

AVIATION MISHAP INVESTIGATIONS

Law Offices Of Chip Biggers PLLC

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AVIATION MISHAP INVESTIGATIONS

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CLASSIFIED INFORMATION LITIGATION

147 COMBAT FLIGHT HOURS

AIRCRAFT CARRIER LANDING QUALIFIED

NIGHT VISION GOGGLE FLIGHT

FLEW IN FIRST WAVE OF DESERT STORM

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AGENCIES REPRESENTED

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TYPE OF INVESTIGATIONS

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JAG Manual Investigation is the investigation which includes legal consequences for guilty parties. The Aircraft Mishap Investigation (AMI) or Safety Investigation is conducted concurrently and completely separately. All information gained from witnesses in the Safety Investigation is privileged, in that the witness cannot be prosecuted on any testimony gained from the interviews conducted by the AMI. The JAG investigation cannot use any evidence from the work product of the Safety Investigation, nor speak with the Safety Investigation about their findings. They are two completely different investigations. The Naval Safety Center from Pensacola will provides personnel to assist.

In addition, each investigation uses completely different procedures to come to findings. More later.

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TYPE OF MILITARY INVESTIGATIONS

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The FAA and NTSB both have their own distinct Investigation styles and schools. The Marine Corps, like the other military services, conducts 2 completely different and distinct Investigations. The JAG which brings legal consequences and the Aircraft Mishap Investigation (AMI), or Safety Investigation. The JAG can be either a Preliminary Inquiry, Command Investigation, or a Litigation Report Investigation.

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TYPE OF JAG INVESTIGATIONS

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PRELIMINARY INQUIRY (PI) is a quick and informal investigative tool that can be used to determine initially whether a particular incident is serious enough to warrant some form of JAGMAN investigation. A PI is not necessarily required, however, it is "advised" for all incidents potentially warranting an investigation.

Command Investigation (CI) is the most common form of informal investigation, It functions to search out, develop, assemble, analyze, and record all available information relevant to the incident under investigation. The findings of fact, opinions and recommendations developed may provide the basis for actions designed to improve command management and administration, publish "lessons learned" to the fleet, and allow for fully informed administrative determinations.

Litigation Report Investigation (LI) is used for "Major" incidents, likely to result in claims or litigation against or for the Navy or the United States. If a "major" incident, the GCMCA will assume cognizance of the case and decide whether to convene a court martial or board of inquiry.

FIRST 48 HOURS ARE CRITICAL

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CIRCUS LIKE YOU HAVE NEVER SEEN BEFORE. CNN, MSNBC, FOX
EVERYONE WHO THINKS HE IS IMPORTANT WILL SHOW UP, BOW THEIR
CHEST OUT AND TRY TO TAKE CHARGE.

"IM THE ASSISTANT WING COMMANDER AND IM IN CHARGE."

Not a lawyer, not an accident investigator, no command authority, even within the
Marine Corps. Yet only cared about being in charge of the crash cite. Fired 48 hours
later. Still hates me to this day because of the success of this investigation.

All of these people's advice was 100% 180 degrees wrong. How do you know? Rule 1,
since someone just died, try to show a little respect. Be humble. Self important people
with low self esteem lack the ability to 'read the room.'

Actual players always speak softly, say 'you will need to speak to me later,' (or words to that
effect) leave a business card, and then leave until you figure it out.

FIRST 48 HOURS ARE CRITICAL

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CIRCUS LIKE YOU HAVE NEVER SEEN BEFORE. CNN, MSNBC, FOX.

READ THE ROOM. We are in the delta of Greenwood, Mississippi in July. 15 US Marines and 1 Sailor just died. Set up command post in the Leflore County Entrepreneurial Start Up facility. Today it's the Yankee 72 memorial, across the street from the MVSU.

As is a southern custom, everyone comes to your house, brings food, and sits down with you to mourn. Several hundred US Marines and first responders running around frantically. Next guy in charge was from Boston. Didn't understand. "Can you all please go home"

Next guy in charge brings all civilians and military together. Asks everyone to 'hold hands, bows heads and says a prayer to the lord. This Marine stayed in charge the rest of the way.

