

United States v. Mark Forkner

Inside the Boeing 737MAX Criminal Trial



Presented By



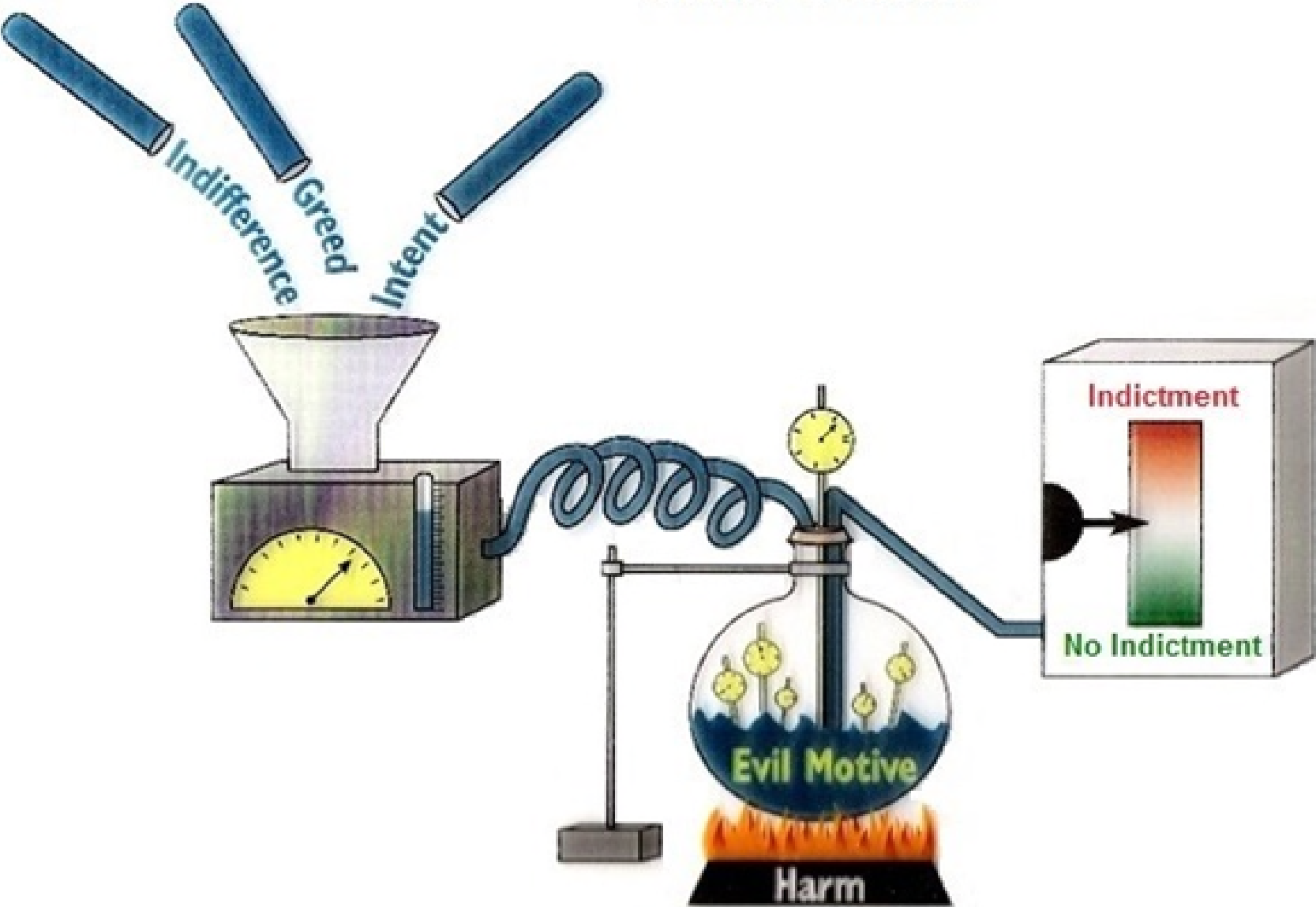
GERGER
HENNESSY
MARTIN

IS IT CIVIL OR IS IT CRIMINAL?

