

2026 Winter LPBA Conference
The Historic Lakeside Inn, Mount Dora, Florida
February 18 – 22, 2026 – Day 2

Presentation 2 – Stuart Couch and Chad Mayer

Biography and Slide Presentation

Honorable V. Stuart Couch, Acting Chief Judge



Judge Couch was duly appointed Administrative Law Judge by Chair Jennifer Homendy in July 2023.

Before joining the NTSB, Judge Couch was duly appointed by U.S. Attorney General Eric Holder as an Immigration Judge in October 2010, and thereafter, Attorney General William Bar appointed him as an Appellate Immigration Judge on the Board of Immigration Appeals in August 2019.

Judge Couch is another proud veteran. After serving a distinguished 22-year career in the U.S. Marine Corps, he retired from military service as a Lieutenant Colonel in September 2009. His past positions include KC-130 pilot, military prosecutor, appellate military judge, and North Carolina state prosecutor.

Judge Couch earned his Bachelor of Arts degree from Duke University. He holds a Juris Doctor degree from Campbell Law School and a Master of Laws from The George Washington University Law School. He is a member of the North Carolina bar.

NTSB | National Transportation Safety Board

National Transportation Safety Board Updates and Discussion

Acting Chief Judge Couch, and Chad Mayer
Office of Administrative Law Judges
LPBA- February 2026

Acting Chief Judge V. Stuart Couch







Acting Case Manager Chad M. Mayer





QUESTIONS?

- ✓ All questions are welcome:
  - Intended to be interactive/audience participation panel format.
  - Non-attribution/learning environment.
  - Comments are based upon personal opinion, and do not represent those of the National Transportation Safety Board.
  - Comments also do not represent how the administrative law judges or members Board would rule upon a particular issue in any case

Overview:

- Office of Administrative Law Judges: NTSB Mission Statement
- Case Trends: Types, Frequency & Statistical Trends
- Notable recent cases, including a challenge grant, PBR cases and EAJA cases
- Helpful Resources and Citations

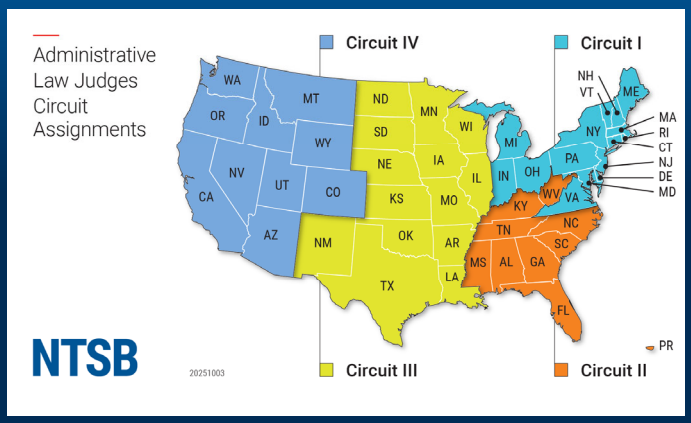
ALJ Circuit Assignments:

- **Vacant (Circuit I - HQ, Washington, DC)**
  - Northeast: CT, DE, DC, IN, MA, MD, ME, MI, NH, NJ, NY, OH, PA, RI, VT and VA
- **Hon. V. Stuart Couch (Circuit II – Washington, DC), Acting Chief Judge**
  - Southeast: AL, FL, GA, KY, MS, NC, PR, SC, TN and WV
- **Hon. Alisa Tapia (Circuit III – San Antonio, TX)**
  - Central: AK, IL, IA, KS, LA, MN, MO, NE, NM, ND, SD, OK, TX and WI
- **Hon. Darrell L. Fun (Circuit IV – Denver, CO)**
  - Western: AZ, CA, CO, ID, MT, NV, OR, UT, WA and WY

