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Presentation 3 – Gary W. Allen

Biography and Paper Presentation



Gary W. Allen is an attorney and consultant specializing in aviation matters. He retired in September, 2005 after serving for 20 years as Director of the 50-person Aviation & Admiralty Litigation staff of the Torts Branch, Civil Division of the Department of Justice with responsibility for the prosecution and defense of all aviation and admiralty tort litigation brought by or against the United States and its departments and agencies. He is an active member of the Virginia Bar and in the courts of that state, successfully obtained demurrer dismissals without leave to amend in two successive cases brought by a disgruntled 80-year-old EAA member against two Chapter officers who stood him down from taking Young Eagles aloft due to observed issues with his proficiency. He successfully arbitrated an insurance dispute over the quantum of damages owed by an insurer for a major Beechjet wing restoration which the insured believed should have been totaled at its stated value.

He served in London on a confidential arbitration involving a major international midair collision loss in 2012, and as a Special Master in the Northern District of Texas for discovery-related issues in a putative class action against an air carrier for flights made with incorrect or inadequate maintenance records. In 2020, he successfully mediated an international failure-to-land fatality in which the parties were initially seven figures apart and represented a defendant in a multiparty LSA matter.

A District of Columbia native, Mr. Allen graduated Phi Beta Kappa from The Ohio State University in 1969, where he worked as a flight instructor, and received his Juris Doctor in 1972 from The Georgetown University Law Center. He moved from the FAA Chief Counsel's Office to the Department of Justice Civil Division in 1980 as the Assistant Director for Aviation Litigation, and was promoted to the Torts Branch Director of Aviation & Admiralty in 1985, where he

managed the handling, trial or settlement of all aviation tort litigation involving the United States, including Delta/DFW, Aeromexico/Cerritos, the C5A Babylift, KAL/Guam, American/Little Rock and USAir/Skywest LAX. He has personally tried many complex aviation cases throughout the United States and is three circuits short of having argued in every US Court of Appeals. He successfully defended the first case attempting to use TCAS activation as a basis for liability against FAA controllers and counseled NASA following the losses of Shuttles COLUMBIA and CHALLENGER.

Mr. Allen has been a Lawyer-Pilots Bar Association member since 1972 and Editor of its quarterly Journal of the since 1997, and was active in ABA leadership positions for many years. He started flying in 1961, soloed on his 16th birthday, and holds a Commercial pilot certificate with single and multi-engine and instrument ratings, and is a flight instructor in single and multi-engine aircraft.

These days he mostly flies the A/Bus, a 40-foot Phaeton diesel pusher motorhome and frequently performs with The Three Jolly Coachmen, a Kingston Trio tribute group. He and his wife Marie live in Williamsburg, Virginia, spend the winter in the A/Bus in Largo, Florida, and enjoy time with their three children and seven grandchildren in Nashville, Los Angeles and St. Petersburg.

ETHICS:
MORE
CIRCUMNAVIGATING
THE BUILDUPS

Gary W. Allen, Esq.
Williamsburg, Virginia

Lawyer-Pilots Bar Association
2026 Winter Meeting
Mt. Dora, Florida

This series of presentations is built around the premise that an attorney facing ethical issues in either the personal sphere or the practice of law is somewhat akin to a pilot encountering the risks and perils of the air. In the course of a flight, each – whether pilot or lawyer -- must use skills of perception, evaluation, and avoidance in order to complete the planned mission safely and without harm to self or others.

Perception in this context means detecting that the current course of flight, or of conduct, is leading towards a situation of aeronautical or professional peril. Some hazards, we know, are easily detected; like towering cumulonimbus clouds, they can be seen for miles, and the risks of tangling with them are, or *should* be, obvious. Other hazards are more subtle and may lie at considerable distance from those which are more apparent.

Evaluation in this context means the thoughtful consideration of the consequences of proceeding along the present course of flight or of behavior. What's going to happen to me, my clients or "passengers," and my fellow crewmembers, if I don't change what's going on here? Will we experience uncomfortable air or professional turbulence, or turbulence so severe it threatens the control or even the structural integrity of the aircraft or the firm?

Avoidance obviously means taking action to avert discomfort or disaster. In aviation, it can take many forms: a change of altitude or airspeed, deploying anti-icing equipment on the airfoils, or getting the aircraft on the ground as soon as possible, to name a few. In professional practice, it can mean pulling in more resources, consulting advisors or authorities, or simply confessing a mistake and seeking help to rectify it – again, just

to name a few options.

Most pilots and aviation professionals find the study of aircraft accidents and incidents helpful in shaping and refining their hazard detection and avoidance skills. Gleaning lessons from the oversights, mistakes and misfortunes of others can be both interesting and instructive, and in recognition of this, the military, the FAA, the National Transportation Safety Board, and NASA have programs that foster the exchange of information that can lead to a greater chance of safely-completed missions.