What is:

CIVIL	CRIMINAL
Fraud	Fraud
Price Fixing	Price Fixing
Water Pollution	Water Pollution
Securities Fraud	Securities Fraud
Theft of Trade Secrets	Theft of Trade Secrets
Assault	Assault
“Aiding” Abortion	“Aiding” Abortion

Crime-O-Meter



ISSUES COMMON TO CRIMINAL CASES:

Fifth Amendment

Individuals vs. Entities

“Act of Production”

Stays of Civil Proceedings

Obstruction of Justice

Preservation of Documents

Responding to Questions

Counsel for Individuals

Search Warrants

Directed at Google, ATT, etc.

Directed at Target

“General” vs. Particular

Preservation of Privilege/ “Taint” Teams

Cell Phones

**CRIMINAL CASES ARE MORE “CIVIL” THAN CIVIL CASES ...
BUT THE RULES ARE DIFFERENT: I.E.**

1. Shorter time to trial.
2. *No depositions, interrogatories, requests for admissions.*
3. Often – no right to subpoena documents before trial without court permission.
4. *Gov’t produces what’s “material” & “favorable,” not what is “relevant.”*
5. No right to identity or prior statements of witnesses ... until court.
6. *Only gov’t has right to compel reluctant witness.*
7. No adverse inference for taking the Fifth.
8. *No “summary judgment” procedure.*

United States v. Mark Forkner

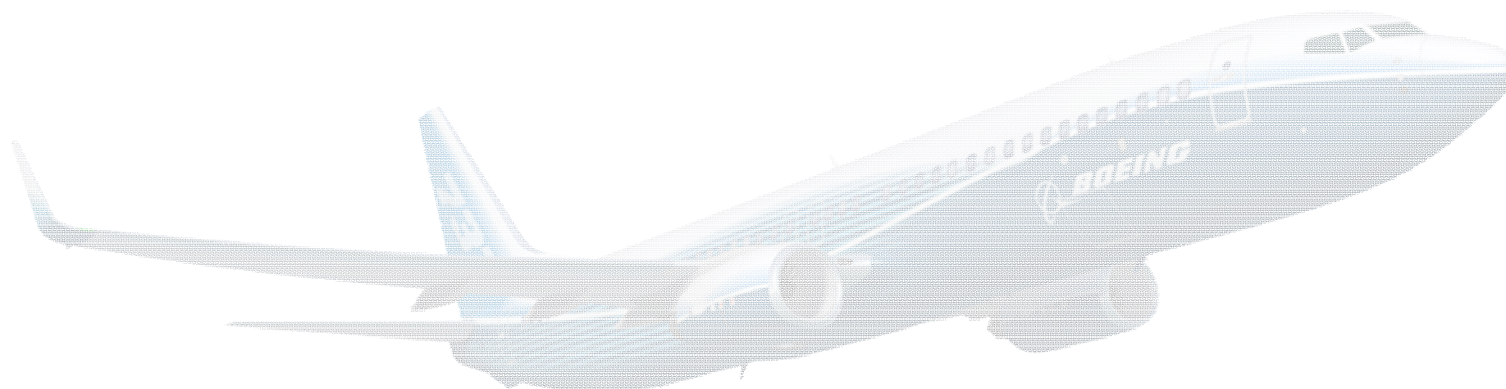
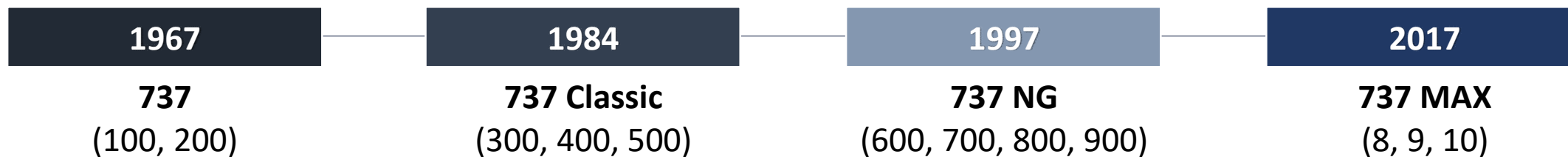
Inside the Boeing 737MAX Criminal Trial