* AK and HI are rotated/Emergencies are assigned across circuits

The NTSB Administrative Law Judges





Left to Right:
Acting Chief Judge V. Stuart Couch, Judge Darrell L. Fun, and Judge Alisa Tapia

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OALJ Staffing

- Case Manager (Chad Mayer - Acting)
- Two Attorney Advisors (Katharine Primosch & Chad Mayer)
- Two Paralegals (Olivia Acosta, vacant)
- Case Management Analyst (vacant)
- Hearing Assistant (Audrey Moores)
- Mission Support Specialist (vacant)

NTSB

NTSB: We carry out our mission by —

- Maintaining our congressionally mandated independence.
- Conducting objective, thorough investigations and safety studies.
- Deciding fairly and objectively appeals of enforcement actions by the FAA and US Coast Guard and certificate denials by the FAA.
- Advocating for implementation of safety recommendations.
- Assisting victims and survivors of transportation disasters and their families.

The ALJ Mission —

- Congress created the ALJ division in administrative agencies with a key purpose-to empower participants to appeal adverse decisions.
- An ALJ is committed to equal justice under the law by ensuring that every party appearing before the ALJ receives a fair and impartial hearing.
- In accomplishing this, the ALJ balances the parties' interest and an opportunity to be heard against the government's interest in prompt adjudication of claims pending before the agency.

Most Frequent Types of Cases

- ❑ **Safety Enforcement (SE) Appeals**
  - ✓ Appeal of ***emergency*** revocation of an airman certificate
    - Decision must be issued in 30 days
  - ✓ Appeal of suspension or non-emergency revocation
- ❑ **Safety Medical (SM) Petitions**
  - ✓ Petition of the denial of a medical certificate application
- ❑ **Equal Access to Justice Act (EAJA)**
- ❑ **Non-medical certificate denials (CD)**
- ❑ **Civil Penalty Appeals (CP)**

ALJ 2025 – By the Numbers

- ❑ 235 cases received and docketed (487 in 2024; 222 in 2023)
  - ✓ 68 new ***emergency*** appeals (116)
- ❑ 9 Petitions challenging the FAA's emergency determination received
  - ✓ 1 challenge petition granted
- ❑ 295 cases closed (293 in 2024)
  - ✓ 84 emergency cases closed (same as 2024)
- ❑ 75 Hearings scheduled
  - ✓ 16 Hearings held
  - ✓ 59 Hearings scheduled but settled

Effects of the 2025 Government Shutdown

- ❑ On December 31, 2025, 49 filed cases remained undocketed
  - ✓ We are currently docketing SM petitions filed in November, 2025
- ❑ Numerous hearings slated for late 2025 had to be rescheduled
- ❑ Hiring delays

Good News

- ❑ New case management system SPAR coming this fiscal year
  - ✓ Online portal for filing and docket access
  - ✓ ALJ decisions available without subscribing to Westlaw or Lexis
- ❑ Another paralegal will be joining us in March
- ❑ Chief Judge hiring action

Standing Order 25-01

- Response to challenges brought about by federal hiring freeze and staffing shortage in OALJ
- January 2024 OALJ had a full compliment of 13 staff members including judges
- As of February 2026, OALJ has 7 staff members, one of whom is a paralegal
- Emphasis on “in person” work across the federal government and NTSB leadership
- Virtual hearings on the merits are convenient for the parties but require additional staff resources
- Heightened attention by OALJ to apply limited resources to emergency cases, whether waived or unwaived

Standing Order 25-1

For the reasons stated above, the OALJ will institute the following directives to take effect on or after May 5, 2025:

1. The OALJ will not schedule a merits hearing to be conducted by virtual electronic means in any case until further notice.
2. The OALJ will not schedule a merits hearing for any SM or non-emergency SE case until the OALJ provides notice, and after adjudication of all emergency appeals is complete.
3. An ALJ may *sua sponte* continue or enter a stay of proceedings in any SM or non-emergency SE cases assigned to them, to include those currently scheduled for a merits hearing.
4. After consultation with the parties, an ALJ may relax application of the Federal Rules of Evidence consistent with the Pilots Bill of Rights and Board Rule 38 (49 C.F.R. § 821.38) to permit adjudication of any case based upon a documentary record, subject to available administrative support.
5. Upon written motion, an ALJ may deviate from any of these directives upon a showing of extraordinary circumstances and to ensure the due process rights of a party. *See* 49 C.F.R. § 821.14(b).

