cases, prosecuted in 2021 fall. Another tool is 18 U.S.C. 1001 which is well known to federal prosecutors as the false statement criminal statute and that makes it a federal crime for someone to make a false statement. The material matter in a matter within the jurisdiction of the United States such as to the FAA or to the Department of Transportation or the like. There are many other tools. Some are found in Title 49 U.S. Code § 46317. These are kind of just different statutes that investigators and prosecutors are aware of that they look to that set obligations for pilots, mechanics and the like in the aviation field so that they can be investigated and prosecuted if warranted.

Ted: What are the key takeaways from all of these cases?

Ed: Well some of the key takeaways are as follows. I wanted to talk about a few of these cases but some of the takeaways are as follows. Pilots and mechanics put their careers in pilot and medical certificates at risks when they make a false statement or engage in fraud. They can go to jail, they can be punished and fined and they also expose themselves to fines and federal prison. The gated community so to speak that we all want to avoid. Really, if you have a problem it is best to consult with an experienced Aviation Lawyer, someone with aviation and federal criminal prosecution experience. But, the timing is critical. It's like using a checklist in flying, you can't use the checklist after the problem has arisen or after the incident. You need to consult with someone before you fill out the form, before you submit to an interview, so that you are prepared and you don't run afoul of federal law. Some of these cases that I can talk about and will in this podcast involved a reverse, the opposite of what I just talked about. For example, one category are what I call operational cases. These involve flying an aircraft and the flying of the aircraft gave rise to the federal criminal violation as follows: This was in *U.S. of America v. Eduardo Aching* who was prosecuted under one of these tools that I mentioned 49 U.S.C. 46317 in the Southern District of Florida down in Miami for operating a commercial airplane with a revoked airman certificate. In other words, at the time Aching served in this capacity as the pilot he had no FAA pilot certificate that was valid. The government learned about this through one of the ways that we talked about before and undertook a federal prosecution of Aching. Another example is the Stewart case. This was in the Northern District of

Ohio and in that case Delbert G. Stewart was prosecuted for flying 3 times without a valid airman or pilot certificate. Finally, we have the Gomez case that is United States of America v. Nelson Gomez. This was a prosecution, a federal criminal prosecution in the Eastern District of New York and Gomez had provided flight instruction without a valid flight instruction certificate and as a result had falsified student log book entries on it was alleged 30 occasions using a false or expired flight instructor certificate and omitting required information. Sometimes people in this area call these paper lies. But this really arose in both was this was why I called it an operation case because it involve flying and providing flight instruction and then not properly documenting it as a certified and valid flight instructor at the time. And the tools there were as I mentioned in the federal code.

The next violations are what I call the false statement or fraud and there are several varieties in here but it is easier to talk about the actual cases than to talk about the federal statutes involved to give a flavor for what is involved here. The first one is United States of America v. Cole Allen Peacock. Another case from the Southern District of Florida it was a prosecution under 18 U.S.C. 1001 which is the false statement to Federal Agency statute and this was Peacock allegedly making false statements to the FAA on an application for an FAA Student Pilot Certificate and the false statements arose allegedly because the application for the student pilots certificate did not disclose previous felony convictions as the form required. Somehow, somehow the government learned about this, investigated and undertook a federal, criminal prosecution of Peacock.

Another one is United States of America v. Christopher Lothal. This was a prosecution in the Eastern District of North Carolina. It was again a prosecution under the false statement statute, 18 U.S.C. 1001. But in addition it also used that other one that I summarized 18 U.S.C. 38 which is fraud involving aircraft parts. In this case the gentlemen Lothal made false statements to the Department of Transportation Office of Inspector General Agents about maintenance to an aircraft, payment for that maintenance and knowing the owner of the aircraft. In addition it was alleged that there were forged signatures of the air frame and power plant mechanic involved regarding an 100 hour airframe inspection.

Finally in this category there is the Hathaway Case. In Hathaway this was another prosecution in the Southern District of Florida and it was alleged in this indictment that Hathaway had made on six different occasions' false statements to the FAA on an application for what is called an Airman medical certificate and a student pilot certificate, and had failed to disclose multiple convictions for felony offenses. There are a couple of other cases there involving, that fit in this category, false statements and fraud. They involved flight instructors using i.e. a flight instructor number to sign off on a student's log book even though that flight instructor number didn't belong to the person doing that sign off on the log book.

