KELLY B. MATHIS

Mr. Mathis practices primarily civil litigation in Jacksonville, Florida. For the last 17 years he has also developed substantial experience in gaming and gambling law.

EDUCATION:

Florida State University, (BS with honors, 1985, cum laude)
Vanderbilt Law School, (JD 1988)

MEMBER:

Florida Bar (1988)
Georgia Bar (2001)

ADMITTED TO:

All States and County Courts, State of Florida
United States District Court, Middle District 1988
United States District Court, Northern District 1992
United States Court of Appeals, Eleventh Circuit 1988
United States Supreme Court

President, Jacksonville Bar Association 2006-2007
President, Jacksonville Area Defense Counsel 2003-2004

Publication:
Internet Cafes: Much Ado About Nothing—A Legal Analysis of Electronic Sweepstakes in Florida by Miriam S. Wilkinson and Kelly B. Mathis, 16 Gaming Law Review and Economics 5, published 2012

Ethics: The Legal Profession Under Attack – A True Nightmare

Kelly B. Mathis, Esq.
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When is an attorney subject to criminal prosecution for providing legal representation?

I. Civil Malpractice Standard

Error

The law is clearly settled that an attorney's error on a point of law is not sufficient to establish legal malpractice in a civil context. See, *Kaufman v. Stephen Cahen, P.A.,* 507 So. 2d 1152 (Fla. 3d DCA 1987). In *Kaufman*, the court cited approvingly the following language:

> [A]n attorney who acts in good faith and in an honest belief that is advice and acts are well-founded in in the best interest of his client is not answerable for a mere error in judgment or for a mistake in a point of law which has not been settled by the court of last resort in his State and on which reasonable doubt may be entertained by well – informed lawyers.

Kaufman at 1153. Thus, even if an attorney is wrong, this error would not subject the attorney to legal malpractice.

Judgmental Immunity

Indeed, the Florida Supreme Court has clearly recognized the judgmental immunity of an attorney providing legal advice. See, *Crosby v. Jones*, 705 So. 2d 1356 (Fla. 1998). In *Crosby*, the court recognized that an attorney is not an insurer of the outcome of a case and that decisions made on a fairly debatable point of law are generally not actionable. *Id.* at 1358. "The rule of judgmental immunity is

premised on the understanding that an attorney, who acts in good faith and makes a diligent inquiry into an area of law, should not be held liable for providing advice or taking action in an unsettled area of law." *Id.* The Florida Supreme Court approvingly quoted the following language:

> As a matter of policy, an attorney should not be required to compromise or attenuate an otherwise sound exercise of informed judgment with added advice concerning the unsettled nature of relevant legal principles. Under the venerable error – in – judgment rule, if an attorney acting in good faith exercises an honest and informed decision in providing professional advice, the failure to anticipate correctly the resolution of an unsettled legal principle does not constitute culpable conduct… In short, the exercise of sound professional judgment rests upon considerations of legal perception and not prescience.

Id. citing *Davis v. Damrell*, 119 Cal. App. 3d 883, 174 Cal. Rptr. 257, 260 – 61 (1981). In holding, as a matter of law, that the attorney was not even required to inform the client of conflicting case law, the court affirmed summary judgment in favor of the attorney. *Id.* at 359.

In another legal malpractice action decided in favor of the attorney on summary judgment the Second DCA held as follows:

> In a motion for summary judgment which was denied, appellees argued that the court need find not only attorney error but must also determine whether the error related to a point of law so settled that the attorney's advice would not fall within the doctrine of judgmental immunity. The trial court did not expressly rule on the judgmental immunity issue, but we find that the question of whether the statute of limitations began running upon entry of the judgment of foreclosure or upon the November 1975 entry of the deficiency judgment against appellants personally, or upon resolution of the appeal from either order, to be a fairly debatable point in law. Therefore, appellees' good faith exercise of professional judgment is protected and no claim for negligence may be premised thereon.

Meir v. Kirk, Pinkerton, McClelland, Savary and Carr, P. A., 561 So. 2d 399 (Fla. 2d DCA 1990)(citations omitted).

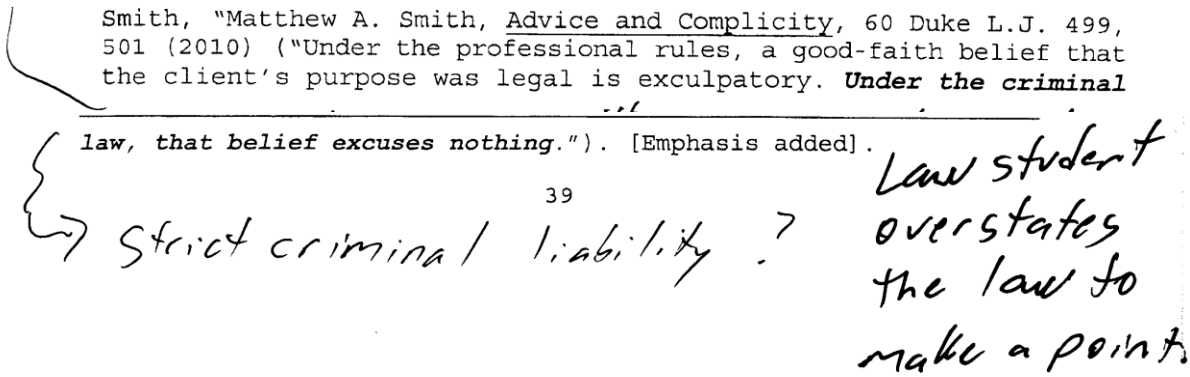
Notably, the trial court recognized that the legality of internet cafes involved "a very technical area" (R. 36-4277) and acknowledged that the law in this area was "subject to interpretation." (S. 156).[5]

II. Professional/Ethical Rules

The Florida Bar, Rules of Professional Conduct, describe a lawyer's responsibilities as follows:

> **Preamble: A Lawyer's Responsibilities**
>
> As a representative of clients, a lawyer performs various functions. **As an adviser**, a lawyer provides a client with an informed understanding of the client's legal rights and obligations explains their practical implications. **As an advocate**, a lawyer zealously asserts the client's position under the rules of the adversary system. **As an evaluator**, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

The Affidavit relied upon for Mathis' arrest noted that Mathis did not provide traditional "after-the-fact" legal assistance. On appeal, the State argued:



In pre-trial proceedings, the State claimed that advocating for his clients was sufficient to justify a RICO conviction. "If the acts by which Mr. Mathis may be said to be practicing law, in fact, were promoting the activities of this enterprise, this criminal enterprise, that those activities could in fact very well be the same criminal acts which would be punished." (Supp. R. 4677, pre-trial hearing).