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FIRST 48 HOURS ARE CRITICAL

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First task is to get your authority. Your Convening Order. Piece of paper that says

“you are the Investigating Officer for the Command Investigation with all powers associated with this duty. You are the Officer In Charge of the team which will conduct the JAG Manual Command Investigation.”

Once the Commanding General Signs this document, print off 20 copies, laminate 3 of them. “Great piece of gear, take it to the field.” You will use this early and often. Gets you through bullshit the first few days. Don't be timid when showing it.

FREEZE, GET COPIES OF ALL MAINTENANCE, OPERATIONAL RECORDS, AND AIRCREW TRAINING RECORDS

2 of the most important conversations are with the General you are answering to, and with your administrative lead.

HERE IS WHERE YOU PUSH BACK, THEY GET MAD, BUT THEY EXPECT IT FROM GOOD ONES!

FIRST 48 HOURS ARE CRITICAL

Was going to retire, retire 14 years ago. But got a call. USMC realized that older pilots have skills the younger ones do not. Brought me back after out for 20 years. Most people would balk. 9 flights, not 20 as per the syllabus, then Africa w 2 aircraft, 62 Marines, over 1000 hours that year. My unit never missed a mission. Old planes. Changed 4 props in 7 days. Sleep.

Learned long ago, that leadership, and life, is all about taking care of others. When someone calls you and is desperate, you say 'yes' and see it as a compliment, instead of just another item on you 'to do' list.

Life's is all about taking care of others. Putting others first.

-Chip Biggers

Colonel USMC (ret)

Was 20 pounds overweight coming back in, retired a year ago and ran a perfect 300 pft at 60 years of age.

FIRST 48 HOURS ARE CRITICAL

Was learning to fly another airplane, living in New Orleans. 2d flight in syllabus, had worked out, picked up a dozen of New Orleans roasted oysters and a salad from Salvo's to go home and study for my next flight.

No rental cars, turned off Belle Chasse highway by the big Blue Angel F-18 outside of the gate, my junker died. Since 9/11 everyone watches for this kind of thing. Navy Shore Patrol is now running at me. Phone was on my lap and it starts buzzing showing the name of a 2 Star USMC General who was in Washington DC. Thought, Oh hell, what am I in trouble for now?

Informed me 3 generals were there, and voluntold me that I was the Lead Investigator Officer In charge. Done many investigations, some with global media implications, but nothing this big. He assigned me someone who was supposed to be an Aviation Investigation Expert.

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FIRST 48 HOURS ARE CRITICAL

IMPORTANT SLIDE. Every accident is different. There is no playbook, THIS is the best that you are going to get!

First issue was when to arrive. My expert said there was no rush. Common sense disagreed. Ended up arriving the day after the accident. My expert was a great help. WRT the technical pieces, eg interviews, it was great to have his support in the beginning. But with the large decisions, like when to arrive, we often disagreed. Ended up getting fired for an unrelated issue. But he was an asset in the beginning.

My boss was a JAG with whom constantly at odds. In her defense, I was at odds with the JAG chain of command the entire time. Still am today (still work on this investigation as an Expert Witness).

Luckily Day 1 I pushed back. When told the LOD Determinations had to be done in 24 hours, and the Investigation JAG Manual says 'only after all the evidence was collected.' There was a big issue.

No hard feelings but if that's the kind of investigator your seeking, fire me now. This relationship is not going to work. From that point on, that particular JAG officer became my ally

FIRST 48 HOURS: HOW TO BUILD YOUR DREAM TEAM!

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Very lucky to have a select group of Marines who enjoy my leadership style. These Marines have made it very clear that they will drop everything and follow me into battle. This is obviously the first group of people I call. Even today. Recommend interviewing at least 3 people for each position.

For an aviation accident you need, at a minimum:

Safety Specialist (DOSS, school trained). Prefer Aircraft Commander.