Standing Order 25-1

Suggestions

- Use of "trial on the documents" by agreement of the parties
- Stipulations of fact and expected testimony; adopt depositions as testimony
- Use of virtual hearing for short hearing on sanction only
- Dispositive motions
- Others?

Adm'r v. Wong - SE-31462 (2025) (challenge petition)

- Medical Condition: acted as PIC with disqualifying medical condition per 14 CFR 61.53(a)(1) and careless/reckless operation.
- Timeline
  - 8/4/22 – subject flight from LAX to Lihue, HI
  - 1/13/23 – FAA issues Letter of Investigation (LOI)
  - 3/7/25 – Emergency Order of Revocation (EOR) issued
  - ** 2 years, 7 months from date of alleged violation to EOR **
- Petition challenging EM determination granted
  - ✓ R argued no emergency as he continued to fly and received 1st class medical certificates on 5 occasions for 2 years after his recovery from injury
  - ✓ FAA argued delay in issuing EOR "does not negate the necessity of an emergency determination"

Adm'r v. Wong - SE-31462 (2025) (challenge petition)

- In a review of the Acting Administrator's emergency determination, the Court must determine, presuming all factual allegations in the order to be true for the narrow purposes of this inquiry, whether aviation safety would likely be compromised by a stay of the effectiveness of the order. 49 C.F.R. § 821.54(e).
- FAA is entitled to some deference with respect to the time it takes to process an emergency order.
- Board (in 2003): "An arguably dilatory prosecution does not vitiate an otherwise proper judgment" regarding an emergency determination, but delay may still be relevant.
- No showing that R still lacks the care, responsibility, or judgment to hold ATP certificate.
- *Adm'r v. Tinlin and White,* NTSB Order No. EA-5658 (2013).
- Two-year delay to reach an enforcement decision is more of a risk to aviation safety than infraction of an individual airman not involving falsification or other egregious behavior.

Adm'r v. Alexander - EA-6019 (2026)

- Revocation of R's airman medical certificate under 49 U.S.C. § 46111(a) and 14 C.F.R. § 3.200
  - FAA is required to issue an order amending, modifying, suspending, or revoking any part of a certificate issued under Title 49 if notified by the TSA that the holder poses or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety.
  - TSA is the "decision maker" which is reviewed by a hearing before a U.S. Coast Guard ALJ.
  - FAA has no discretion once TSA makes a threat determination.
- Chief ALJ found no jurisdiction and entered a "Not Accepted" order
- Board affirmed
  - R is pursuing relief in the wrong forum
  - NTSB is not part of the review process; plain language 49 U.S.C. § 46111 gives no discretion to FAA
  - NTSB jurisdiction limited to 49 U.S.C. §§ 44703, 44709, or 44710

Adm'r v. Loughrey - EA-5996 (2025)

- Med Application Falsification: failure to report all DUIs/DWIs and failure to report MVA under FAR 61.15.
  - ✓ R answered "Yes" to 18.v. but only listed a 2001 DWI
  - ✓ R had two DWIs (2011 and 2012) – arrest, conviction & DL action
- ALJ found for the FAA, and the Board affirmed
  - ✓ R's testimony that he told the AME about both DWIs was not credible
    - R testified knew had 2 DWIs but didn't know how to indicate it on the form
  - ✓ AME's testimony was credible, detailed and consistent with evidence
    - AME took contemporaneous notes (only referenced single lifetime DUI)
    - AME used checklist and needed record of BAC (if > 5 yrs & <.15)
  - ✓ AME's failure to fully review documents R submitted was not exculpatory

