



Accident Investigation Procedures

SO FAR I HAVE NOT SEEN any follow-up to Captain J. W. G. James's article in BEA's *Intercom*—which was quoted in *Flight* for September 8, page 413—on the over-elaborate procedures of the UK type of public inquiry into air accidents.* With three or four main themes in my head (as outlined in the earlier column "New Perspectives"†), I had not wanted to add another on accident investigation procedures; it is a big subject and really deserves a whole series of articles. And besides, if this column has any guiding genius at all, it leads in the direction of working at longer range (a stall that is a true stall and a navaid which gives a true position—simple but so far unobtainable objectives) rather than concerning itself with clearing up the mess after the accident has happened. However, Captain James' article is important; I agree with practically all he says and I would not like to let it slip by without adding a little emphasis to at least one of the main issues which he raises—namely that lawyers are not the right people to run inquiries into air accidents.

A brief interregnum in the vertical separation series‡ is also timely while new data on instrumental and flight technical error flow into IFALPA and on static system error to NASA, the RAE and the Netherlands Astronautical Research Institute—all expected to mature in the near future.

Fortunately, while on the subject of the position of lawyers at public inquiries, I find that I do not have to do any new thinking or writing and so, being a great believer in never doing the same thing twice if it can be avoided, here are some extracts from my evidence to the Cairns Committee which sat in 1960. This evidence draws freely on the Franks report into administrative tribunals, which came out a little earlier. I called the attention of the Cairns Committee (in these extracts and in several others) to the relevancy of this report to the whole subject of accident investigation; however, they made no mention of it in their own report.

"Employment of Counsel

The aircraft industry is a very progressive one and I do not think that the slower rhythms which are traditional in the law courts and which characterise public inquiries in the United Kingdom are the best in this case. I attended the inquiry into the Comet mid-air break-ups (November, 1954) and the main impression I had was that it was a 'show piece' produced to give a dramatic effect at least commensurate with the emotional state of the public. That, at any rate, was the effect, if not the design. One could see there most of the trappings of a court of law, together with numerous eminent Counsel and could hear a great forensic display. In my view, however, much of the proceedings was a waste of time and, of course, expense.

"My main criticism of these public inquiries is the dominant role played by Counsel. Far be it from me to criticise the honourable profession of the law, but, with all due respect, I think that barristers are out of place when playing the leading roles at public inquiries. Inquiries into aircraft accidents are, by their very nature, mainly technical and, therefore, any procedures or personalities which intervene between the *fons et origo* of the evidence and its assessment by the court of inquiry are, broadly speaking, undesirable. As matters stand, technical experts have to brief non-technical solicitors who, in turn, have to brief non-technical barristers. Although it may be thought that the disadvantages of this may to some extent be mitigated by conferences between clients and Counsel, such conferences can take place

only before the hearings. During the hearings themselves there is inadequate time for all the questions which may arise in the mind of an interested party to be put to his Counsel, and, even if the order of business is changed to allow for such conferences, the primary objection remains, namely the channelling of technical thought through a mind not trained in the technicality of aviation. Interested parties would, in my view, be much better served if they were allowed, or rather encouraged, to put questions and to reply to them directly. The whole proceedings should be as simple and direct as is consistent with a thorough and orderly elucidation and assessment of the facts. In a similar context the Franks report says (paragraph 38, page 9):

'We agree with the Donoughmore Committee that tribunals have certain characteristics which often give them advantages over the courts. These are cheapness, accessibility, freedom from technicality, expedition and expert knowledge of their particular subject.'

and (rec. 19, page 92).

'Parties should be free to question witnesses directly and not only through the chairman.'

"This, in my view, should be the general setting of public inquiries and not that of the High Court.

"But, notwithstanding the above, I would not dispense with legal representation altogether. Any interested party should have the right to be advised by a solicitor, a barrister, a trade union official or a friend. However, some means should be found to make the use of Counsel the exception rather than the rule. This type of solution would appear to be practicable since it is already applied to accident inquiries in the United States and to most tribunals in the United Kingdom. For example, the Franks report says (paragraphs 83 and 86, pages 20 and 21):

'83. Another feature of tribunals which has attracted considerable criticism in evidence is the ban on legal representation. This ban attaches to a limited number of tribunals, but they are among those most widely used. Where the ban applies, there is, however, provision for an applicant to be represented by a friend, who is often in practice an official of an industrial or other organisation to which the applicant belongs.

'86. The effect of the removal of the ban is conjectural whereas the hardship caused by its existence is in some cases real and considerable. In proceedings before Industrial Injuries Local Tribunals, legal representation is permitted at the discretion of the chairman, and it is to be noted that it is resorted to in only two per cent of the cases. No doubt applicants appearing before these tribunals can be adequately represented by their industrial organisations, but on this evidence the prospect of the whole of the work of tribunals being changed simply by removing the ban appears exaggerated. . . .'

"I agree with the tenor of the Franks report here and believe that a system can be laid down in which inquiries permit legal representation but do not encourage it and which, in any event, prevent such representation from playing the dominant role it does today. This is time wasting, expensive, invites exaggerated press interest and sometimes diverts the direction of the inquiry away from the facts of the case and towards the forensic eminence of individual Counsel."

The sooner it is realised that the aviation fraternity is just another social group and that it stands to gain rather than to lose by making the maximum use of our traditional institutions, such as the tribunal system, the better. Unlike the public inquiry, these tribunals are put daily to the anvil and the experience thereby accumulated is used for a quinquennial review of the whole system.

Perhaps someone will pick this one up before we are plunged into another expensive series of Ciceronian orations.

*This and a succeeding article, to be published later, on accident investigation reports, were written some time ago, but have been held out because of pressure on space. †*Flight* for June 30, 1966. ‡*Flight* for August 18 and October 13, 1966.