What follows, then, are some case studies drawn from reported cases in the practice of law which will be presented in the rubric of aviation accident or incident reports. Hopefully, this will help the careful pilot/practitioner stay clear of airborne misfortune and safely complete each mission, delighting the passengers and satisfying its captain.

Just the Usual Post-flight Debrief; or, Did You Mention Her Name?

Francisca Johanna Wider, Fla. Supreme Court Case No. SC19-317, February 1, 2021

Flight crews carrying passengers for hire operate with the understanding that much of what they're doing when preparing for a trip is important to *them*, but not for their trusting passengers; the pax could care less about what the fuel load is or where the CG falls for a particular flight. But there's critical information that *must* be communicated for the passengers' safety in the event of things like a loss of pressurization, the

need for an emergency exit and how to stay afloat in a water landing.

The same dichotomy may apply to legal aviators handling matters for one or more passengers who obviously have no interest in or need to know *everything* that that their legal airman is doing; much of it may be first revealed when they receive an itemized statement of charges. But matters that directly affect their interests most certainly must be provided, and in timely fashion.

Thus it's important to be clear about such things. The late Gordon Lightfoot had a winsome hit recording that touches on this entitled "Did She Mention My Name," in which the speaker prattles on to his friend about shared events and experiences at an earlier time and place -- and then repeatedly returns to his plaintive question to his friend, "Did She Mention My Name?"

Since we're in Florida and enjoying its dead-of-winter charms, let's start here. Our legal aviatrix in this matter was Francisca Johanna Wilder, who was admitted to the Florida bar in October of 1998 and was obviously experienced in the legal airways when this matter arose in 2021.

In 2014, she had been retained by a trusting passenger to prepare a last will and testament which named our aviatrix as the personal representative for the estate and provided for a sole beneficiary of the estate who also happened to be a woman. In due time, the testator died 0n June 29, 2016. In July, our aviatrix telephoned the sole beneficiary and informed her that she was "mentioned" in the will and that she would call her when she

returned from her vacation.

Interestingly, for some reason -- perhaps a vacation distraction -- our aviatrix did *not* tell the woman that by the terms of the will, she was the sole beneficiary of the estate. In an interesting addition, our aviatrix took it upon herself, without notice to the sole beneficiary, to take possession of the entire contents of the decedent's condominium. Were there items in the condo that the sole beneficiary might have wanted for herself, for practical or sentimental reasons? We'll never know – and more importantly, *she* will never know.

A complaint was filed with the Florida Bar and after its fact-finding and hearings were held, our aviatrix was issued a public reprimand. The Bar's Referee found that although misrepresentations were made as to the beneficiary's status as sole beneficiary, the conduct on the part of our aviatrix was not done with the intent to deceive or injure the sole beneficiary.

The Referee found that she believed that the contents of the personal property in the condominium was of no value and her disposal of those contents was an attempt to comply with the deceased's instructions. The Referee found there was no injury to the beneficiary, and that our aviatrix did believe that she was protecting the deceased's dignity in complying with her last instructions.

Our aviatrix was nonetheless publicly reprimanded and ordered to attend the Florida Bar's Ethics School. Does your bar association have such a school? Mine doesn't.

And thus, here we are, circumnavigating the buildups.

Uneasy Rider: Take it Easy?

In the Matter of George William Bruch, VSB Docket No. 24-022-131856, November 24, 2025

This matter involves three areas of interest that have always been of interest to Your Captain Speaking: airplanes (if only by analogy here), staying out of ethical buildups, and . . . motorcycles. My interest in the latter commenced with a Whizzer add-on to my old Schwinn bike in the 1960's, which had no serviceable brakes and a kite-string throttle I wrapped around my thumb -- but it could do up to 30 mph.

Since I'm still here, I obviously survived the Whizzer and I currently, albeit occasionally, ride my 1995 Suzuki Intruder 1400 that I've owned since 1999. Designed in California and built in Japan, it's like a Harley with all the problems engineered out. But we won't go *there.*

I will observe that in the 30ish years I've been doing these articles/presentations, this is the first that involves an actual motorcycle. And I'm pleased with this.

The setup is this: on July 23rd, 2023, a dangerous kerfuffle took place in Virginia Beach, VA as a motorcyclist on Interstate 264, identified in the record only as TB, fired several shots, some of which struck home, at another motorist who was in his vehicle. Unfortunately for TB, video from surrounding sources captured his appearance, his garb, his motorcycle, its license tag, and the

cutie (his wife) riding as his passenger.

With this trove of information, in just three days TB was contacted by Virginia Special Agent Rohoke. TB made no statement but advised Agent Rohoke that he had retained airman George William Bruch, a criminal defense practitioner and partner in the firm of Randall & Bruch from Virginia Beach, as his wingman.