Maintenance Specialist (School trained). Prefer Aircraft Commander.

Legal Specialist, (need this to separate Leader input from legal input on occasion)

Other Aircrew Position specialist.

Scribe and Admin. (Can be the same person. Must be able to write.)

Technology Specialist

Maintenance Records Investigative Team (minimum 5)

FIRST 48 HOURS: ADMINISTRATIVE DUTIES.

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Make sure everyone is getting paid. For Marines this means orders. For other entities, there are emergency funds you need to pursue. This is going to be a long haul.

Need a place to work. Must be able to secure all the evidence. Will need at least one warehouse.

Will need a secure online database, hopefully in the cloud, but secure. Limited access to your team.

Be part of the team. US Marines usually roll up their sleeves to a very keen, sharp look in the Summer. The Marines there are in the 105 degree Mississippi July sun, with their sleeves down to prevent mosquito bites, and other injuries. My team, although indoors, we wore our sleeves down to show solidarity and pay respect.

Need a place to stay, if austere locations, hotels will fill up rapidly. Need food, water and other supplies.

INVESTIGATION BATTLE RHYTHM

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Done many investigations. In the Corps fact is it interrupts your 'real job' the one you will be evaluated on. But it will end in about 2 to 3 months.

On 10 July 2017, felt like I estimated 6 to 9 months. Its now 8 years later and there is no end in sight. Subpoenas keep coming. They like me as an expert witness. This will be with me forever.

After slogging away at this for about a year, not going to lie, it got me down. But life's about putting others first. Remember writing the medals for these Marine working under my command in Africa years earlier. Had flown with most of the aircrew.

JAG officer in charge used undue influence to attempt to restrict what was in my report. Normal schoolgirl bullshit of mocking me publicly etc. Just ignored him. Made him angrier and angrier until one day he said: "If you put that in the report, I'll punch you in the face." Unfortunately I knew he didn't have the energy to do it, but didn't stop me from praying every day that he would grow some and hit me. I couldn't wait for that day. But he was a coward and could only run his mouth.

During this time I decided to embrace it and go to the mat. I was going to "Chip Biggers" this thing for my Marine. Making my life into a mission. I was going to get the truth out for the families of Marine.

INVESTIGATION BATTLE RHYTHM

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For an investigation of this nature, wanted a hard copy of Chapter 2 of the JAG Manual.. Sure its because I'm a boomer, but really fell like I absorb more from reading a document in print, vice off the internet. In the beginning requested repeatedly for the JAG office to provide me with a hard copy of Chapter 2 of the JAG Manual. The chapter that covers investigations.

The lawyers there kept sending me the page from the JAG Manual which was the DUI checklist. Cant make this up.

GET A HARD COPY OF CHAPTER 2 AND MEMORIZE IT.

GATHER EVIDENCE

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Absolutely critical to have all evidence categorized so that it is easily retrievable, and saved on a secure cloud site where only your investigation team has access to it.

First duty is to classify all items on the plane to determine which need to be found first. Testing expeditionary fields in Republic of Korea in 1992 with one of Lockheed Martin's top engineers.

Nick DeCandia, Korean fields, Ie Shima landings, my return to the USMC.

Back to the issue. Especially in a little town like Itta Bena, Mississippi, this is the biggest event to ever this any of these peoples lives. Today they have a huge monument with 3 flags, all 16 names on plaques on the ground in a circle and a large metal monument marker describing the event. Just down the road is a museum dedicated to the event. Use all documentation from the flight to determine what was on board, and prioritize what you are searching for.

THE MOMENT THIS CRASH HAPPENS EVERY LOCAL IS GOING TO RUSH TO IT AND SEE WHAT THEY CAN COLLECT. YOU HAVE TO BEAT THEM TO IT.

GATHER EVIDENCE

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Classify by categories to prioritize the search.