67 million pages



Boeing's 737



Goal of 737MAX: More Fuel Efficient Engine ... but

To feel and fly “the same” as the 737NG,
so a qualified NG pilot needs very little additional training
(called “Level B Differences Training”)
to fly the MAX

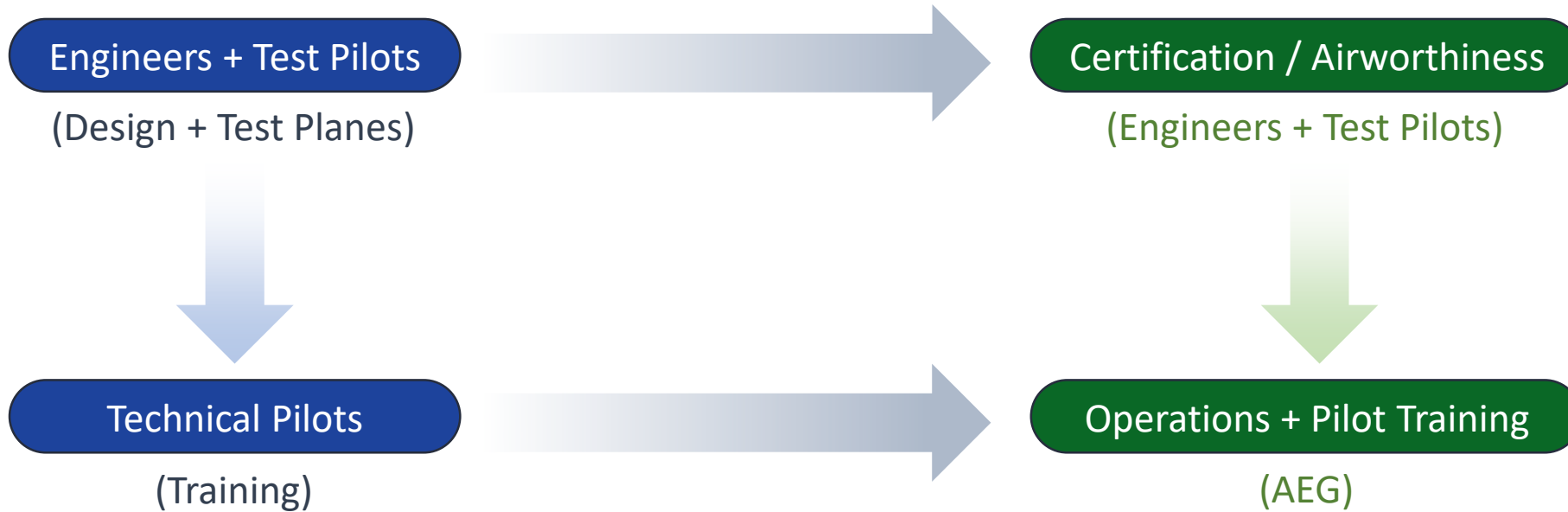
Why Add “MCAS”

To make the MAX react the same as NG
in a particular “outside the envelope” maneuver
(for “certification”).

What Happened?



Players



“MCAS” Wire Fraud Theory

- March 2016: Mark told his FAA counterpart that MCAS did not require training – it was “outside” normal flight envelope & had no impact on pilot – and FAA agreed. FAA believed activated at *hi* speeds.
- March 2016: “MCAS” expanded to *lower* speeds - still “outside” normal flight. Mark was not told about expansion.
- November 2016: Forkner “learns” of lower speed MCAS and does not tell FAA it changed. (We say he did not “learn” of lower speed.)
- *Mark withheld lower speed from FAA to get “no training” approval. This defrauded customers - did not tell them he tricked FAA into Level B*

Trial Issues

23. On or about November 15, 2016, during a simulated test flight of the 737 MAX, FORKNER experienced MCAS operating at a significantly lower speed (Mach 0.2) than what FORKNER and Boeing had previously told the FAA AEG (Mach 0.7-0.8) in and around June 2015. As FORKNER knew, low speeds around Mach 0.2 in a typical 737 MAX commercial flight were common at lower altitudes in and around takeoff and landing.