In his text messages with airman Bruch, TB identified himself as a member of the "VB Boozefighters," a motorcycle club, and was told by text that he should set up an appointment with our airman. TB thus became a client of the Randall & Bruch firm; considerable texting occurred between them. Our airman asked TB whether the state troopers noted his Boozefighter membership and he said no, they didn't seem to.

Airman Bruch also noted that the main issue for the police was they had his bike's tag number "but that's not a for-sure thing;" they had no clear shot of TB's face. In subsequent texts, our airman advised TB that "just to be safe," he should get the helmet he was wearing at the time of the altercation "out of your house," make sure his wife didn't speak to anyone, and fer sure stash the clothes they'd been wearing somewhere (including their "cuts" – vests with their club affiliation on them) in case a search warrant were obtained. He also advised TB that he should "do something" with the photos his wife had taken earlier in the day before the gunfire erupted.

On August 14, 2023 the police executed a search warrant of TB's house, but they did not find his motorcycle -- which he'd

parked at a fellow Boozefighter's crib per our airman's suggestion. Nor did the search turn up the specific helmets or the garb TB and his wife had been wearing when the shots were fired. Our airman had ensured that his clients had stashed virtually everything the police were looking for. "Make sure your house is scrubbed clean of everything we talked about," he said.

Nonetheless, on August 22nd Agent Rohoke obtained multiple felony arrest warrants, charging TB with malicious wounding, use of a firearm in the commission of a felony, and firing a weapon into an occupied vehicle. The next day, TB informed the Court that he had retained airman Bruch, who had already proved to be a frequent and foolhardy flier into hazardous ethical buildups.

On August 25th, an untranscribed bond hearing was held and TB was denied bail. His denial was appealed to the Virginia Beach Circuit Court and a transcribed hearing was held there on September 13, 2023, at which a portion of the video of the shooting was played. Our airman claimed to Assistant Commonwealth's Attorney Megan Lang that the video showed only "an unidentified individual brandishing a firearm, which is a misdemeanor."

Unfortunately for our airman, The Man had a tool that Bruch had not reckoned with; TB's iPhone was subjected to a Cellebrite download, which is a common law-enforcement tool to examine, review and extract information from cellphones in criminal investigations. This data dump was left at the front desk of the Commonwealth's Attorney's office for pickup by our

airman Bruch. And it gave our airman an eyeful, as it included all the interactions between himself and TB.

At this point, the collusive nature of this attorney/client relationship was crystal-clear and the façade began to crumble. The felony charges against TB were certified to the Virginia Beach Circuit Court and on January 24, 2024, our airman informed Ms Lang that "for trial purposes" his client would stipulate that he was the driver of the motorcycle and the guy who fired the gun. On February 5th a grand jury indicted TB on four felonies, including aggravated malicious wounding, and added three misdemeanors related to the 2023 shooting.

Four days later, the prosecutor filed a motion seeking an in-camera review of the text messages between Bruch and TB and a ruling that these were not privileged attorney/client communications and should be admissible at TB's criminal trial.

A month later, on March 8, 2024, our airman's then practice partner John Randall filed a motion objecting to the prosecution's intentional disclosure of attorney/client privileged information and a motion to dismiss the case against TB due to prosecutorial misconduct by the Commonwealth.

On March 11th, a hearing was held in the Virginia Beach Circuit Court before Judge Afshin Farashahi to address the potent issue of whether the text messages we've discussed were covered by the attorney/client privilege. Airman Bruch appeared with his law partner Randall, and their firm was represented by Kevin Martingayle. Our airman kept a low profile; his partner Randall conceded that if the text messages were found to be privileged,

airman Bruch would be disqualified based on a conflict of interest.

This hearing before Judge Farashahi would have been fascinating to attend. The Chief Deputy Commonwealth's Attorney, Scott Lang, noted that "there's a big difference between [TB] on his own coming up with the decision to remove stuff from his house and go hide it, conceal it, put it in the woods, I don't know, as opposed to an attorney, an officer of the court, directing him to do so." Lang argued that our airman committed fraud on the court by arguing at bond hearings that identity would be an issue when he had assisted in concealing evidence and had been an accessory after the fact by advising TB to hide or dispose of evidence. His stipulation that his client was the shooter came only after the prosecution disclosed our airman's text messages.

A further hearing before the Judge was held on April 17, 2024; he reported his consultations with the Bar Ethics Counsel, the Judicial Inquiry and Review Commission and the Office of Legal Research for the Supreme Court of Virginia and concluded that he did have the authority to remove our airman as TB's counsel due to a conflict of interest.