- A. What can be used to kill someone else. Find out how many weapons, with serial numbers, and find those first. If believe to be stolen, threaten criminal actions until returned by locals. Confirm serial numbers.
- B. What can kill or is toxic if mishandled. What types of hazardous material is on the plane. Any toxic substances must be returned, confirmed as destroyed, or decontaminated from the earth, or a mixture of one or more of these strategies to reduce any possibility of harmful exposure to civilians, or toxic absorption.
- C. Bodies of crew and passengers.

A. ONCE ALL OF THE PRIORITIES ARE FOUND, THEN GET ALL VOLUNTEERS ON LINE TO BEGIN EXHAUSTIVE SWEEP OF ENTIRE CRASH CITE. CAN TAKE WEEKS.

SAFETY ABOVE ALL ELSE. Do not risk any more lives. Yankee 72 was not halfway across the country. Still had 70% of their fuel left. The fuselage burned so hot that the fire department trucks had to spray down the fields AROUND the plane to get them cool enough to stand on, so that they could eventually put the fire suppressant on the fire itself. Plane burned for 3 days.

ORGANIZE EVIDENCE

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FOR EACH PIECE OF EVIDENCE FOUND:

- A. BEFORE YOU TOUCH IT, take a photo of it. Ensure image also captures time, date and geographic location in the metadata for that image. Suggest taking 2 just in case one is blurry, thumb block etc.
- B. Depending on the size, spread, but in a bag and label.
- C. Weapons and ammunition should be immediately secured in an armory or temporary armory and placed under guard.
- D. Hazardous material must be secured to ensure others are not exposed to harmful chemicals.
- E. Must have a warehouse to rebuild critical parts of the airframe.

CONDUCTING INTERVIEWS

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Military JAG Interviews are an art, not a science. As attorneys, you are all familiar with interrogating or deposing a witness and that witness' rights as a citizen and a civilian.

HOMEWORK QUESTION:

IF THE WITNESS IS ACTIVE DUTY MILITARY, HOW DOES IT AFFECT THEIR DUTY TO PROVIDE INFORMATION DURING AN INTERVIEW?

HOW DOES THE WITNESS' RIGHT TO AN ATTORNEY AFFECTED BECAUSE THEY ARE ACTIVE DUTY MILITARY?

CONDUCTING INTERVIEWS

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According to the JAG Manual, Military JAG Interviewers are required to discuss with every witness:

- A. The different objectives of each of investigations;
- B. The reasons why procedures vary;
- C. The need to preserve the privileged nature of the aircraft mishap investigation; and
- D. The privileged aircraft accident safety investigation statements are not be available to the JAGMAN investigation.

Given the duty of a military witness to provide the statement, the Investigator must be very careful. The Investigator must brief the discussed with each witness, but OVEREMPHASIZING these issues can easily shut down the investigation and make the investigators job unnecessarily more difficult.

Every witness statement should be recorded and include the above brief. The intro should include the Investigation Name, time, date, and identify all persons in the room. These should be organized in the database by group being interviewed, and issues being discussed, and dates.

CONDUCTING INTERVIEWS

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HERE IS THE DILEMMA. LETS DO AN EXERCISE:

According to the JAG Manual, Military JAG Interviewers are required to discuss with every witness:

- A. The different objectives of each of investigations;
- B. The reasons why procedures vary;
- C. The need to preserve the privileged nature of the aircraft mishap investigation; and
- D. The privileged aircraft accident safety investigation statements are not be available to the JAGMAN investigation.

IF YOU GO INTO A LOT OF DETAIL ADDRESSING 'THE DIFFERENCE' NO ONE WILL PROVIDE ANY INFORMATION. IF SOMEONE IS RISKING LIVES UNNECESSARILY, HOW FAR DO YOU GO TO GET INFORMATION. IT'S A DELICATE BALANCE.

RECOMMENDATION IS HITTING ALL 4 POINTS WITHOUT SCARING ANYONE. ANOTHER TACTIC THAT WORKS IS LETTING THEM RECORD THE INTERVIEW AS WELL. IT MAKES THEM FEEL COMFORTABLE.

CONDUCTING INTERVIEWS

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Some more suggestions for interviews.