Finally, there is the Norwood case which was in the United States District of Utah where false statements were made on a medical application called Med Express indicating that the person had

never been diagnosed with a mental disorder in this case PTSD which was diagnosed by a psychiatrist in violation of again 1001 the false statement statute in federal criminal law.

Finally, the third category that exist out there is the big one from actually January of 2021. This was probably the biggest, federal criminal aviation case to come down in many, many years and it involved two crashes of Boeing aircraft 757's and this was the Boeing Case that involved a crash in Ethiopia and another crash before that. The allegation there was that Boeing had conspired in violation of Title 18 U.S.C. § 371 to defraud the United States by lying about the 737 Maxus maneuvering characteristics augmentation system, MCAST as it was called, to influence the FAA's determination about whether flight simulator training would require of crew members concerning this new 737 equipped with the MCAST system. A great movie to summarize what occurred here is now on Netflix and it is called "Down Fall." Anybody wanting to learn more about the prosecution and what happening to Boeing here and what occurred can watch Down Fall. But to give you an ideal about how serious this federal criminal prosecution was that was resolved through what is called a deferred prosecution agreement in January 2021, you can just look at the end result and the end result is that Boeing was fined 2.5 billion dollars. That is billion with a b, not million with an m. It was a big case and involved 2 crashes as many know now and was a very serious prosecution and it also involved a spin off prosecution of the individual, Boeing employee for his activity involved in dealing with the FAA and the like.

Ted: Ok did you want to provide any other key takeaways for these cases?

Ed: Yes I do, other than the couple of ones I provided before, it is really important that the airmen, the pilot, the individual involved in a potential federal criminal aviation matter spot this. You are going to be able to spot this before you sign the law book, before you submit your medical certification application called MED Express to the FAA. Before you speak with the DOT, OIG people its imperative you will have that airman, that pilot that person, that individual will have a feeling about that interaction. I call them interceptions with the FAA or the government and it is vitally important that the person before they deal with the FAA or the government seek qualified and competent and trained representation from someone who is experienced in this area so that they can prepare them for the interview if an interview is to be granted and to find out what happened and to assess risk for the pilot, the mechanic or the person involved before they squeeze the toothpaste out of the tube and the lawyer has to fight to get it back in. So to speak. So it is important to consult ASAP about these matters and not to go it alone. It is what I call the copilot rule. You need as your copilot in effect an experienced aviation lawyer to help you navigate the risks here because they can be tremendous and it's no fun to participate in one of these. Even when these are just civil enforcement matters there is a huge emotional impact on the pilot or the mechanic and the like and one that you want' to engage in again. I think it is also important to look forward because this area of federal criminal aviation matters is evolving and changing and what we are seeking now is the FAA and the Department of Transportation through the Office of Inspector General focusing on what we all heard

in 2021 its really a pandemic kind of creature and that is the unruly passenger. I am handling an unruly passenger case right now, and the risks here are will it stay a civil enforcement matter or will it turn into a federal criminal aviation matter? And that is the risks in all of these unruly passenger cases that the Department of Justice is now scrutinizing to deter others from engaging in an unruly passenger conduct.

Ted: Well great, thank you that was very informative. Is there anything else you wanted to discuss about these federal criminal aviation cases?

Ed: The only think I would say is that to sum up is that the tools that the FAA and the Office of Inspector General and the Department of Justice have at their discretion are varied from the false statement statute to the fraud involving parts statute or the statutes entitled 49 that make it a crime to fly an aircraft without being properly registered, or to operate an aircraft as a pilot in command without a medical certificate, or a pilot certificate. There is no really void here. They have got all the basis covered with statutes that range from Title 18 to Title 49 and elsewhere to capture potentially criminal conduct. So, it is better to just simply avoid this altogether and to save yourself a lot of heartache.

Ted: Great thank you, what can our audience do to learn more about these cases, or who should they contact if they have something that requires this legal expertise?

Ed: I would ask them to give me a call here at Carlton Fields in the Tampa Office. If I am not the right tool in the box, I am going to send them to the right tool because I am connected with lawyers throughout the country from my 40 years of practice as a white collar lawyer both as a prosecutor and as a defense lawyer. We are going to get them to the right person in their area if need be, if I am unable to work with them and counsel them and help them out through this process.

Presented By



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