RULE 4-1.2 OBJECTIVES AND SCOPE OF REPRESENTATION

> (d) Criminal or Fraudulent Conduct. A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer *knows or reasonably should know* is criminal or fraudulent. However, a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

Restatement:

> For purposes of professional discipline, a lawyer may not counsel or assist a client in conduct that the lawyer knows to be criminal or fraudulent or in violation of a court order with the intent of facilitation or encouraging the conduct, but the lawyer may counsel or assist a client in conduct when the lawyer reasonably believes: (a) that the client's conduct constitutes a good-faith effort to determine the validity, scope, meaning, or application of a law or court order; (b) that the client can assert a nonfrivolous argument that the client's conduct will not constitute a crime or fraud or violate a court order.

Restatement of the Law Governing Lawyers, Third, at §94 (2). Thus, it is not sufficient to prove that the attorney should have known (a negligence standard) that the conduct was criminal but that the lawyer actually knew that it was criminal and that there were no non-frivolous arguments to be advanced to the contrary.

III. Criminal standard

It is when the requirements of the law are unclear that the public, and our system, needs lawyers to interpret and seek to apply the law to the client's particular factual situation. This is the essence of the practice of law. Simply, if the law is clear, legal advice and guidance is not necessary. However, it is exactly when the law is not clear that the prosecution seeks to step in and convict an attorney for that advice. There are a greater number of laws that have potential criminal consequences than ever before. If lawyers are prevented from providing advice and guidance to clients merely because the applicable law may have potential criminal consequences they could provide very little effective service to their clients.

There is a tremendous chilling effect if attorneys are not able to advise clients when the law is not perfectly clear, when the law may have criminal implications, or when legal counsel is simply unwilling to aggressively assert their client's position for fear of personal prosecution. In other words, must all lawyers advise client's to take only an extremely conservative position to preclude any argument from the prosecutor that the argument was close to, or over, the line?

Prosecution Theory

Answer Brief:

What Appellant refused to grasp was that such opinion testimony was irrelevant to the criminal trial below. The question was not what someone thought the law was, or wanted it to be; rather, the question was what the law was and did the actions of this particular defendant violate that law.

Strict liability

If the prosecution thinks you are wrong and gets a single judge to go along there is criminal liability. This standard is more than strict liability. If the prosecutor has an argument that you are wrong, there can be a criminal conviction. Isn't this every court hearing? What if the court of appeals disagrees? Is the trial judge subject to liability? What if the Supreme Court disagrees? This is a ruling that the lower court judges were wrong.

TRIAL

Opening

References by prosecution regarding legal advice/legal representation:

- "…our charges relate to his practice of law…" [voir dire; Tr. 520, line 3]
- "… a couple of attorneys general had issued opinions…and said this was illegal" [opening; Tr. 792, line 3-4]
- "one of the attorney generals…had written Mr. Mathis a letter…saying it was illegal" [opening; Tr. 792, line 6-10"
- "…none of this probably would have gone on without him saying its okay…" [opening; Tr. 815, line 14-15]
- "…if he had said, hey, this is a real risk or this is illegal, like the attorney general opinion said, they wouldn't have done it." [opening; Tr. 815, line 18-20]

Evidence

Customers

Plug pullers

Investigating officers

Former clients

References by prosecution regarding legal advice/legal representation:

- "…if Mr. Mathis had told you that this plan, this business plan, that you-all were trying to do was illegal or criminal, what would you have done?" A: "I would not have done it." [Anthony Parker; Tr. 1563, line 23 to 1564, line 2]

- "Is it fair to say you believe this was a sweepstakes in Florida because Kelly Mathis told you that?" A: "Yes." [Michael Graham; Tr. 1634, line 16-18]

- "Let me ask you Mr. Graham, had Kelly Mathis told you that this venture was risky or that it was illegal, would you have done this in Florida." A. "No." [Michael Graham; Tr. 1665, lines 7-10]

- "If Mr. Mathis had told you-all that it was a risky venture or that it was illegal, would you have done it?" A: "No." [Michael Ryles; Tr. 1814, lines 23-25]

Couldn't put on any evidence regarding legal opinion, context.

26.7 RICO — CONDUCT OF OR PARTICIPATION IN AN ENTERPRISE THROUGH A PATTERN OF RACKETEERING ACTIVITY
§ 895.03(3), Fla.Stat.

To prove the crime of Unlawfully [Conducting] [Participating in] an Enterprise, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was [employed by] [associated with] an enterprise.**

2. (Defendant) **[conducted] [participated in], directly or indirectly, such enterprise by engaging in at least two of the following incidents**. *Read incidents alleged in information.*

3. **Of those incidents in which** (defendant) **was engaged at least two of them had the same or similar [intents] [results] [accomplices] [victims] [methods of commission] or were interrelated by distinguishing characteristics and were not isolated incidents.**

Closing

- "And they all acted because he said it was okay, because he said it wasn't a risk. He didn't tell them that it was illegal. That's why we're here." [Closing, Tr. 3943, line 20 - 22]

- "Four times I heard during the course of this, he was just a lawyer. He was only a lawyer. That's the problem. That's the problem. He was a lawyer. If anybody out of the fifty-seven defendants that were involved in this, if anybody knew better about what the law said, it was him. It was him." [Closing, Tr. 3943, line 14-19]

- "You know, it's not only – it's aggravated because he was a lawyer and he knew better." [Closing, Tr. 3944, line 1 - 3]

- "You know, the Defense kept on talking to you about – about he's only an attorney, he was just an attorney, and how he acted like an attorney. The problem is in this case, you can't hide behind the Florida Bar. You can't hide behind your Bar card." [Closing, Tr. 3962, line 18 - 22]

In Re Watts, 190 U.S. 1 (1903).

There, lawyers advised their clients in good faith that state, not federal, courts had bankruptcy jurisdiction over a certain property in the hands of a state receiver. This advice led to a collision between the state and federal courts, and criminal contempt citations for the lawyers. The argument was that the improper

actions taken by their clients was pursuant to their legal advice, therefore they were subject to criminal contempt for giving such advice. Although the court held that the lawyers' advice was substantively incorrect, it refused to allow the federal contempt convictions to stand because there was no evidence the advice was given in bad faith. Id. at 32. Mr. Chief Justice Fuller, speaking for the Court, said:

> In the ordinary case of advice to clients, if an attorney acts in good faith and in the honest belief that his advice is well founded and in the just interests of his client, he cannot be held liable for error in judgment. The preservation of the independence of the bar is too vital to the due administration of justice to allow the application of any other general rule.

Id. at 29.