Speak slowly, don't get emotional. Be persistent. Don't be cute or funny. People are going to listen to these over and over. Including people that work for you. They can also come out later in court.

War story: Yankee 72 there were two planes taking off together and they briefed as a flight. Aircraft commanders switched planes last second. Always felt sorry for the Aircraft Commander who lived. He had to feel bad.

During the interviews, he continue to avoid us. But his entire crew was spectacular. They really stepped up and answered the bell. He ignored our order to appear for an interview on a Saturday, but the entire rest of the crew testified incredibly well. Had to be tough on them. But He was not much of a leader blew off the order, then Saturday evening when we called him he said he was busy all day. Then he said he could not come in Sunday because his son had a T-Ball game Sunday morning. When we told him we would wait until Monday, he changed his mind and came in Sunday. When he walked in he made a big demonstration in front of the entire investigation crew. I didn't react again when he did this because I felt sorry for him. 2 years later it got back to me that he was bragging about how he told me and the entire investigation team off in the interview. Didn't remember it that way. Went back and listened to the tape again. He was afraid to interview and whined like a little girl the entire time.

Point, remember this tape can always be played back. Be professional, let them make an ass out of themselves.

CONDUCTING INTERVIEWS

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Some more suggestions for interviews.

Interviewing is a skill like anything else. Do it as a team. Try to get better each interview.

Winston Churchill was famous for the intensity, not of his negotiations, but in the preparation of his teams before going to the negotiation. Approach interviews the same way. Make a list of who you want to interview and, because the information will be dependent, structure the order to help you. EG, if you need info from one person, to then interview another, schedule it as such.

You should spend at least 2 to 3 hours prepping all the information you need from a day of interviews.

TRUST ME, NOTHING BUILDS YOUR CONFIDENCE LIKE CONDUCTING 537 INTERVIEWS FOR THE SAME AIRCRAFT MISHAP. *-COLONEL CHIP BIGGERS*

Take a break between each interview. 1. Debrief good points and points to improve. 2. Brief the next person and what specifically you want to learn from them and how that affects the investigation as a whole.

Then you should debrief the entire day, the following day when you are fresh again. Work as a team. Be open to constructive criticism. Use it as a team building exercise.

WRITING THE INVESTIGATION REPORT

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This final report has to be signed by myself. All responsibility falls on the shoulders of the Investigating Officer. Large flaw in Naval Investigations is that:

JAG officer in the Chain of Command acts as an advisor.

JAG officer in the Chain of Command is one of the two necessary reviews required to publish.

JAG officer does not have to sign the report. So:

This officer gets to take information out, or put into it, but bears no responsibility for any errors he causes.\

THIS IS WHY ALMOST ALL MAJOR USMC INVESTIGATIONS HAVE TO BE REINVESTIGATED. THE INVESTIGATING OFFICER USUALLY HAS NO LEGAL EDUCATION AND RELIES 100% ON THE OPINION OF THE JAG OFFICER.

I like JAGs, They are great in the courtroom. But the fact that they are good trial attorneys, and that they have no training or experience mitigating the reputational risk of an institution like the Marine Corps, puts them in the perfect position to devastate the Marine Corps. This is why a vast majority of our investigations on issues which have the public eye, are usually kicked back. Have to be redone, and crush the original investigating officer because it appears he was favoring the USMC, when in actuality he was just following JAGs orders.

WRITING THE INVESTIGATION REPORT

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Your investigation is going to come under fire from the media. To this day it shocks me how quickly the media attacked my report the day it was published. Within minutes they cut right into the weakest part of the report wrt the Marine Corps reputation. But because my team did a great job of flushing this out, the report held its ground and has won accolades. Had we followed JAGs instructions, it would have had to be redone, and the families of my Marines would not have received the closure they deserved for their our young heros.

Some rules for writing:

Write every day, set up a secure sharepoint site so that your investigation team can dial in everyday, trying to keep it as the same time, and write and rewrite the report. I love to write. We rewrote our report 176 times.