Trial Issues

23. On or about November 15, 2016, during a simulated test flight of the 737 MAX, FORKNER experienced MCAS activation at a significantly lower speed (Mach 0.2) than what FORKNER and Boeing had previously told the FAA AEG (Mach 0.7-0.8) in and around June 2015. As FORKNER knew, low speeds around Mach 0.2 in a typical 737 MAX commercial flight were common at lower altitudes in and around takeoff and landing.

WHAT IS WIRE FRAUD?

A “scheme to defraud” means any plan, pattern, or course of action intended **to deprive another of money or property**

A “specific intent to defraud” means a **conscious, knowing intent to deceive or cheat someone.**

For 30 years, govt has tried to expand to “intangible assets:” *McNally, Cleveland, Kelly, ...* and now *Ciminelli*.

Instruction Requested in Boeing; Approved in 2nd Cir:

Property includes the right to control the use of one's assets. [It is fraud to deprive victim] of potentially valuable economic information that it would consider valuable in deciding how to use its assets, in other words, when it is deprived of information that affects the victim's assessment of the benefits or burdens of a transaction or relates to the quality of goods received or the economic risks of a transaction

***Cert Granted* in *Ciminelli v. United States*
(Ciminelli drafted specs in RFP awarded to Ciminelli)**

Pretrial Issues: Access to FAA & *Touhey Regs*

Summary

- Scape Goat
- The 737 max accidents were caused by a failure of the Engineering processes, but the public/media focus on “training and publications” aspects (including the Forkner indictment) is not only incorrect and misguided, it is detracting from the real lessons that **SHOULD** be learned.



Federal Aviation
Administration

46

Trial Issues: FAA Knew

July 2016

737MAX TCCA Tech Fam. Meeting Place Holder

Where: Boeing Rooms 4-21 Building
 What: Tue Jul 05 18:00:00 2016 (UTC)
 Until: Sat Jul 16 00:00:00 2016 (UTC)
 Organizers: *Adjibly, Patrice (FAA) <pradjibly@faa.gov>
 Required Attendees: *Adjibly, Patrice (FAA) <pradjibly@faa.gov>
 *Stacey, Stacey (FAA) <sstacey@faa.gov>
 *Tobin, Robert (FAA) <rtobin@faa.gov>
 *Tucker, Sherry (FAA) <stucker@faa.gov>

Required Attendees:

"Klein, Stacey (FAA)"

Optional Attendees:
 *Klein, Stacey (FAA) <sstacey@faa.gov>
 *Tucker, Sherry (FAA) <stucker@faa.gov>
 *Tobin, Robert (FAA) <rtobin@faa.gov>

12A

DX12A

MCAS Overview

Maneuver Characteristics Augmentation System

- New system on the MAX
- Drives stabilizer input in the Airplane Nose Down direction to enhance stability at high angles-of-attack.
- Two functions: improves high-Mach stick force gradient and improves low-speed stall characteristics.
- Based on angle of attack as a function of Mach number.
- Maximum authority at high speed is 0.65 degrees stabilizer; maximum authority at low speed is 2.5 degrees stabilizer.

737-8 Validation - Technical Familiarization

Briefing on New and Changed Control Systems
 (elements of agenda items FT-8 and FT-9)
 Ashley Evans
 Aerodynamics - Stability and Control
 July 2016

DX12C

October 2016

FW: IAC AR Agenda - as of 10/5/2016

From: *Adjibly, Patrice (FAA) <pradjibly@faa.gov>
 To: *Adjibly, Patrice (FAA) <pradjibly@faa.gov>, *Helgeson, Christy (FAA) <christy.helgeson@faa.gov>, *Hickel, Robert (FAA) <rhickel@faa.gov>, *Ripple, Brian (FAA) <bripple@faa.gov>, *Stacey, Stacey (FAA) <sstacey@faa.gov>, *Tobin, Robert (FAA) <rtobin@faa.gov>, *Tucker, Sherry (FAA) <stucker@faa.gov>, *Klein, Stacey (FAA) <sstacey@faa.gov>, *Tucker, Sherry (FAA) <stucker@faa.gov>, *Tobin, Robert (FAA) <rtobin@faa.gov>, *Hickel, Robert (FAA) <rhickel@faa.gov>, *Helgeson, Christy (FAA) <christy.helgeson@faa.gov>, *Klein, Stacey (FAA) <sstacey@faa.gov>