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Adm'r v. Hoyen - SE-31027 (2024) (not appealed)

- Drug Test Refusal: leaving without providing sufficient sample
  - ✓ R's testified that he provided two samples of at least 45ml, but less than the sharpie line the collector arbitrarily drew
- ALJ found R provided a sufficient sample, which collector inappropriately discarded
  - ✓ Collector's testimony found not credible
  - ✓ Another donor corroborated R's testimony
    - tested by the same collector 2 weeks prior
    - collector's attitude, sharpie marking practice, and discarding 1st sample
  - ✓ FAA failed to produce a CCF - a fatal flaw on its own

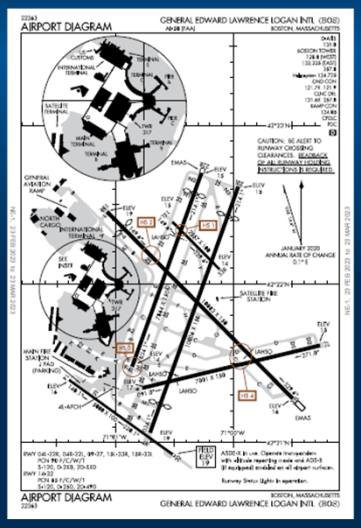
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Adm'r v. Burrows - SE-31425 (2024) (not appealed)

- Emergency revocation for alleged deficient annual inspection, and alleged intentional falsification of the aircraft's logbooks.
- Respondent's affirmative defense of stale complaint was successful as to the deficient inspection charge, so the merits hearing was held only for the falsification charge.
- ALJ found for Respondent
  - ✓ FAA's expert witness mechanic lacked familiarity with GA aircraft
  - ✓ Respondent's testimony found credible
  - ✓ Logbook entries were found not to be false, therefore Respondent could not have made them with knowledge of falsity

Adm'r v. Carrillo - SE-31275 (2024) (on appeal)

- Order of suspension (330 days) for runway incursion at Boston Logan by Part 135 "Hop-A-Jet" Learjet 60 vs. JetBlue Airbus 320 on 2/27/23
- R at controls held ATP with 1500 hours; PIC as co-pilot held ATP with 22,000 hours
- ATC instructed "line up and wait" for Runway 9; R crossed hold short and took off
- JetBlue waived off approach to Runway 4R and missed collision by 320 feet
- Violations alleged: 14 C.F.R. § 123(b) (operating an aircraft contrary to an ATC instruction) and 14 C.F.R. § 91.13(a) (residual violation for careless or reckless operation of an aircraft)
- Respondent's affirmative defenses were (1) reasonable reliance and (2) "NASA report" immunity from sanction.
- ALJ found for Respondent and vacated the order of suspension





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Adm'r v. Carrillo - SE-31275 (2024) (on appeal)

Issues

- Discovery related to status of runway status lighting ("RWSL") system at Boston Logan and whether the takeoff hold lights ("THLs") were illuminated for Runway 9
- No equipment telemetry for RWSL provided by FAA until eve of trial
- FAA experts unaware that RWSL was NOTAM out or service earlier in the day or why
- ATC instruction to "line up and wait" was received while aircraft was transiting "Hotspot 3" and crossing Runway 4L, and acknowledged by PIC who was handling the radios
- Both pilots testified credibly that the THLs were not illuminated when they began takeoff roll
- Reasonable reliance of R on PIC's acknowledgment they were cleared for takeoff
- Applicability of the Aviation Safety Reporting Program ("ASRP") also known as "NASA report"
- FAA contends R cannot show his actions were "inadvertent and not deliberate"
- FAA withdrew a substantive charge days before trial, but proposed sanction remained the same