That's not a typo here or there, those are complete rewrites and here is why.

The report is going to come under fire. People are going to attack it. The investigation team is not always going to agree on every point. But as a leader if you really listen to your team, you can reword the parts they disagree with until we are all in agreement. This way you can state that the entire investigation team was in unanimous agreement on the entire report. That's stronger than battery acid.

Always have at least 4 people working on the writing together. Your team should be at least 6 so this is not a problem.

WRITING THE INVESTIGATION REPORT

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Writing is my passion. But every writing assignment is different. Hardest part of this project was 'fixing' the writing of my team mates without dampening their enthusiasm. One had a unique expertise for our group, but insisted on writing every sentence in the passive tense. He is a great Marine, but had I attacked this with a red pen, like some of my enlisted Marines' college applications, then I could have shut him down.

Also feel like the team bonded during this writing process.

LIGHT IS A DISINFECTANT. For all the problems in the next slide, our investigation ran every one of them to ground. As an investigating officer, one lesson I've learned is that Marines are great people. 99% of the time they are doing the right thing.

None of the mistakes the Marine Corps made caused the accident. But if it had, its always better to face it head on. Lucky for me that, by the time the report was to be published, the JAG 'advising' me had made so many mistakes that the command didn't followed my lead and let me thoroughly flush out every potential issue.

WHEN TO DO THE LINE OF DUTY DETERMINATION

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When Marines die, our community circles around them and their families. We ALL want to take care of them. The fact is, if the Marine died in the Line of Duty, then that affects their families compensation. You want to take care of their families. For this reason many people become emotional about this issue.

The JAG Manual says that “you must have ALL the evidence” before making the LOD determination. This works in 90% of the cases because you have all the evidence within a week.

In an investigation like this, you have 10 to 15 Engineering Investigations which can take up to 9 months. Waiting for these does not help the situation either.

But what you DON'T WANT TO DO, is rush to say it was in the Line of Duty, start paying the widow, and THEN find out it wasn't and have to ask the widow for the money back.

While that may always be a possibility, my recommendation, and what I did with Yankee 72 was wait until the autopsies were published, then went through them thoroughly with the LOD in mind. The get a second opinion from a doctor. This is the most reasonable approach.

WHEN TO DO THE LINE OF DUTY DETERMINATION

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During Yankee 72, this was a big issue and one of my harshest criticisms. Even though it had been explained many times, still had a mentally challenged opso from their squadron call me late nights screaming "they could be drunk and be in the line of duty." Cant make this up.

So lets go through the numbers. In all there are 7 potential funds the Marines' family receives funds.

Three pay one time within 28 days: SGLI \$400,000, Death Gratuity \$100,000 and Burial Fees \$2,000 = \$502,000.

But another fund depends on rank, years of service, and other factors if it was in LOD. This pays a monthly stipend going forward.

Follow the money, when a Financial Advisor hears about this, he speaks with someone close to the family to try to get these funds to invest for the family. If the straw man is successful, the FA usually sends a 'gift' (eg a cruise) to the straw man for adding half a million dollars to his Assets Under Management. Usually the LOD is quick so this is not an issue, the family can live off the stipend. But in some cases this is not the case. Now if the family needs that money, they have to pull out of the invested moneys a a penalty. Not saying the OPSO got a kickback, but when I threatened an investigation into this matter, no one complained abou the LOD determination any more. The family should be able to live off the half a million dollars for a few months. One would think.

INVESTIGATIONS WITHIN THE INVESTIGATION

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Once you find the proximate cause of the accident, what do you do with the other errors you find? How far do you dig into something that is not a causal factor?

Going to detail Yankee 72 only for learning purposes.

1. P2B4 flew off the propeller and hit the airplane.
2. Number 3 propeller came off entirely and FLEW IN FRONT OF THE PROP ARC to hit the plane.
3. No less than 11 errors in the load of the aircraft.
4. Squadron level maintenance procedures were not completed.
5. This was not flagged, so the remedial intermediate level maintenance was not completed.