The prosecution of legal counsel for actions taken in the scope of the legal representation, such as that in Mathis, is exceedingly rare. However, a law review article has commented on just such actions:

> Some aggressive state and federal prosecutors... have sought to evade both the advice- of-counsel defense and attorney-client privilege by joining both clients and their lawyers as defendants in criminal prosecutions. The clients, of course, are charged with acting in violation of the law. The attorneys, however, are forced to face criminal charges and possible imprisonment because of advice they gave in good faith in the course of a legitimate attorney-client relationship. The opportunity for abuse is enormous because the scope of prosecutorial discretion is virtually unlimited.

Joel Cohen & Norman Bloch, Can Lawyers Be Prosecuted For the Advice They Give?, 206 N.Y. L. J. 1, 5 (1991) (emphasis in original) noting that this tactic has been used in past white collar crime investigations "begun by prosecutors so displeased with the acts of individuals, that they not only chose to prosecute them,

but also want to indict their lawyers for having given them what the prosecutors perceive to be "questionable' advice in the first place." *Id*. at 1.

Vinluan v. Doyle, 60 A.D. 3d 237 (NY 2009).

In Vinluan, several nurses sought legal consultation regarding the terms of their employment contract. The attorney advised the nurses that they were within their legal rights to simply not show up for their next scheduled shift at work. The prosecutor claimed that the lawyer's advice caused patient endangerment since the patients were suddenly without sufficient medical care. Charges were brought against the lawyer and the nurses. The trial court denied the attorney's motion to dismiss and the appellate court reversed. The court did not engage in a detailed analysis whether the attorney's advice was absolutely correct but merely concluded that it was objectively reasonable. The court was very concerned with the real chilling effect that existed for the prosecution of an attorney giving legal advice to clients. It stated:

> We cannot conclude that an attorney who advises a client to take an action that he or she, in good faith, believes to be legal loses the protection of the First Amendment if his or her advice is later determined to be incorrect. Indeed, it would eviscerate the right to give and receive legal counsel with respect to potential criminal liability if an attorney could be charged with conspiracy and solicitation whenever a District Attorney disagreed with that advice. The potential impact of allowing an attorney to be prosecuted in circumstances such as those presented here is profoundly disturbing. A looming threat of criminal sanctions would deter attorneys from acquainting individuals with matters as vital as the breadth of their legal rights and the limits of those rights. Correspondingly, where counsel is restrained, so is the fundamental right of the citizenry, bound as it is by laws complex and unfamiliar, to receive the advice necessary for measured conduct.

> Moreover, by placing an attorney in the position of being required to defend the advice that he or she has provided, the State compels revelation of, and thus places within its reach, confidential communications between attorney and client. Such communications have long been held to be privileged in order to enable citizens to safely and readily secure "the aid of persons having knowledge of the law and skill[ ] in its practice" (Hunt v Blackburn, 128 US 464, 470 (1888). A prosecution which would compel the disclosure of privileged attorney-client confidences and potentially inflict punishment for the good faith provision of legal advice is, in our view, more than a First Amendment violation. It is an assault on the adversarial system of justice upon which our society, governed by the rule of law rather than individuals, depends. The respondent Thomas J. Spota, District Attorney, is prohibited from prosecuting the petitioners.

Vinluan, 60 A. D. 3d at 251.

United States v. Anderson,

Criminal indictment of two healthcare attorneys. However, although their clients were convicted at trial, the attorneys were acquitted. In Anderson, the criminal indictment alleged that the attorneys had prepared contracts, legal analysis, and other documents designed to fraudulently concealed monetary bribes and to aid their co-conspirators in avoiding regulatory scrutiny. Essentially, the healthcare attorneys drafted consulting agreements between physicians and hospitals. The prosecution claimed that these agreements were shams in order to disguise illegal bribes for patient referrals. Therefore, the prosecution claimed, that the attorneys facilitated the payment of bribes by drafting the agreements and discussing the structure of the physician/hospital relationship. The attorneys in Anderson were allowed to introduce testimony of expert witnesses to show that

their advice met or exceeded existing standards. In Anderson, the District Court acknowledged:

> The state of the law was in flux; and [Lehr and Anderson] adapted their advice to it as it changed … The problem here is that a very simple concept [of] "payment for patients is illegal," became far from simple as Congress, the Executive Branch, and the Courts got more deeply involved.

What the evidence unassailability demonstrated is that [Lehr and Anderson] steadfastly maintained to their clients that if fair market value [was] paid for the [LaHues'] practice or for legitimate consulting services, the relationship passed legal scrutiny. Nothing in the evidence or the law suggests otherwise … [E]ach time it came to their attention that there was a potential compliance problem, they urged their clients to make sure that fair market value for real services was being required.

United States v. Lauren Stevens, No. 10-cr-694-RWT (D. Md.)

- Indictment of associate general counsel of Glaxo Smith Kline.
- FDA letter inquiry.
- The indictment alleged that Stevens failed to reveal information and falsely asserted that GSK had not promoted Wellbutrin for off label purposes when she knew this was not correct. In addition, it alleged the indictment alleged that a statement she wrote in a letter to the FDA was false.
- The government accused Stevens of obstructing an FDA investigation by virtue of her legal advice.
- The defense position was that the allegedly false statements were merely legal arguments and well within the bounds of effective advocacy.
- The trial court granted the motion for judgment of acquittal on the grounds that she was engaged in bona fide legal representation of a

client, even if the responses had not been perfect. The court noted that:

[A] lawyer should never fear prosecution because of advice that he or she has given to a client who consults him or her… There is enormous potential for abuse in allowing prosecution of an attorney for the giving of legal advice. . . [T]he Court should be vigilant to permit the practice of law to be carried on, to be engaged in, and to allow lawyers to do their job of zealously representing the interests of their client. Anything that interferes with that is something that the court system should not countenance.

Order on Motion for Judgment of Acquittal at 10.

Mens Rea

In its amicus brief in Mathis, the NACDL explained the application of the mens rea requirement as follows:

> The State is clearly required to prove that the defendant actually intended to do the act that the law proscribes. See e.g., United States v. Haun, 494 F. 3d 1006 (11th Cir. 2007) (charged with communicating a false distress signal to the Coas Guard, the defendant was not permitted to argue that he was unaware that providing a false distress signal was a crime, but he prosecution was required to prove that the defendant knew the distress signal he communicated was false). In this case the act alleged is the proffer of erroneous advice to a client. As such, the State must prove that the defendant understood that the advice he gave was both wrong and that he intended to communicate such incorrect advice to his client. The fact that such advice was based on the attorney's interpretation of the law does not remove it from the jury's contemplation. …[T]he jury was not tasked with determining the accuracy of Mathis's legal advice, but they were tasked with determining whether or not Mathis knew he was offering erroneous advice at the time he gave it.