He also concluded that this conflict prevented his ruling on the attorney/client privilege for the texts between Bruch and TB. The judge continued the matter so that TB could retain new counsel; one James Broccoletti got the nod.

On July 1st a hearing on the admissibility of the text messages was held and the Court determined they were protected and

inadmissible at TB's trial because he had only sought legal advice from our airman, not a short course in how to commit a crime and hide evidence from the law.

TB's trial then proceeded for three days and he was convicted of malicious wounding, use of a firearm in the commission of a felony, two counts of brandishing a firearm, reckless handling of a firearm, and maliciously shooting into a vehicle. TB and his wife both testified at trial, and said they believed that our airman's tutelage in hiding and discarding evidence was legitimate legal advice.

In February 2024, our airman contacted the Virginia Judges and Lawyers Assistance Program and reported he had begun drinking heavily in April 2023 due to stress at work and personal issues. He entered into a one-year contract later that month and in April 2025, our airman left the firm of Randall & Bruch and no longer flies the legal airways.

The consequences of his prolonged flights into the buildups were yet to be reckoned with. A telephonic hearing was held on November 18, 2025 at the request of VSB representative and our airman's attorney, Mr. Martingayle, to obtain the VSB Disciplinary Board's approval of an Agreed Disposition reached between our airman and a Board representative for a nine-month stay in the chocks, with terms. The terms required our airman to do the usual notifications to his clients and make arrangements satisfactory to them and to the Board for the handling of their matters by other counsel and submit sworn affidavits on a specified schedule of his compliance; failures to fully comply would bring the risk of the extension of his suspension and/or

revocation of his airman's certificate. He also was taxed with the expenses of the VSB Disciplinary System.

The Agreed Disposition specified our airman's violations of the Virginia's Rules of Professional Conduct (RPC) 1.2, which forbids counseling or assisting a client to engage in criminal or fraudulent conduct; RPC 1.7 (a)(2) which forbids representing a client with whom he has a concurrent conflict of interest, as he did when he identified his client TB as the shooter once his cellphone data was revealed; RPC 3.4(a), which forbids obstructing, destroying or concealing evidence to which another party (the Law, in this case) is entitled, as he did by suggesting the hiding or relocation of his client's clothing and motorcycle; and RPC 8.4(b), which defines professional misconduct, which he violated by proposing criminal and wrongful acts to TB and his wife.

The Disposition was entered on November 24, 2025 and requires our airman to successfully complete 12 hours of approved VSB ethics CLE during his nine-month suspension. If he misses this deadline, his suspension jumps to a year and a day, and additional costs will be assessed.

His client TB, represented by new counsel, was tried and convicted on multiple counts for firearms violations and shooting into a vehicle.

Thus, both airman Bruch and his client spiraled in as a result of their respective tangle with dangerous buildups.

The Good, the Bad, and the Annoying: Passengers Come in All Flavors

In the Matter of Jeremy Clyde St. James Sharp, VSB Docket No. 25-070-135382 December 30, 2025

Commercial airmen understand that their passengers come from all walks of life and in all states of mind, which can range from competent, well-organized and collegial to unhappy, worrisome and unpredictable – plug in your parameters here. The same can apply to the passengers signing on for the services of legal airmen, and understandably so, because everything from routine life concerns to the fear of money damages, public embarrassment and even incarceration may be in your passengers' luggage. While this might affect some legal airmen, it comes with the responsibility to put the best foot forward for the passengers. That didn't quite happen in a matter from my home state of Virginia.

Our airman Jeremy Clyde St. James Sharp was licensed to practice law in the Commonwealth of Virginia in 1996 and was an associate with the firm of Voors & Kenefick in Scottsville. On or about May 24, 2023, our airman agreed to represent one Holly Foster as his passenger in the appeal of a misdemeanor trespass conviction to be heard in the Circuit Court for Fluvanna County. She signed a written fee agreement that stated our airman would charge her a fixed fee of $1,200 for their flight together. On the same day she paid $736.00 to our airman's employer and on May 25, 2023, our airman noted his appearance as Foster's wingman with the Court.

Airman Sharp got to work for his pax on the misdemeanor trespass conviction and during the next week or so he discussed a potential plea agreement with James Hingeley, the Special Prosecutor who was representing the state in the case. On June 3, 2023, our airman communicated the potential plea agreement to passenger Foster, who immediately yanked out the mixture control and shut down his engine. She then told airman Sharp that she wanted a jury trial, even though she had previously waived her right to a jury trial.

Airman Sharp told Foster that if she sought revocation of her previous waiver of a jury trial, he would withdraw as her counsel. In emails dated that day, our airman asked Foster twice to "[t]ake some time and think about it."

Maybe she did, maybe she didn't; but in any event, on June 5th passenger Foster sent an email to Clerk of Court Tristana Treadway *sua sponte* and "moved" the Court to revoke her previous waiver of her right to a jury trial. Foster did not copy our airman on her email.

