

# Flying in the Face of Criminalization

## *The Safety Implications of Prosecuting Aviation Professionals for Accidents*

Two parallel investigations take place after every aviation accident: one technical, one judicial. The former must be conducted with the sole intention of making safety recommendations to prevent the recurrence of similar accidents. The judicial investigation, however, has the intention of identifying those parties that have been at fault and to apportion blameworthiness for criminal and civil liability.

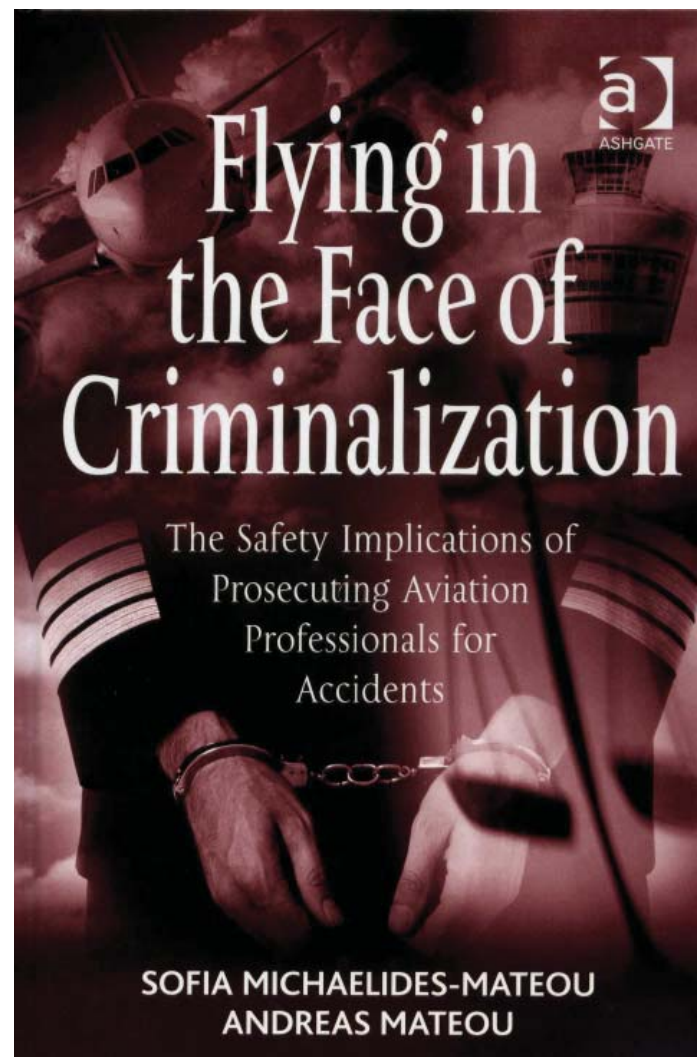
By Dr. Sofia Michaelides-Mateou and Captain Dr. Andreas Mateou

Book review by Dr. Ronald Schnitker

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Because of concurrent investigations, the criminal inquiry could dramatically interfere with the technical investigation, possibly resulting in retarded detection and determination of the sequence of events effecting the cause of the accident and examination of evidence, most likely leading to the establishment of the (probable) cause of the accident. Fact is that the criminal inquiry, which in most cases is focused on the question of guilt, will indeed hamper the technical investigation into the cause of an accident or consider the technical investigation as indifferent or irrelevant.

The authors Sofia Michaelides-Mateou and Andreas Mateou explain in their new book, **Flying in the Face of Criminalization**, how evidence and data acquired from an accident report may be used in a court of law to apportion blame and liability. They warn that this intermingling of investigation and litigation can jeopardize the independence of the accident investigation, result in a failure to learn from mistakes and even lead to miscarriages of justice. The authors also maintain that when these reports are used in subsequent litigation they are applied inconsistently. Not only do different jurisdictions have different legal systems, they also have different ways of using accident reports in criminal litigation. As the authors explain: *'The contradictory approach results in a perilous situation where pilots, for example, first may be faced with criminal charges in one country but not in another*



*and, second, will be totally oblivious as to whether statements given during the technical investigation and the final accident investigation report will be used against them in a court of law.'*

Airline pilots, air traffic controllers and other front line operators in civil aviation, indicating those people who perform the actual work, are concerned about what they perceive to be an increasing trend towards criminalizing unintentional actions or omissions of dedicated aviation professionals following major accidents or serious incidents. This trend of more aggressive law enforcement activity in aircraft accident investigations has the potential to disturb efforts in preventing accidents and incidents, to interfere with the efficient technical accident investigation, to limit the accessibility of gathering important data and to hamper the authorities from issuing vital safety recommendations to successfully prevent the recurrence of similar accidents.

In global aviation criminalization of aviation accidents and incidents is a delicate issue. On the one side, in the interest of civil aviation safety, we should judge and punish individuals guilty of appropriate criminal conduct as well as those who willfully and consistently violate safety rules and regulations. On the other side, we do not want to criminalize individuals because of unfortunate and unforeseen consequences of human error, sometimes after meticulous investigation identified as the cause of an accident.

A predominant risk of criminalizing aviation accidents and incidents is the refusal of witnesses to cooperate with inquiries, as individuals appeal to rights in order to protect themselves from criminal prosecution. The willingness of cooperating in accident investigations by front line operators will decline dramatically if criminal prosecution does become a realistic phenomenon. Obviously, nobody wants to provide self-incriminating evidence to be used by criminal investigators or prosecutors for the purpose of assessing guilt and punishment in a criminal prosecution. Aviation professionals not only will be subject to possible criminal proceedings, but could as well face punishment from

several other sources such as civil actions, regulatory sanctions and disciplinary or administrative measures.

**Flying in the Face of Criminalization**, with its unique collection of case studies, gives aviation professionals an insight into the law of negligence and how it applies to their profession. The book is essential reading for aviation professionals as well as the aviation authorities and judicial authorities that regulate their activity.

#### About the Authors:

**Dr. Sofia Michaelides-Mateou** holds a Doctorate from the University of Middlesex, a BA and a law degree (LLB) from the University of Witwatersrand. She is currently an Associate Professor in the Law Department at the University of Nicosia. She is an aviation-legal consultant who has participated in a number of aviation litigation cases and currently a director of MM Aviation Consultancy Ltd.

**Captain Dr. Andreas Mateou** holds a Doctorate from the University of Middlesex, a MSc in Aviation Management from the University of New South Wales and a law degree (LLB) from the University of London. He has 25 years flying experience with more than 16000 flying hours. He is also a part-time lecturer in Law at the University of Nicosia. He has been an aviation safety and legal consultant in a number of aviation litigation cases and is a director of MM Aviation Consultancy Ltd.

#### About the reviewer:

**Dr. Ronald Schnitker** has worked in the field of enforcement of aviation law. He has been Commanding Police Officer of the Aviation Investigation Department of the Dutch National Police Force and is currently Director Legal Affairs at Eindhoven Airport. He obtained a juris doctor degree from the University of Tilburg. He has published widely in particular about the subject Enforcement of Aviation Law.

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