The State continued to argue:

> To support the conviction the State argued: "Several of Mr. Mathis's co-conspirators testified that they would not have entered into their gambling businesses unless Mr. Mathis had counseled them their actions were legal under Florida law**. He was wrong**." [R. 2862-2863]. "Like Mr. Cheek or any other lawbreaker, the Defendant took the risk of being wrong. Unfortunately, this bet went against him." [R. 2861]

Its brief included the following argument:

> Appellant mistakenly posits that because he was not an officer, director, owner, manager or direct recipient of profit percentages of proceeds of the illegal activities of the affiliate locations, he cannot have "participated" in the racketeering enterprise. Not so. Appellant's role placed him in a unique position to exert control or direction over the affairs of the racketeering enterprise even though not designated as an officer, director, owner, or manager. RICO laws are intended to encompass all participants in the racketeering enterprise, both leaders and foot soldiers. See generally Keesling v. Beegle, 880 N.E.2d 1202

the same could be said of every attorney

Mathis v. State, 208 So.3d 158 (Fla. 5th DCA 2016)

The Fifth District in *Mathis* limited its holding regarding criminal culpability of attorneys based on a mens rea analysis. It found that RICO was not a strict liability offense but required mens rea, proof that Mathis knew he was committing a criminal act. In this context the proof would require that the attorney know that the

advice was given with the purpose of furthering a criminal enterprise. In Mathis the court recognized the appropriate burden of proof for criminal liability for legal representation. It is more than mere error, negligence or even gross negligence. Instead, actual knowledge of false legal advice and intent to further a criminal endeavor are appropriate.

The *Mathis* opinion, however, is limited to crimes with an acknowledged mens rea requirement. In that respect, the opinion does not go far enough. Mathis was also charged with, and convicted of, possession of slot machines in violation of § 849.15, Fla. Stat. There was no evidence that Mathis had slot machines in his law office or that he had even been to many of the locations that his clients operated. The question of whether an attorney can be charged with constructive possession of his client's objects merely because he provides legal representation remains unanswered. What if a client brought in a computer to the attorney's office to seek a legal opinion whether it was a slot machine under Florida law? Later the jury concludes that it is, in fact, a slot machine. Does the attorney's possession of the machine for purposes of rendering the legal opinion constitute a crime? What if the attorney concluded that it was not a slot machine? Would that be a defense since there is no mens rea requirement for the crime?

The special role of legal counsel in the administration of the judicial system should be recognized and applied. It is particularly when the area of law is technical or gray that the public most needs legal guidance. Prior to the Fifth District's reversal in Mathis, the risk of criminal conviction for the attorney giving

legal advice in those circumstances would have been the greatest and few would have ventured into that arena, leaving the public without legal assistance when it was needed most.

The bar associations should take a more active role in protecting attorneys that are legitimately practicing law from being subject to criminal prosecution. The legal system depends on the attorney being able to evaluate legal issues, provide advice and representation to clients, particularly where the law is unclear, and advocate for that client when there is a plausible legal argument.

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Executive Biography

Mark C. Fava
Vice President & Ombudsperson – Organization Designation Authorization,
The Boeing Company
Chief Aerospace Safety Office

Mark C. Fava is the Ombudsperson serving Boeing employees who hold Organization Designation Authorization (ODA) from the U.S. Federal Aviation Administration (FAA). The ODA program authorizes selective Boeing employees to certify compliance on behalf of the FAA. Appointed to this new role in 2022, Fava advises ODA representatives with any concerns, including those related to independence and transparency. He also provides updates to the Aerospace Safety Committee of the Boeing Board of Directors related to any trends raised by ODA unit members.

Prior to this role, Fava served as chief counsel for Boeing's Engineering, Regulatory & South Carolina Operations. Hired in 2010, he was the first chief counsel for the South Carolina site, managing all legal matters related to the company's growth and presence in South Carolina. Fava's responsibilities were later expanded to encompass Boeing Commercial Airplanes' FAA regulatory and compliance issues and advising the company's chief engineer and senior vice president of Engineering, Test & Technology.

Fava is a veteran, having served in the U.S. Navy as a Naval Flight Officer and Mission Commander in the P-3 Orion, accumulating more than 3,000 flight hours. He was the Commanding Officer of three navy units including a P-3 squadron and a member of the National Navy Reserve Policy Board. Fava is the recipient of three Legion of Merit Awards and multiple individual service awards. He retired in 2015 from the navy reserve as a Captain with 30 years of service.

Fava is admitted to practice law in South Carolina, Georgia, and Washington, DC. Before joining Boeing, he led a national aviation law practice at a major law firm. From 2001 to 2004, he worked as the chief operations attorney for Delta Air Lines, Inc. He began his legal career in 1994 as a federal judicial law clerk in Charleston.

Fava is a member of the Board of Directors of the Southeastern Wildlife Exposition. He is a bestselling author and entertaining speaker. His first book *Lessons from the Admiral, Naval Wisdom and Sea Stories for Leaders*, was published in January 2025.

Fava is a graduate of the University of North Carolina at Chapel Hill and the University of South Carolina School of Law. He has taught Legal Writing and Oral Advocacy and Aviation Law as an adjunct law professor.

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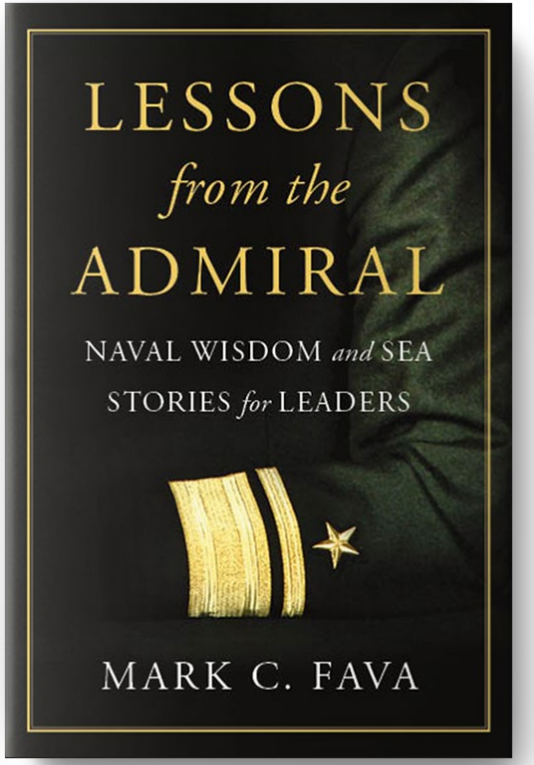
March 2025

Mark C. Fava

Lawyer Pilot Bar Association
Winter Conference
March 13, 2025



LAWYER-PILOTS BAR ASSOCIATION

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WHAT IS THE *BEST* TEAM YOU EVER WORKED ON ?