From: "Adjibly, Patrice (FAA)"

"Klein, Stacey (FAA)"

From: *Adjibly, Patrice (FAA) <pradjibly@faa.gov>
 To: *Adjibly, Patrice (FAA) <pradjibly@faa.gov>, *Helgeson, Christy (FAA) <christy.helgeson@faa.gov>, *Hickel, Robert (FAA) <rhickel@faa.gov>, *Ripple, Brian (FAA) <bripple@faa.gov>, *Stacey, Stacey (FAA) <sstacey@faa.gov>, *Tobin, Robert (FAA) <rtobin@faa.gov>, *Tucker, Sherry (FAA) <stucker@faa.gov>, *Klein, Stacey (FAA) <sstacey@faa.gov>, *Tucker, Sherry (FAA) <stucker@faa.gov>, *Tobin, Robert (FAA) <rtobin@faa.gov>, *Hickel, Robert (FAA) <rhickel@faa.gov>, *Helgeson, Christy (FAA) <christy.helgeson@faa.gov>, *Klein, Stacey (FAA) <sstacey@faa.gov>

14A

DX14A

MCAS Overview

Maneuver Characteristics Augmentation System

- New system on the 737 MAX
- Drives stabilizer input in the Airplane Nose Down direction to enhance stability at high angles-of-attack
- Two functions:
 - Improves high-Mach stick force gradient
 - Improves low-speed stall characteristics
- Based on angle of attack as a function of Mach number
- Maximum authority at high speed is 0.65 degrees stabilizer; maximum authority at low speed is 2.5 degrees stabilizer

14C

DX14C

March 2017

RE: Technical Familiarization of 737-8 Agenda and Location

From: *Giberson, Samantha (FAA) <sgiberson@faa.gov>
 To: *Giberson, Samantha (FAA) <sgiberson@faa.gov>, *Adjibly, Patrice (FAA) <pradjibly@faa.gov>, *Casper, Nigamon (FAA) <nigamon.casper@faa.gov>, *Tran, Dung (FAA) <dung.tran@faa.gov>, *White, John (FAA) <jwhite@faa.gov>, *Adjibly, Patrice (FAA) <pradjibly@faa.gov>, *Tucker, Sherry (FAA) <stucker@faa.gov>, *Kobayashi, Takahisa (FAA) <tkobayashi@faa.gov>, *Norma, Annel (FAA) <annorm@faa.gov>, *Morrone, Susan L (FAA) <smorrone@faa.gov>, *Tucker, Sherry (FAA) <stucker@faa.gov>, *Cantin, Meghan (FAA) <mehgan.cantin@faa.gov>, *Tobin, Robert (FAA) <rtobin@faa.gov>, *Helgeson, Christy (FAA) <christy.helgeson@faa.gov>, *Klein, Stacey (FAA) <sstacey@faa.gov>

From: "Giberson, Samantha (FAA)"

"Klein, Stacey (FAA)"

From: *Giberson, Samantha (FAA) <sgiberson@faa.gov>
 To: *Giberson, Samantha (FAA) <sgiberson@faa.gov>, *Adjibly, Patrice (FAA) <pradjibly@faa.gov>, *Casper, Nigamon (FAA) <nigamon.casper@faa.gov>, *Tran, Dung (FAA) <dung.tran@faa.gov>, *White, John (FAA) <jwhite@faa.gov>, *Adjibly, Patrice (FAA) <pradjibly@faa.gov>, *Tucker, Sherry (FAA) <stucker@faa.gov>, *Kobayashi, Takahisa (FAA) <tkobayashi@faa.gov>, *Norma, Annel (FAA) <annorm@faa.gov>, *Morrone, Susan L (FAA) <smorrone@faa.gov>, *Tucker, Sherry (FAA) <stucker@faa.gov>, *Cantin, Meghan (FAA) <mehgan.cantin@faa.gov>, *Tobin, Robert (FAA) <rtobin@faa.gov>, *Helgeson, Christy (FAA) <christy.helgeson@faa.gov>, *Klein, Stacey (FAA) <sstacey@faa.gov>