By email dated June 6, 2023, Clerk Treadway shared Foster's email with our airman and his opposing counsel Hingeley and our airman was not pleased with her cutting him out of her traffic pattern. Thus on June 7th, our airman filed a Motion to Withdraw with the Court in which he stated that he did not believe his passenger Foster's actions were "made in good faith" but were instead "an attempt at obfuscation and harassment of the witnesses and agencies." He further stated that Foster's "perception of the facts and circumstances related to her case are

contrary to defense counsel's own finding" but that she continued to insist "on their veracity despite all evidence to the contrary." His motion told the Court that it was impossible to effectively communicate with or advise his pax because of her "insistence on these alternative facts and realities" and "by her actions, her insistence upon the veracity of circumstances that are contrary to reality, and her attempts to require defense counsel to subpoena individuals and records that are completely unconnected to the case" made it "unreasonably difficult" for him to keep her aboard his aircraft.

Our airman copied his opposing counsel Hingeley on the Motion to Withdraw. Passenger Foster did not consent to our airman's release of privileged information to Hingeley and the Court and objected to airman Sharp's attempt to withdraw from her case.

On June 15, 2023, after airman Sharp argued his Motion to Withdraw, the Court granted his motion and on June 19th pax Foster was given a full refund of the fixed fee and a copy of her file. On June 21, 2023, the Court entered an order releasing our airman.

Is this the end of the story? Well, no. The matter came to the attention of Air Traffic Control which found a number of violations by Airman Sharp of the Virginia Rules of Professional Conduct which governed his relationship with passenger Foster. The Panel investigating the matter concluded:

> By including privileged information obtained by Respondent during his representation of Foster that was both embarrassing and detrimental to Foster in the Motion

> to Withdraw submitted to the Court and opposing counsel, without Foster's consent to the disclosure of the privileged information to either opposing counsel or the Court, and when the disclosure was not reasonably necessary to obtain the Court's permission to withdraw as counsel, Respondent violated Rule 1. 6(a).

In my opinion it's likely that passenger Foster's rather obstreperous behaviors tempered somewhat the sanction imposed upon airman Sharp. The fact that he was sanctioned at all reflects the fact that he vented his frustrations with his passenger so publicly and unnecessarily.

In any event, the bar Subcommittee imposed a Public Reprimand without Terms upon airman Jeremy Clyde St. James Sharp with the costs to be assessed by the Commonwealth's Disciplinary System.

That outcome seems about right to me.

Anger Management: Can We Speak with the Manager?

In re Teresa Schiele Roper, Florida Bar SC2025-1834 (November 21, 2025)

Professional airmen know that maintaining a measured and steady demeanor is essential not only for the comfort and confidence of their customers, but also for the proper execution of the multitude of tasks required to safely transport one's self and the aircraft to the desired destination.

The same approach is of course applicable to legal airmen as well, because our passengers trust themselves to the thoughtful exercise of the skills that they believe will carry them to their hoped-for destination. Legal airmen know that those with overall authority for their operations are likely to get involved when behaviors fall outside the expected norms.

Our legal airman Teresa Schiele Roper was a member of the Florida Bar and maintained her practice at Roper & Roper in Apopka. She graduated in 1989 from the Stetson University College of Law and gained her Florida bar membership in 1990; her practice included a number of areas including civil litigation and especially workers' compensation cases.

On October 5, 2024 she was arrested on multiple charges arising from an altercation with police the night before, including Aggravated Battery on a Law Enforcement Officer/Great Bodily Harm, Trespass on Property After Warning, and Resisting an Officer Without Violence.

On January 21st, 2025 she was formally charged with Battery on a Law Enforcement Officer, which is a third-degree felony under Florida law; nine months later, she pled *nolo contendre,* and the Court found her guilty, withholding adjudication. She was sentenced to four days of incarceration, with credit for time served, and 12 months of supervised probation. Conditions of her probation included abstaining from illegal drugs and alcohol, adhering to her prescribed medications, completing an anger management class, completing 35 hours of community service at a non-profit, and – last but not least – writing a letter of apology to the officer she attacked.

The “withholding adjudication” part was new to me and perhaps to you. Her felony conviction is entered for disciplinary purposes but was not adjudicated as a standard conviction. Per Florida statute 948.01, it allows courts to withhold adjudication when the defendant “is not likely to engage in a criminal course of conduct again.” She can legally answer “no” to the question of whether she’s ever been convicted of a felony and won’t suffer the other penalties that would usually apply – no voting, no firearms, etc.