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WHO IS THE *WORST* TEAM YOU EVER WORKED ON?

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THE TRUE TEST OF TEAMWORK AND LEADERSHIP OCCURS WHEN THINGS DON'T GO AS PLANNED OR BAD THINGS HAPPEN.

Legacy Leadership | CRISIS

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INCIDENT OR ACCIDENT

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SEPTEMBER 11, 2001

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ENTRY OF DEFAULT OR DEFAULT JUDGMENT

Legacy Leadership | CRISIS

RUNAWAY JURY OR ADVERSE FINDING OF THE ADMINISTRATIVE LAW JUDGE

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DELIVER CLEAR EXPECTATIONS TO EMPOWER YOUR TEAM TO ACCOMPLISH THE MISSION.

Legacy Leadership | HUMILITY

ASK FOR HELP WHEN YOU NEED IT. IF YOU MAKE A MISTAKE OR ARE IN TROUBLE, ASK EARLY. THE SOONER THE BETTER.

Legacy Leadership | COMPOSURE

KEEP YOUR COMPOSURE WHEN THINGS ARE NOT GOING WELL. DON’T BE THE ONE WHO ALWAYS PANICS UNDER PRESSURE.

Legacy Leadership | VISIBILITY

AS A LEADER, THEY ARE ALWAYS WATCHING YOU. WHAT YOU SAY, WHAT YOU DO, AND HOW YOU ACT.

Legacy Leadership | TEAMING

ALWAYS BE A TEAM PLAYER. HELP OTHERS AND CONTRIBUTE TO THEIR SUCCESS. TEAM PLAYERS BECOME THE TEAM LEADERS.

Legacy Leadership | DEPENDABILITY

BE DEPENDABLE AND RELIABLE. DO WHAT YOU SAY YOU WILL DO WHEN YOU SAY YOU WILL DO IT. RELIABILITY MATTERS.

Legacy Leadership | INTEGRITY

BE LOYAL TO YOUR CHAIN OF COMMAND, BUT ALWAYS BE GUIDED BY INTEGRITY. DO THE RIGHT THING.

Legacy Leadership | TEMPERAMENT

DON’T BE A SCREAMER. SOME IN CHARGE ARE SCREAMERS, BUT THEY ARE NOT TRUE LEADERS. LEADERS ARE NOT SCREAMERS.

Legacy Leadership | CREATIVITY

BE A CREATIVE PROBLEM SOLVER WHEN THINGS DO NOT GO AS PLANNED. DON’T GIVE UP EASILY.

Legacy Leadership | ACCOUNTABILITY

HOLD PEOPLE ACCOUNTABLE. MAKE THE TOUGH DECISIONS.

Legacy Leadership | GRATITUDE

SAY THANK YOU OFTEN. EXPRESS SYMPATHY, EMPATHY, AND GRATITUDE TO OTHERS AT EVERY OPPORTUNITY.

Legacy Leadership | LOYALTY

ALWAYS TAKE CARE OF YOUR PEOPLE. INVEST IN THEIR FUTURE AND MAKE THEM SUCCESSFUL. DO THIS EVEN IF THEY DECIDE TO LEAVE YOU.

Legacy Leadership | CONCLUSION

BE THE LAWYER THAT LEAVES A LEGACY THAT WILL INSPIRE SOMEONE TO WRITE A BOOK ABOUT YOU.

Legacy Leadership | CONCLUSION

- EXPECTATIONS
- HUMILITY
- COMPOSURE
- VISIBILITY
- TEAMING
- DEPENDABILITY
- INTEGRITY
- TEMPERAMENT
- CREATIVITY
- ACCOUNTABILITY
- GRATITUDE
- LOYALTY

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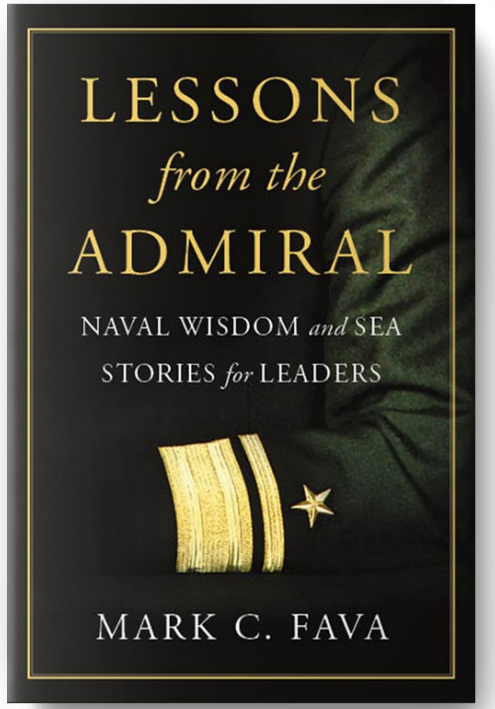


MICHAEL FRANCESCONI

Vice President and Chief Counsel, UPS Airlines

Michael Francesconi serves as the senior legal officer of UPS Airlines, the global aviation backbone of UPS's integrated transportation network comprising flight, maintenance and air gateway teams and supporting assets including Worldport. He leads the airline legal team which manages all legal affairs for this critical UPS business unit including regulatory compliance, contracts, employment, labor, environmental, litigation, procurement, and real estate matters. His team provides advice and counsel to the airline president and other airline c-level managers and their teams, as well as to corporate legal team partners.

Prior to joining the airline in his current role, Michael formed and led the company's first compliance team focused on government contract programs. The team worked to improve service and reduce contract risk with U.S. federal (civilian and military), state and local government contracts for all UPS business units. He was responsible for developing UPS's first integrated government contracts compliance framework, tools and training to optimize compliance with contract obligations.

In other roles with UPS, Michael served as lead counsel to the company's chief procurement officer and the senior business leaders of the procurement, construction and engineering divisions. Prior to that, he served as vice president of International Public Affairs at UPS, where he was responsible for protecting and promoting UPS's network operations, employees and customers through advocacy in law and public policy. With his partners worldwide, he coordinated matters regarding market access and trade facilitation, customs activities and international aviation rights. Prior to that, he was vice president of Public Affairs and Strategic Communications at UPS Airlines (his first tour with the airline), where he chaired the department which managed all external company messaging and the airline's efforts to build cooperative government partnerships, strong employee communications, and positive media relations.