20A

DX20A

MCAS Overview

Maneuver Characteristics Augmentation System

- New system on the 737 MAX
- Drives stabilizer input in the Airplane Nose Down direction to enhance stability at high angles-of-attack
- Improves stick force gradients for both high speed and low speed conditions
- Based on angle-of-attack as a function of Mach number
- Maximum authority at high speed is 0.65 degrees stabilizer; maximum authority at low speed is 2.5 degrees stabilizer

20C

DX20C

October 2016

FW: 737-8 MAX Technical Familiarization Meeting

Technical Familiarization Meeting

Required Attendees:

"Klein, Stacey (FAA)"

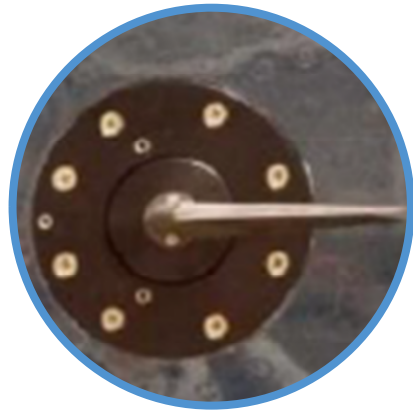
From: *Helgeson, Christy (FAA) <christy.helgeson@faa.gov>
 To: *Helgeson, Christy (FAA) <christy.helgeson@faa.gov>, *Giberson, Samantha (FAA) <sgiberson@faa.gov>, *Tran, Dung (FAA) <dung.tran@faa.gov>, *White, John (FAA) <jwhite@faa.gov>, *Adjibly, Patrice (FAA) <pradjibly@faa.gov>, *Tucker, Sherry (FAA) <stucker@faa.gov>, *Kobayashi, Takahisa (FAA) <tkobayashi@faa.gov>, *Norma, Annel (FAA) <annorm@faa.gov>, *Morrone, Susan L (FAA) <smorrone@faa.gov>, *Tucker, Sherry (FAA) <stucker@faa.gov>, *Cantin, Meghan (FAA) <mehgan.cantin@faa.gov>, *Tobin, Robert (FAA) <rtobin@faa.gov>, *Helgeson, Christy (FAA) <christy.helgeson@faa.gov>, *Klein, Stacey (FAA) <sstacey@faa.gov>