Pilot's Bill of Rights

- PL 112-153 (2012) - Section 2
  - implemented FRE and applicable FRCP
  - requires written notification and "Miranda" type of advisement in writing
  - provide releasable information on request unless integrity of investigation threatened
  - right to appeal to Article III Court
  - 30-day waiting period after providing ATC data before initiating enforcement actions.
- PL 114-190 (FAA Extension, Safety, and Security Act of 2016 – PBR II)
  - Section 4 – access to covered flight records upon request
  - Section 3 - extended right to appeal and information access to other FAA certificate holders
- PL 115-254 (FAA Reauthorization Act of 2018 – PBR Expansion) - Section 392
  - release EIR upon request & dismissal if no good cause
- PL 118-63 (FAA Reauthorization Act of 2024) - Section 805
  - reexamine within 1 year of notice (if more than 30 days, FAA can restrict carrying passengers
  - Administrator to close or pursue action within 2 years of LOI absent extension (nondelegable)

Adm'r v. Oelofse - SE-31246 (2024) (on appeal)

- Transporting 100 Kg of marijuana: guilty plea to 49 USC 46306(b)(7) and (c)(2) – serving as airman without a proper certificate and violation "was related to transporting controlled substance in aircraft"
  - ✓ VFR rated but IFR in effect + expired 2nd Class Medical Certificate
    - R seen standing outside of hanger #37 & R refused consent to search #37
    - DEA obtain search warrant for hanger #39 and find Piper w/6 duffle bags
- ALJ dismissed for lack of evidence/FAA failure to meet burden
  - ✓ FAA did not have certified copies of court records under FRE 902(4) or (11)
  - ✓ FAA did not call custodian of records/clerk of court under FRE 1005
  - ✓ FAA did not call case agent (only one FAA witness) w/o personal knowledge
  - ✓ R exercised 5th Amendment Rt when FAA attempted to call as witness

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Adm'r v. Trebbe - SE-31332 (2025) (on appeal)

- Various airspace violations: (1) >200 kts below class B, (2) less than 2,500 above surface within 4 nm of class D, (3) operating < 1,000 above highest obstacle w/in 2,000 horizontal ft in contested area, and (4) entering traffic pattern < 1,500 ft above airport.
- ALJ dismissed as PBR violation (section 2(b)(1))
  - ✓ FAA investigator interviewed R without providing written advisement of PBR
    - FAA ID'd aircraft, pilot & had flight path/ground speed/airspace/likely violations
    - Investigator claim that no investigation had been opened was not credible
  - ✓ FAA failed to authenticate radar data/plotted track on sectional chart/radar return
  - ✓ Laches & PBR Amended May 16, 2024 (2 years to act or close after issuing LOI)

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Adm'r v. Wong - SE-31462 (2025) (not appealed)

- Medical Condition: acted as PIC with disqualifying medical condition 14 CFR 61.53(a)(1) and careless/reckless operation.
  - ✓ Petition challenging EM determination granted – R continued to fly/get 1st class medicals for 2 years after recovery
  - ✓ Dueling experts – rib fractures and pneumothorax symptoms unmistakable vs. pneumothorax occurring with additional movement
- ALJ granted motion to dismiss due to laches + stale complaint
  - ✓ Aug. 2022 incident & LOI issued Jan. 2023 but 785 days (over 2 yrs) passed before EOR
  - ✓ PBR, section 805 (May 16, 2024) – 2 yrs from LOI to close or pursue action
  - ✓ FAA attempt to use EM to avoid stale complaint rule

Equal Access to Justice Act (EAJA)