Before joining UPS in 2005, Michael worked as an attorney in private practice at the law firms of Reed Smith Shaw and McClay LLC and Kelley Drye and Warren LLC, both in Washington DC, where he specialized in commercial transactions and government regulatory matters supporting telecommunications, aviation and transportation corporate clients.

Michael holds an engineering degree from the U.S. Military Academy at West Point and served in the U.S. Army as a Ranger-qualified cavalry officer and helicopter pilot. He proudly served on posts in the United States, Germany and the Middle East, including a combat tour in Iraq during Desert Shield/Storm where he earned a Bronze Star Medal and two Air Medals, one with 'V' device. Michael received his law degree *cum laude* at Catholic University Law School where he was managing editor of the school's Law Review. He is admitted to the bars of Virginia, the District of Columbia, and the U.S. Supreme Court.

Michael currently spends time in support of the aviation organizations including the Cargo Airline Association and Airlines for America, and he has worked with a number of charitable organizations, trade associations and civic groups during his career, serving in the role of director on a number of their boards, including his current service on the board of Leadership Louisville. Michael resides in Louisville, Kentucky, and is the proud father of three adult sons.

UPS Airlines

An integrated air-ground business designed to support the UPS enterprise

LPBA Conference
Louisville, Kentucky
March 2025

Presentation Highlights

UPS Airlines: History of an integrated air-ground business supporting the UPS enterprise.

Global Scale: Operates 2,155 daily flight segments, serving 807 gateway airports.

Fleet Diversity: Six aircraft types with varying capacities.

A Global Operation: While serving over 800 gateways worldwide, our maintenance efforts require a multi-layered approach.

Safety Leadership: Recognized for strong safety culture and industry-leading standards.

Legal Issues / Discussion / Questions

UPS Airlines – A Short History

37 years for the airline…with a moment in the 20's

1929

First air service

- UPS used United Air Lines to carry its first air product.
- The Depression stopped growth

1977

FedEx

- Fred Smith starts using planes
- Clear the market was ready for this

1985

Reach every address - 48 states & Puerto Rico

- UPS Next Day Air reaches 48 states and Puerto Rico
- U.S. – Europe service
- Purchases 1st six 747-100s

1988

Fastest airline startup in FAA History

- UPS Airlines is created
- Fastest in FAA history
- Add 800 pilots/300 mechanics

1989

Add Middle East, Africa & Pacific Rim

- Extend service to Middle East, Africa and Pacific Rim

COVID

- COVID shuts the world down
- UPS stands tall
- 1st COVID vaccine flight LAN-SDF
- 1+ Billion vaccines delivered

Current

Operate in more than 200 countries/territories

Today's UPS Airlines – Global Scale, Scope and Reach

2,155
Daily Flight Segments

807
Gateway Airports Served

291/280
UPS Owned & Leased Aircraft

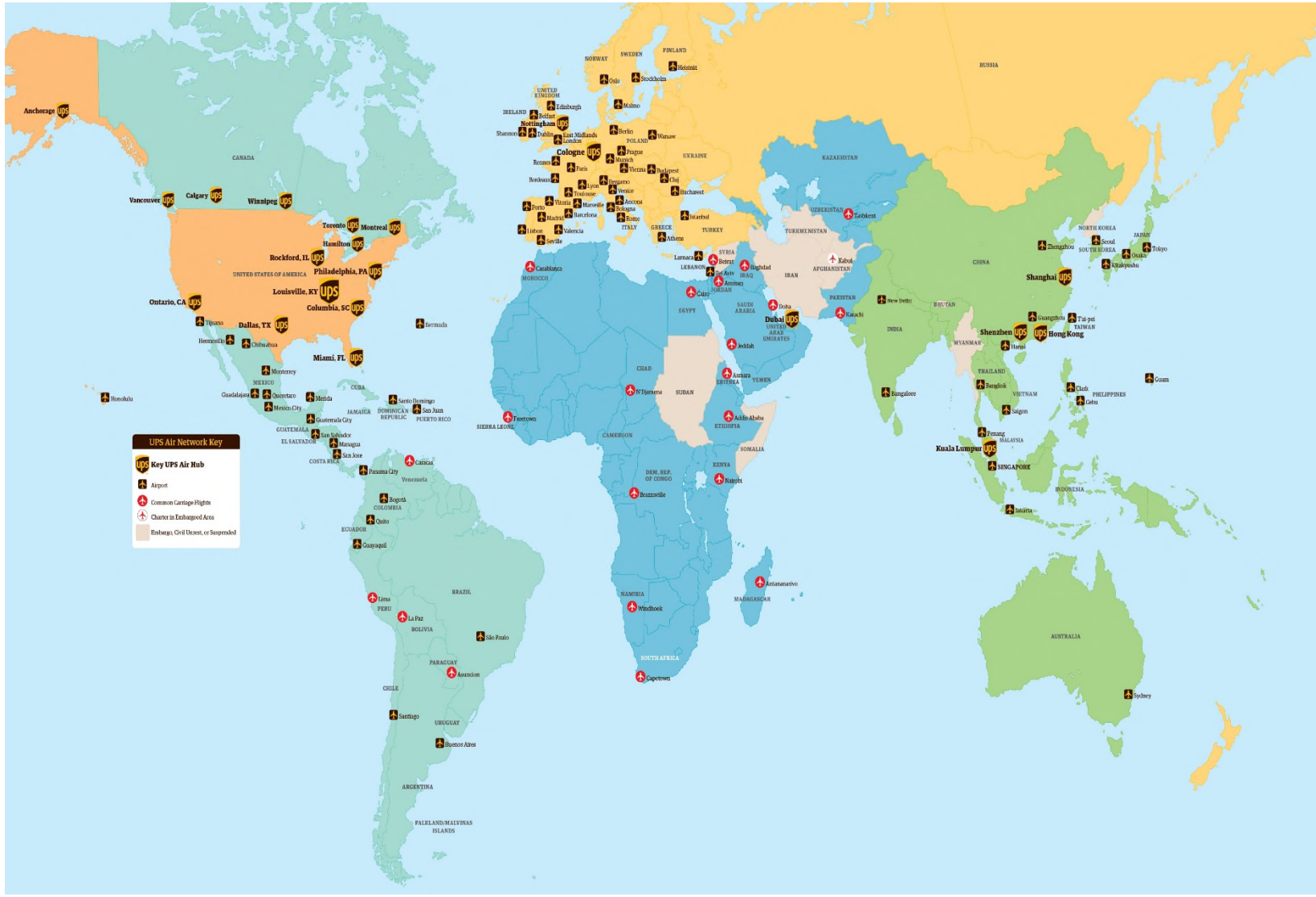
804
Aircraft Engines
8 Engine Models for 6 Fleet Types