The Supreme Court has referred the matter to the Chief Judge of the 10th Judicial Circuit for the appointment of a referee to conduct a sanctions hearing. She must also comply with Rule 3-5.1(h) and if applicable 3-6.1. The Court’s Disposition suspended airman Roper from the practice of law on November 21, 2025; she can accept no new clients until she is reinstated, on a date to be determined by the Referee.

Admittedly we don’t know at this stage what caused this experienced legal aviatrix -- whose firm has a 2026 Martindale-Hubble Distinguished peer rating -- to swerve into some really fearsome buildups. Presumably that will come out in the sanctions phase of the matter. We can wish her the best and hope that the shakeups she’s had in the ethical turbulence will get her back on course.

Words Not to Live By: “What, you trusted me??”

In the Matter of Rosanna Pilar Mitchell, SBC-23-N-30325; SBC- 23-O-30326 (consolidated), February 28, 2025

The field of commercial aviation is, as we've oft noted before, built on trust largely, but not entirely, running from the paying passengers to all levels of this multileveled transportation enterprise we shorthandedly call Aviation. It starts with the aerospace companies who design and build the aircraft, the FAA and its international duplicates who oversee the integrity and quality of designs and production facilities, to the ATC system and finally to the flight crews who have it all on the line. The system can't tolerate personnel who shuck off their responsibilities.

The same can be said of the relationships between legal aviators and their passengers. The pax expect a safe transit along the legal airways and straightforward, if not necessarily detailed, information about the flight's progress. When the information for the passengers is incorrect or purposely misleading, the legal aviator has a guaranteed appointment with towering ethical buildups.

The first thing to note about our legal aviatrix Rosanna Mitchell is that this was not the first time she found herself in the glare of the investigatory klieg lights. She was admitted to practice in California in December 2000, and had one prior record of discipline. This one record was a quite substantial one, though. On June 28, 2021, the Hearing Department found her culpable of four counts of misconduct with her passengers in three matters: a moral turpitude violation for dishonestly claiming she had a lien against a passenger's property and using that as

leverage to receive her outstanding legal fees; failing to provide an accounting to her pax when she improperly included a charging lien in a retainer agreement; and finally, improperly communicating with a passenger represented by another legal aviator.

The hearing judge assigned aggravation for multiple acts of misconduct and failure to pay restitution; mitigation was credited for absence (at that time) of a prior record of discipline, her good character and acts of community service, and cooperation for entering into a detailed stipulation of facts concerning her behaviors.

For aviatrix Mitchell's various ethical violations, the hearing judge recommended a two-year stayed suspension, an actual suspension of six months, and a two-year probationary period to stay within the legal airways. The Supreme Court adopted the recommendation on November 15, 2021, and ordered Mitchell to "comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order." (S270462)

To make sure these time bookmarks were noted by our aviatrix, the same recommendation included a footnote alerting Mitchell that for purposes of compliance with rule 9.20(a), the operative date for identifying clients and others to be notified is the *filing* date of the Supreme Court order – in this case, November 15th - and not any later "effective" date, December 15th here. The Supreme Court order also pointed out that failure to comply with rule 9.20's particulars "may result in disbarment or

suspension." With these somber reminders, the Hobbs meter started clicking down to her required passenger-notification-completion date of November 15th 2021. Her time in the chocks was set to begin on December 15, 2021 when her suspension from the legal airways was to begin.

When the Supreme Court deadline for informing her passengers and transferring their travels to another legal carrier came up on November 15th our aviatrix actually had several passengers still on her passenger list. She believed that if she was no longer flying them anywhere when her suspension went into effect on December 15th, she could avoid having to comply with the rule 9.20 client notification requirements.

Aviatrix Mitchell left substitution of attorney forms and her signature stamp with her office staff and looked to associate Mario Rivas to execute the forms. She took no steps to ensure that the substitution of attorney forms would actually be filed and at her subsequent disciplinary trial she blamed her associate Rivas for failing to file them.

The ATC transcripts show that during this period she was aviating without an ATC clearance. Examples? On December 2nd, aviatrix Mitchell appeared remotely for a trial setting conference in passenger Raquel Casas's case. On December 14th, she again appeared remotely, this time in pax Illiani Allured's matter. She did not provide the required ATC notice of her grounding to her passengers but instead emailed them on December 8th, 2021 breezily stating she would be

taking some “personal time off” and would handle their cases when she returned.

On January 21, 2022, aviatrix Mitchell filed her rule 9.20 compliance declaration stating that as of the date upon which the order to comply with rule 9.20 was filed, she had no legal pax in the cabin, and she did not represent any in pending matters.

These representations were, alas, false. She was flying the legal airways without a clearance on several active passenger matters at the time of the Supreme Court’s Order which constituted Rule 9.20 violations.