- 5 U.S.C. § 504 & 49 C.F.R. Part 826
- Purpose is "to dissuade the government from pursuing weak or tenuous cases"
  - ✓ Three-part test to determine if applicant is prevailing party:
    - (1) There must be a "court-ordered change in the legal relationship" of the parties
    - (2) The judgment must be in favor of the party seeking the fees
    - (3) The judicial pronouncement must be accompanied by judicial relief
  - ✓ An individual applicant's net worth cannot exceed $2M
  - ✓ If applicant is prevailing party and eligible, the FAA can argue:
    - Position of the agency was substantially justified
      - ➢ Requires showing agency's position was reasonable in both fact and law
    - Special circumstances make an award unjust
  - ✓ When case turns on witness credibility, FAA typically deemed to have had substantial justification
  - ✓ Credibility can only be assessed by the law judge in the hearing

Application of Freeman - EA-5965 (2023)

- EM Revocation against a CFI alleging intentional falsification of logbook endorsements related to flight instruction in a single-seat AC
- ALJ found that smaller violations warranted only a suspension
- Many falsification cases come down to credibility requiring a hearing (not this one)
  - Although the logbook endorsements were erroneous
    - ✓ FAA made "no effort" to investigate
    - ✓ Treated falsification like a strict liability offense
- The Board split 2-2
  - With no majority, ALJ decision stood
  - Today, the Board once again has 4 members so ties are possible

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Application of Knight - EA-6007 (2025)

- FAA Emergency Revocation against an ATP for failed drug test
- R proved accidental ingestion - sanction mitigated to 90-day suspension
- Board reversed ALJ's grant of EAJA fees:
  - ✓ Credibility determinations were essential in proving affirmative defense
    - ALJ cited witness credibility as part of reasoning for granting the application
  - ✓ Disagreement with the sanction does not mean FAA lacked substantial justification to bring the enforcement action itself
    - Prior to the hearing R admitted ingesting the medication
    - FAA proved regulatory violation by preponderance of the evidence

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Application of Burrows - 1028-EAJA-SE-31425 (2025)

- ALJ partially granted EAJA fees
- FAA had a duty to discontinue the prosecution once they knew or should have known the case was not reasonable in fact or in law
  - ✓ FAA's investigation was not objective or complete
  - ✓ FAA should have known its evidence was inadequate
- Witness credibility
  - ✓ Respondent's testimony found credible, but the case did not hinge on this
  - ✓ Logbook entries not false/incorrect as a predicate matter (wasn't a close issue)
  - ✓ Contrast to: *Freeman*, incorrect log entries but honest mistake
    Knight, per se violation established but valid affirmative defense

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Lessons Learned – The Big Take Aways

- ✓ We are understaffed and will be for the foreseeable future
  - ➢ While we strive to timely adjudicate cases, please be patient and consider external factors when advising your client
- ✓ Falsification Cases (VA and Medical) continue to be litigated as credibility is the primary issue
- ✓ Drug Test Refusals significantly hinge on the particular facts
- ✓ Read and use the PBR (and all amendments)
  - ➢ Be aware of 2-year time limit
  - ➢ Be well-versed in FRE (foundation, authenticity and hearsay)

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FINAL QUESTIONS?

Online Resources: Rules of Practice

- ❑ 49 CFR Part 821 – Rules of Practice in Air Safety Proceedings
  https://www.ecfr.gov/current/title-49/subtitle-B/chapter-VIII/part-821?
- ❑ Federal Rules of Evidence
- ❑ Federal Rules of Civil Procedure
- ❑ Pilot's Bill of Rights
  https://www.govinfo.gov/content/pkg/COMPS-11475/pdf/COMPS-11475.pdf

Online Resources: NTSB, Board Decisions & OALJ

- **NTSB website for Board Decisions**
  https://www.ntsb.gov/legal/alj/Pages/ONOQQuery.aspx
- **OALJ website for Appeal Process, Judges, Circuit Assignment and Calendar**
  https://www.ntsb.gov/legal/alj/Pages/default.aspx
- **OALJ website for Calendar of Currently Scheduled Hearings**
  https://www.ntsb.gov/legal/alj/Pages/hearing_calendar.aspx



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