32,000
Global Employees

5.2 Million sq ft
UPS Worldport

1 Billion Gallons
Jet Fuel Consumed Annually

Recognized For Safety Leadership



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2,155
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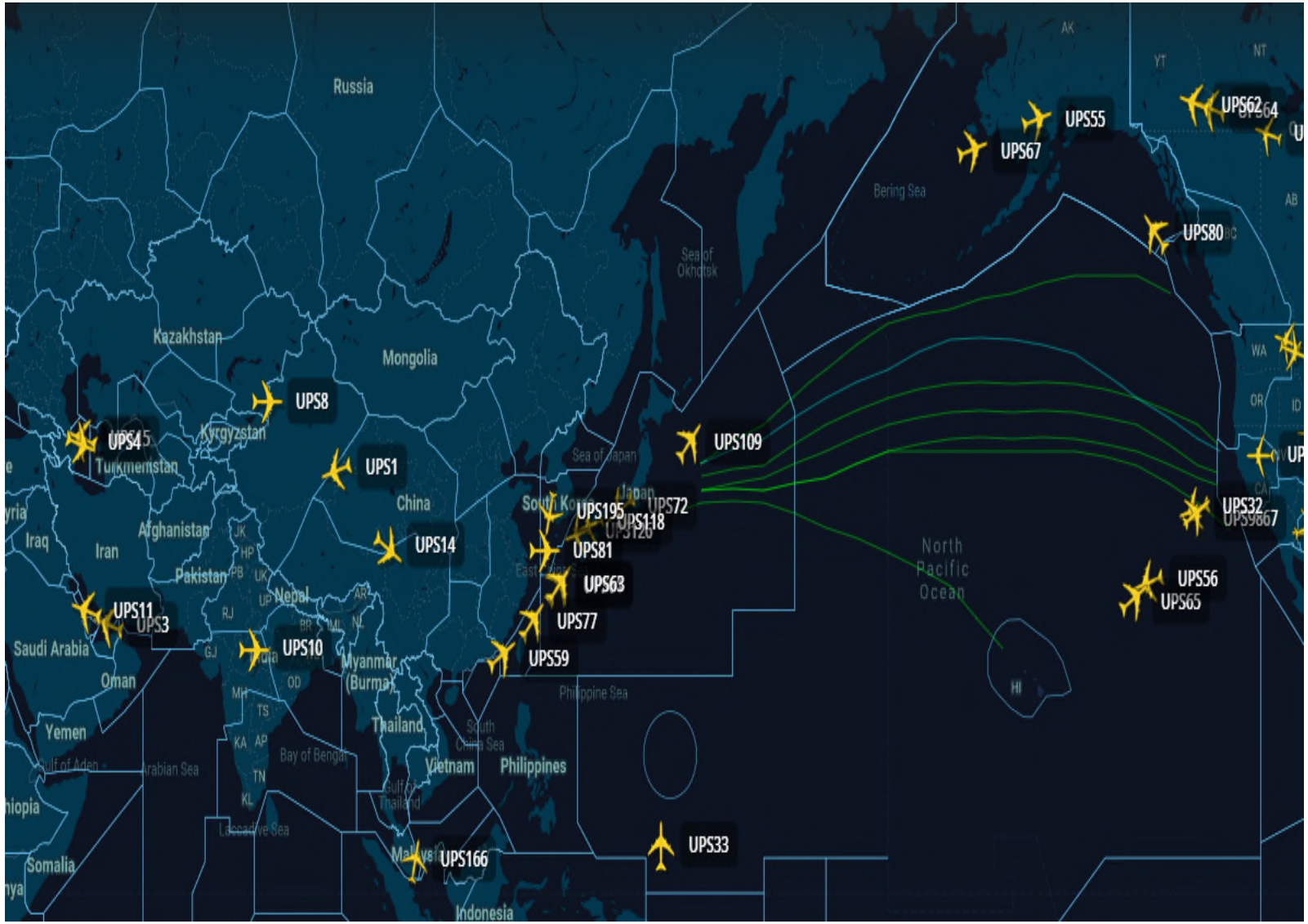
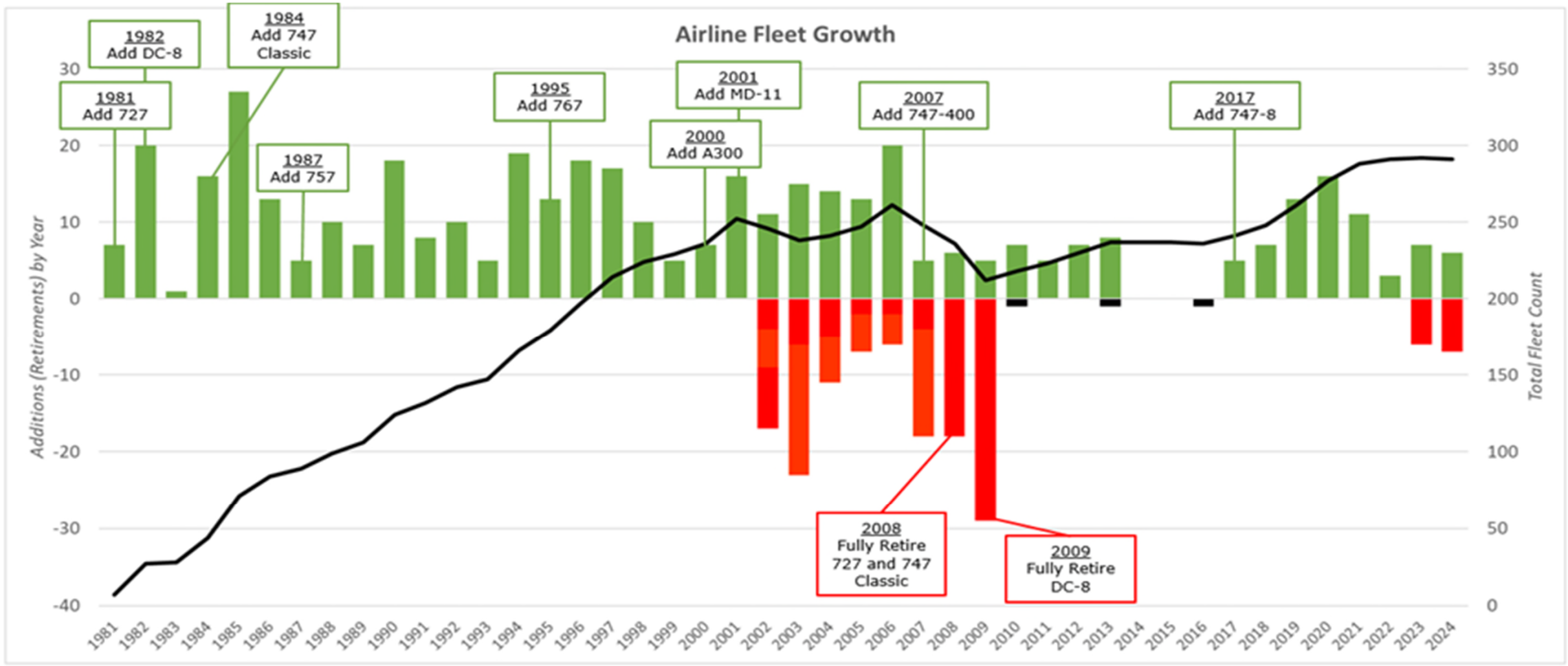
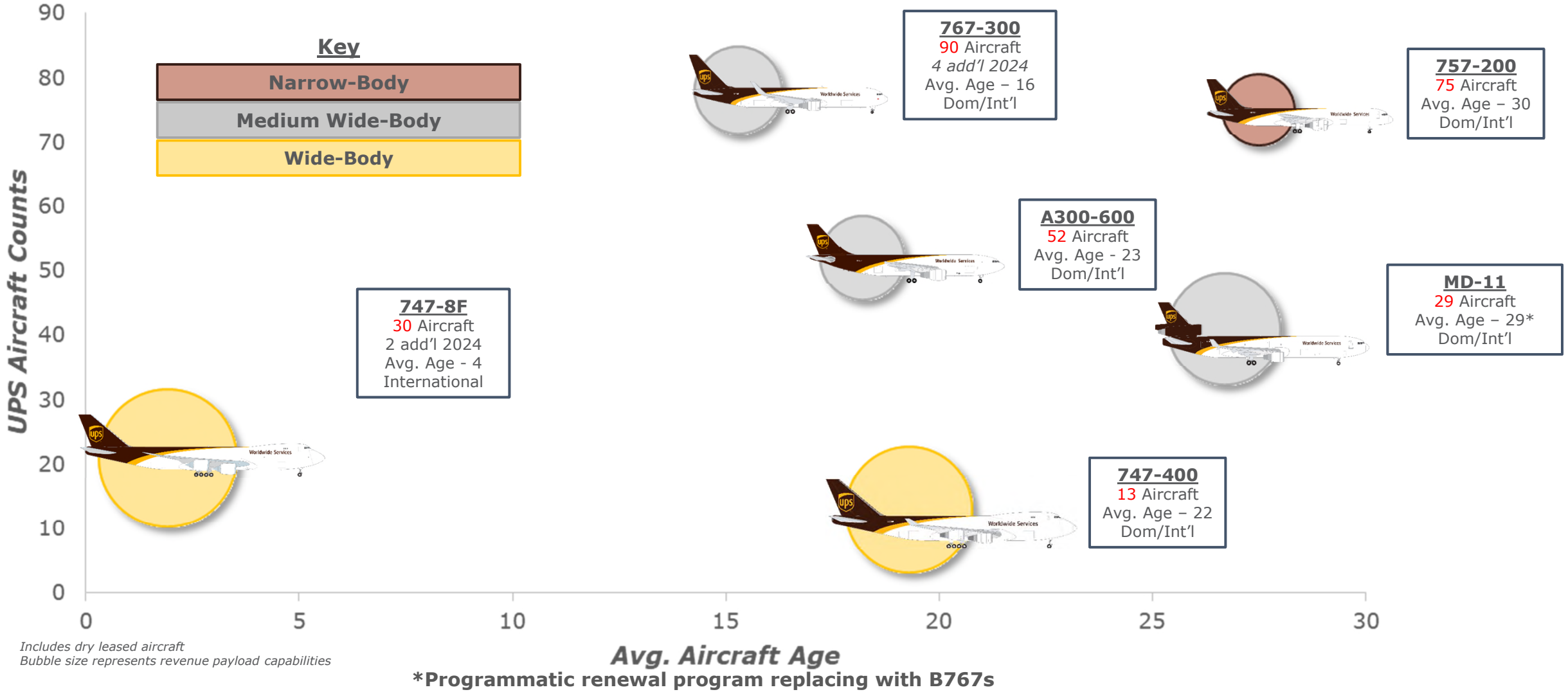


