

by Joseph W. Varela

FLYING vs. AIRMANSHIP

The crash of Czar 52 was primarily the result of actions taken by a singularly outstanding "stick and rudder pilot," but one who, ironically, practiced incredibly poor airmanship.

Maj. Anthony T. Kern, USAF

In June of 1994 a B-52 bomber piloted by Lt. Col. Arthur "Bud" Holland crashed at Fairchild Air Force Base in Washington. Col. Holland and three crewmen were practicing maneuvers for an upcoming air show. The aircraft began a tight turn at 250 feet of altitude, banked perpendicular to the ground, stalled and impacted. Although ejection was initiated, none of the crew got out. Amateur video of the crash sequence was widely broadcast on television.¹

Military aviation accidents are not investigated by the National Transportation Safety Board and are not public record. What is known about the causes of the crash was published by an Air Force bomber pilot, Maj. Anthony T. Kern, who wrote a case study of the accident.² Most of this case study focuses on the multiple failures of leadership that contributed to the crash. But it develops one concept that is applicable to the trial lawyer: The distinction between flying and airmanship.

Investigation of the crash showed that Col. Holland had a reputation with his superiors as an outstanding bomber handler, perhaps the best in the entire B-52 fleet. He was the designated B-52 pilot at air shows and his responsibilities included training and standards evaluation. But it was also revealed that he had a long history of violations of aircraft design limits and flying regulations, both at demonstrations and on military missions. These violations included extremely steep bank and pitch angles, flying within feet of the ground, and other unauthorized maneuvers.³

Among his peers, it was felt that a disaster was inevitable. Some bomber crewmen refused to fly with him. There were demands from below that he be grounded.

His own attitude was one of supreme confidence in his abilities. At a planning meeting two days before the fatal practice, when confronted about a plan to fly excessively steep bank angles, his response was to brag that "he could crank it pretty tight."

Maj. Kern's study recognized a distinction between flying and airmanship. Flying requires skill, while airmanship requires judgment. Holland may have been an exceptionally skilled "stick and rudder pilot," perhaps the best, but his poor airmanship manifested itself in overconfidence, violations of regulations, disobedience of orders, and eventual loss of the aircraft.

All lawyers who try cases regularly possess some skills, natural and acquired. Some talented few do so to an extraordinary degree. But no matter how skilled one may be at "flying" in the courtroom, judgment must be exercised in the use of these skills. For example, someone may be a formidable cross-examiner, able to intimidate witnesses into giving up valuable answers. Armed with that skill, there is temptation to use it on every witness. But this approach may backfire if the jury thinks the cross-examiner is bullying the witness, or showing up a beginning prosecutor, or showing off smarts. It takes judgment to know when and when not to use such a talent.

Again, those who have done successful written grand jury presentations in state⁴ court may be tempted to make such presentations frequently. If it has worked a couple of times, why not do it every time? For one thing, such a presentation may result in a client being called to testify when it is not advisable to testify. Not all defendants are capable of holding their own in the grand jury room. Judgment must be exercised in deciding whether a given client can and should testify. For another, it is easy to use up credibility. When the grand jury (and the grand jury prosecutor) see the advocate coming with his stack of booklets several times a month, they will ignore the one case in which he truly has a chance to influence the outcome.

Most training in the art of trial tactics concerns application of skills in trying a case. Skills might be taught but the judgment of how and when to use these skills is up to the student. Trial lawyers have to learn to practice "airmanship" as well as "flying."

¹ The curious can find the clip by doing a Google video search of "B-52 crash."

² "Darker Shades of Blue: A Case Study of Failed Leadership," (1995). Available at <http://www.crm-devel.org/resources/paper/darkblue/darkblue.htm>.

³ The B-52 is a very large and heavy aircraft, with dimensions slightly smaller than those of the 747 "Jumbo Jet."

⁴ Don't try this in Federal court. 18 U.S.C. § 1504.