21A

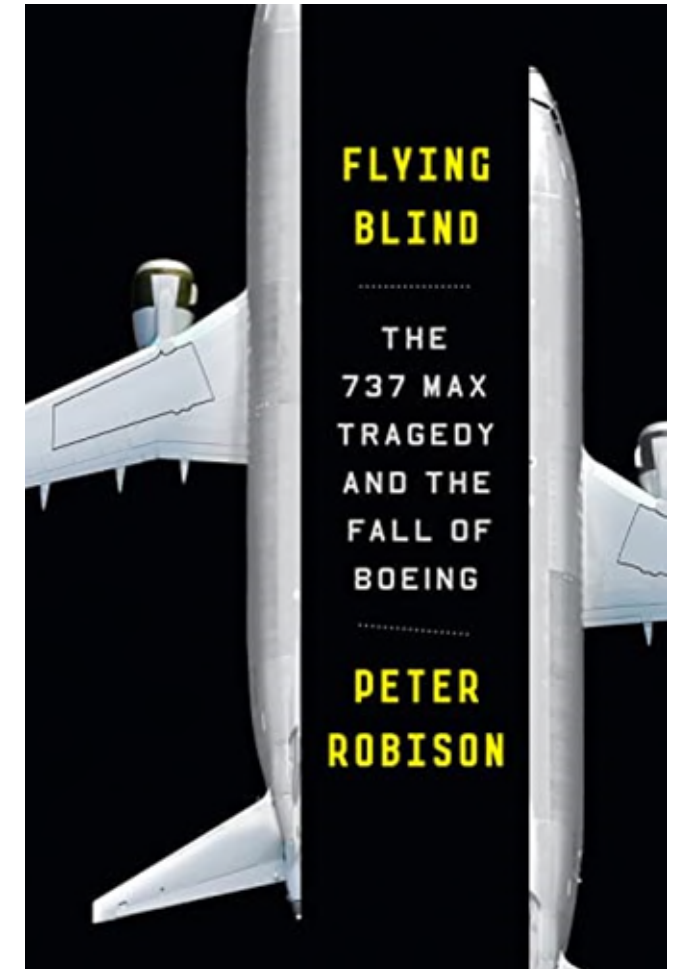
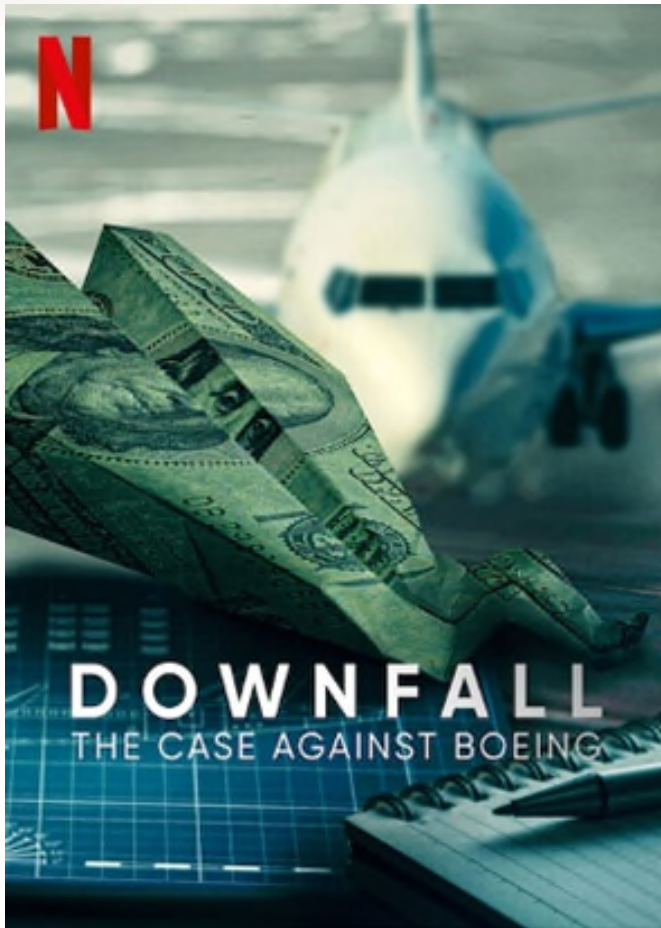
DX21A

Trial Issues

1. Exclude or offer the crashes: Elephant in the Room?



Trial Issues – 2. Media



Trial Issues – 2. Media

Jury questionnaire

Q11: What are your feelings about flying on a 737 MAX?

Q16: What are your usual sources for national news?

Q17: List the 3 people you admire most/least.

Q21: Do you have strong feelings about professional training?

Q22: Have you or anyone you know well worked in a regulated industry?

Trial Issues

3. Whether defendant testifies.





What This Means

VERDICT

Count One: Wire Fraud

As to Count One of the Second Superseding Indictment, we the jury find the defendant,

Mark A. Forkner:

Not Guilty Guilty

Count Two: Wire Fraud

As to Count Two of the Second Superseding Indictment, we the jury find the defendant,

Mark A. Forkner:

Not Guilty Guilty

Count Three: Wire Fraud

As to Count Three of the Second Superseding Indictment, we the jury find the defendant,

Mark A. Forkner:

Not Guilty Guilty

Count Four: Wire Fraud

As to Count Four of the Second Superseding Indictment, we the jury find the defendant,

Mark A. Forkner:

Not Guilty Guilty