Aviatrix Mitchell represented one Brandie Ramirez in a divorce and child custody case. On November 23, 2021, after the Supreme Court Order was filed on November 15, Ramirez and our aviatrix signed a substitution of attorney form which substituted her out of the case. Timing is everything, though; the form was signed on November 23, 2021 but not filed until February 8, 2022, well after the effective date of Mitchell’s suspension on December 15, 2021. Our aviatrix blamed her passenger Ramirez for not filing the substitution of attorney form after it was signed on November 23, 2021. Not a good look, is it?

She also represented Raquel Casas in a family law case and a child support case. We've already noted that she appeared remotely on behalf of Casas on December 2, 2021, in the family law case. On that same day, our aviatrix had her staff convince Casas she did not *need* Mitchell's continued representation in the child support case, and had Casas sign a substitution of attorney form to proceed as self-represented.
In January 2022, Casas saw an article in a local newspaper announcing our aviatrix's suspension. Distressed by this discovery, Casas borrowed money to hire a new legal airman who started on January 28 and filed a substitution form on February 4. Casas requested an accounting from aviatrix Mitchell's office twice; she never received one. Another deviation from the designated airways.

On to another passenger: aviatrix Mitchell initially represented one Illiani Allured as a passenger in a dependency case and then took on both a criminal law case and a family law case. On November 30, 2021, Allured's father paid our aviatrix $5,000 for just the criminal case and with the cash in hand, Mitchell told Allured that an associate would help with the cases while she was on "vacation." Allured believed our aviatrix would remain her attorney and would work on her cases after the "vacation." Mitchell did not disclose her suspension to Allured.

On December 13, 2021, Allured and our aviatrix signed a substitution of attorney form to bring Rivas into the family law case and the next day, Mitchell appeared remotely in the family law case.

For whatever reason -- we can think of several, no? -- in January 2022, Ms. Allured went searching for aviatrix Mitchell's name on the State Bar website. There she learned of Mitchell's suspension.

And doubtless thought of her father's handover of $5,000.

Next, aviatrix Mitchell represented Carl Smith in a child custody case. On December 12 and 13, 2021, Smith signed two forms to substitute Rivas into the case as Smith was told Mitchell was expanding the firm. Mitchell signed a substitution form on December 13, and it was not filed until January 31, 2022. She was unqualified for the legal airways on these dates.

Our aviatrix represented one Cathleen Fuller in a marriage dissolution case. On December 8, 2021, passenger Fuller agreed to substitute Rivas into her case. On December 14, aviatrix Mitchell appeared remotely in the case. The substitution form was not filed until December 29, after she was suspended.

Opposing counsel learned of Mitchell's suspension in January 2022, when he was preparing to serve a pleading on her and asked his staff to check her address on the State Bar website. Fuller herself learned of Mitchell's suspension in January by reading a newspaper article it.

By now you're thinking (and/or hoping) that we've exhausted this bumper crop of ethical buildups penetrations by our aviatrix. Alas, you would be wrong. Because there were airway deviations by her that *preceded* the November 2021 Supreme Court Order. Let's look under *that* rock, shall we?

One Yolanda Cervantes hired aviatrix Mitchell on November 7, 2019, to work on a family law case. She paid $5,000 in advanced fees and signed an hourly fee agreement providing our aviatrix would have a lien on any money or property awarded to Cervantes. Our aviatrix did not advise Cervantes in writing that she could seek the advice of independent counsel regarding the potential conflict of interest created by the lien, as good airmanship would require.

Cervantes became dissatisfied with Mitchell's representation and requested an accounting in January 2020, because she wanted a refund. Cervantes terminated Mitchell's representation on February 11 and a substitution of attorney form was filed on February 20, 2020 when our aviatrix was already grounded.

Cervantes called Mitchell's office multiple times requesting billing statements and a refund. Once, she spoke directly to our aviatrix who told Cervantes to stop with the calling already and then hung up on her.

Cervantes initiated a fee arbitration on the matter and it occurred the following year on February 3, 2021. The arbitrator found that our aviatrix never provided Cervantes with billing

statements and awarded $4,550 of the $5,000 paid to Cervantes. Cervantes and Mitchell settled the dispute with our aviatrix paying back $3,000 of the $5,000 fee. It's hard for me to see where that $2,000 of services Cervantes paid for was.
Another passenger left hanging: Elodia Sanchez paid aviatrix Mitchell $3,500 in advanced fees to represent her in a probate case but then terminated Mitchell in August 2020. On September 15, Mitchell returned a signed substitution form to substitute attorney Mark Regus into the case. Sanchez called and emailed Mitchell requesting a receipt for services and a refund of unearned fees. Mitchell replied via email claiming it was "against State Bar rules" for Sanchez to contact her and advised that new attorney Regus could reach out to her anytime.

