

# FLIGHT-WATCH

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## **WHY IS REMEDIAL TRAINING A LOW PRIORITY WITH THE FAA?**

### **I. The Genesis of This Article**

The undersigned attended a meeting of the Atlanta Aero Club on May 5, 2011, where there was a presentation made by the FAA Administrator, J. Randolph Babbitt. No doubt, Mr. Babbitt is a popular Administrator who deserves our respect and admiration. He began his working life as a lineman servicing aircraft, then became a flight instructor and found his way flying for Eastern Airlines as a captain. Clearly, Administrator Babbitt's life experiences are an illustration of the American dream. Nothing in this article should detract from his accomplishments.

Steven Champness, the President of the Atlanta Aero Club, in calling the meeting to order, announced that Administrator Babbitt was the man who establishes the current culture at the Federal Aviation Administration. During his speech, the Administrator focused on the technical advances being made in aviation. He focused on NexGen, the new technology that is being embraced and developed by the FAA to plot the positions of aircraft without using radar. The Administrator is very optimistic about the capability of this technology to improve flight safety, something we all desire.

At the conclusion of his remarks, Mr. Babbitt was kind enough to afford me a question. I asked him if that as the man who sets the culture at the FAA, would he publically embrace the policy whereby if an airman commits an inadvertent violation of the Federal Aviation Regulations, the matter would be resolved by way of remedial training in lieu of certificate action. In response, the Administrator gave a discussion on self-disclosure. This is something that clearly he was acquainted with during his

time as an airline captain. Under any number of self-disclosure programs, if a pilot voluntarily discloses a violation of the Federal Aviation Regulations, he may be entitled to a waiver of sanction. For example, see FAA Circular AC 0046D, the publication of FAA policy affording airmen a waiver of sanction in the event they timely disclose an inadvertent and non-deliberate violation of the FARs by dispatching a report to NASA.

Following the Administrator's exposition on the self-disclosure, he afforded me a second question during which I commented that he was speaking about waiver of sanction, not remedial training. In pressing the point, I made the observation that the FAA is spending inordinant amount of resources on civil hearings to punish pilots, and I asked Mr. Babbitt: "to what end?" The rejoinder of the Mr. Babbitt was to note that my remarks were against my economic interest in having these kinds of trials which serve to provide income to my law practice. While that may be true, we have to look at the bigger picture. If the current culture at the FAA is pursuing certificate actions against airmen, could these matters be better resolved by remedial training of the pilot? This topic is the focus of this issue of Flightwatch.

### **II. Policy Considerations Suggesting Remedial Training Is The Better Approach**

It is no secret that the United States Congress is looking at ways to cut the current federal budget which stands at roughly fourteen trillion dollars. Almost every day, we hear or read accounts in the media about efforts in the United States Congress to cut wasteful federal spending. It would be my suggestion that one of the places to look at cutting federal

spending is the money spent by the FAA on trying cases against airmen for inadvertent and non-deliberate violations of the FARs.

Currently, the FAA looks at enforcement action against pilots in a win/lose paradigm. The FAA must win, and the pilot must lose for aviation safety to be served. However, what if we could engage in a paradigm shift which would become a win/win approach to aviation safety? Remedial training could be the cornerstone of a win/win paradigm that would bring the FAA and airmen into a partnership in pursuing air safety in America.

Under the present win/lose policy, the FAA spends inordinate resources trying cases over alleged violations that are relatively minor. For example, the undersigned is currently representing an airman who scratched the wingtip of his aircraft, and the trial will take place in or near Miami, Florida with the FAA having identified eight witnesses and the airman having identified two expert witnesses. Again, these resources are going to be spent over a case involving a scratched wingtip.

To underscore the point, the aircraft was equipped with Flint tanks. These tip tanks are very sturdy. After the scratch to his wingtip, the airman made an assessment that the aircraft was safe for flight, since there had been no damage to the tip tank. The FAA takes issues with his assessment, and is attempting to suspend his airman's certificate for sixty days on the theory that he flew an aircraft that was in an unairworthy condition in violation Section 91.7 of the FARs. In point of fact, the airman did carefully and competently evaluate the scratch to the wingtip of his aircraft, noted that there was no cracking, no leakage or any indication of a compromise of the integrity of the tip tank, and the airman flew the aircraft home to his base of operations. Upon returning home, the mechanic who maintains the aircraft concurred in the assessment of the airman that that there was no damage to the wing tip tanks. It merely required some touchup paint.

So why does the FAA go to bring to trial a case over a scratched wingtip spending inordinate amounts of money on a case of such minor importance? The answer is because under the current paradigm, the FAA must "win" and the pilot must "lose." Given the economic constraints on our budget, is this a wise and prudent use of government resources?

If the FAA as part of its culture, could move away from a "win/lose" paradigm to a "win/win" paradigm, a pilot who inadvertently and non-deliberately scratched the wingtip of his airplane by coming in contact with the empennage of another aircraft could receive remedial training at **his expense**. However, the current paradigm of the FAA will not allow this. Rather, inordinate government resources must be spent transporting witnesses to and from Miami, Florida to allegedly prove an airman flew an aircraft with a damaged wingtip even though it was not damaged. What is the point of this wasteful use of federal resources?

### **III. Conclusion**

In times of fiscal austerity and budget cutting, one must wonder why the FAA believes that cases of such minor significance as a scratched wingtip deserve the expenditure of significant government resources to punish an airman for an inadvertent and unintentional act. The FAA is held hostage by its own culture. The agency must win and the pilot must lose. But what if the culture could be changed whereby we are both on the same team trying to achieve the same objective, to ensure air safety and compliance with the FARs? The author submits that it is time for the FAA to place a greater emphasis on remedial training. By doing so, it can eliminate government waste in trying cases over minor infractions and improve its image and cooperation with the aviation community.

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