UPS Airlines – Buying, Selling and Retiring Airplanes



UPS Airlines Current Fleet – Fit for Purpose

Six aircraft types vary in capacity, range, age and operating area (Currently 291 total)



Includes dry leased aircraft
Bubble size represents revenue payload capabilities

***Programmatic renewal program replacing with B767s**

Our Safety Standard LEADS THE INDUSTRY

UPS is well-respected in the industry, FAA for its leadership in Safety Ownership and Performance.

This **recognition** comes from **industry leaders**:

- Airlines for America
- Cargo Airline Association
- International Air Transport Association
- Flight Safety Foundation
- Radio Technical Commission for Aeronautics
- International Civil Aviation Organization
- Other Air Carriers
- Manufacturers

FAA Administrator Whitaker commended UPS for our strong safety culture and stated, "It feels different on UPS ramps and in your buildings than it does at other airlines and at Boeing."

After Administrator Whitaker's visit, he called Boeing and suggested we work together. In early May, a team went to Seattle – sharing best practices with Boeing's ELT and safety team members.

UPS Capt. Houston Mills, Pres. of Flight Operations & Safety, was appointed to the FAA's Management Advisory Council (MAC). It advises FAA's senior management on policy, spending, long-range planning and regulatory matters.

Taking Action – After the 2011 Dubai accident, UPS placed an industry-first order for more than 1,800 new fire-resistant cargo containers capable of containing intense lithium-ion fires for four hours. Today, we operate over 47,000 fire-resistant containers (92% of our inventory).

Airframe & Powerplant Support

How Airline Supports Enterprise Strategy

Growth Potential:
- Global demand for air cargo services to grow by 5.8% in 2025.

Opening Global Trade to SMBs:
- Airline key part of goal to unlock new SMB growth and become the #1 premium international provider.

High-Value Market:
- The airline puts us in a position to move high-value goods ANYWHERE and remain flexible.

End-Of-Runway Solutions:
- Positioning near locations like Worldport or Cologne, leverage faster speeds.

Path to #1 Complex Healthcare Logistics Provider:
- Healthcare is a high-growth market with new treatments requiring fast, specialized cold-chain capabilities

UPS Airlines – Legal Issues

- **Ethics and Compliance**
- **Transactional**
- **Labor and Employment**
- **Regulatory**

Questions Appreciated.

Thank you!