Regus then made requests for a copy of the file and an accounting or refund on September 24, October 12, and December 17, 2020, and January 6, 2021. On January 20, 2021, Mitchell attached two documents to an email to Regus labeled "Billing" and "Invoice" and finally on March 3, Mitchell refunded Sanchez $1,792.66 of the $3,500 she had been paid.

The Court found on its review that the charging authority had clearly proven the case against our aviatrix. She had failed to follow the client notification requirements of Rule 9.20, which was designed to ensure that all the concerned parties - including clients, cocounsel, opposing counsel or adverse parties, and any tribunal in which litigation is pending – would learn about a legal aviator's discipline. Aviatrix Mitchell had trusting passengers Ramirez, Casas, Allured, Smith, and Fuller all aboard her aircraft at the time the Supreme Court order was

filed on November 15, 2021 and was required to notify all of them by registered or certified mail of her impending suspension. She was thus found culpable for failing to comply with rule 9.20(a)(1) and (b).

She was also found to have made false statements to her passengers amounting to moral turpitude under Business and Professional Code § 6106, which provides that a legal aviator may be disbarred or suspended for the commission of any act involving moral turpitude, dishonesty, or corruption. Rule 9.20(d) also states that "willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation." The hearing panel found that Mitchell had committed intentional misrepresentations in violation of section 6106 by falsely stating in her rule 9.20 declaration that, as of November 15, 2021, she had no pax aboard her aircraft and did not represent any in any pending matters when she clearly knew this was false.

The panel noted that honesty is absolutely fundamental to the practice of law because without it "the profession is worse than valueless in the place it holds in the administration of justice." (Tatlow v. State Bar (1936) 5 Cal.2d 520, 524) The rule 9.20 compliance declaration form is clear and direct, the panel noted, using simple checkboxes for attorneys to provide answers about their compliance. Mitchell did not tell her passengers Ramirez, Casas, Allured, Smith, or Fuller that she was suspended; instead she actively avoided disclosure and instead sent out a mass email saying she "needed personal time off" and would "still be handling" cases when she returned; she verbally told Allured she was going on "vacation." Mitchell falsely stated on the

declaration form that she had no clients and did not represent any at the time the Supreme Court order was filed. The form clearly conveyed that the operative date was the date upon which the Supreme Court order was filed, and it should have alerted Mitchell to any earlier mistaken belief that she could simply substitute out of her cases instead of informing her pax of her suspension.

The Panel found that Mitchell's intentionally dishonest statements in her rule 9.20 compliance declaration violate "the fundamental rule of ethics—that of common honesty." (Tatlow v. State Bar, supra, 5 Cal.2d at p. 524.) For these reasons, it found that Mitchell committed an act of moral turpitude and affirmed the hearing judge's finding of culpability.

The other issue we'll note briefly here was that of aviatrix Mitchell taking out a lien against a passenger in order to protect her collection of a fee. Under rule 1.8.1 of the Rules of Professional Conduct, if a legal aviator acquires a pecuniary interest adverse to a passenger who is not represented by independent counsel in the transaction or acquisition, the passenger must be informed in writing to seek the advice of independent counsel and give the pax a reasonable opportunity to seek that advice. The pax must then provide informed written consent to the terms of the acquisition. Our aviatrix did not follow this rule when she entered into the agreement with pax Cervantes in November 2019 and acquired a lien on money or property awarded to Cervantes in her family law case. Accordingly, the panel found Mitchell is culpable for violating rule 1.8.1.

Our aviatrix was also found to have stiffed passengers Cervantes and Sanchez who each repeatedly asked for accountings in their cases which were either ignored entirely or produced so late as to be a constructive failure under Rule 1.15(d)(4) of the Rules of Professional Conduct, which requires an attorney to promptly account in writing to a client for whom the attorney holds funds or other property. She also failed to timely refund unearned fees collected from these pax as required by RPC Rule 1.16(e)(2)

The Panel reviewed the factors of aggravation and mitigation and, unsurprisingly, found lots of the former and essentially none of the latter. She had a record of prior disciplinary action and here committed multiple, egregious and purposeful acts of wrongdoing. Her explanations for her failures were attempts to transfer blame to others. We'll leave it at that.

The Panel found, as had the Hearing Judge, that aviatrix Rosanna Pilar Mitchell's "dishonesty and subsequent indifference" warranted her permanent banishment from the legal airways and recommended that result to the California Supreme Court. It further recommended she pay $3,000 into the state's Client Security fund and directed that costs of the proceedings be assessed.

We'll see how that turns out. It would be extremely surprising, in my view, if the Supreme Court does not clip her wings.

Hopefully the lessons learned by our legal aviators in the cases we've reviewed today will remind us that no good ever comes from penetrating the ethical buildups. There's only spar-shredding downdrafts in there.

Have safe flights, and happy landings.