

# Criminal Law News



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## **Airbus A320 crashed in the French Alps and 150 killed on 23 March 2015**

**Sally Ramage**

### **French Alps air crash killed 150 people**

Officials on Wednesday, 24 March 2015 struggled to explain why a passenger plane with 150 people on board crashed in the French Alps on the previous day, investigators called a press conference to divulge that the cockpit voice recorder indicated that the pilot left the cockpit before the plane's sudden descent. At no point during the descent was there any communication from the cockpit to air traffic controllers or any other signal of an emergency. Meanwhile the pilot was unable to get back into the cockpit and that the co-pilot did not make any mayday call. Allegedly, a very smooth, very cool conversation took place between the pilots during an early part of the flight from Barcelona, Spain, to Düsseldorf, Germany. Then the audio indicated that one of the pilots left the cockpit for a toilet relief and could not re-enter.

### ***German Wings parent company Lufthansa***

In 1926 two airlines, Deutsche Aero-Lloyd and Junkers Luftverkehr merged to create Deutsche Luft Hansa with 27.5 percent owned the founding companies; 26 percent by the central German government; 19 percent owned by the German state and 2.5 percent by various private interests. Deutsche Luft Hansa became the largest airline in the world in 1926.

During the 2nd World War, Deutsche Luft Hansa ceased trading until after the war when it was liquidated in 1951. A new German airline was formed in 1952 and became known as Lufthansa.

Germany has other airlines, namely Air Berlin; Augsburg Airways; Avanti Air; Cirrus Airlines; Condor; Contact Air; Dauair; DBA; European Air Express; Eurowings; Germania Express; Germania Fluggesellschaft; Germanwings (incorporated 2002, formed as a low-fare domestic and international scheduled airline by parent company Eurowings); Hamburg International; Intersky; Lufthansa Cargo; Lufthansa Cityline; OLT; Privatair; Tuifly; Walter; WDL Aviation; and XL Airways Germany;

### **Airbus A 320 - voice recorder data**

At the crash site workers had found the casing of the plane's black box, the flight data recorder, but the memory data on the plane's altitude, condition was not inside, been thrown loose or impact. The descent from about 10 minutes was



card containing speed, location and apparently having destroyed by the 38,000 feet over alarming but still

gradual enough to indicate that the twin-engine *Airbus A320* had not been damaged catastrophically. Yet it must be remembered that this airplane was built in 1971- it is over 40 years old. An electromagnetic pulse could have knocked out instruments causing the plane to plunge to its destruction.

When the plane plowed into craggy mountains northeast of Nice, it was traveling with enough speed that it was all but pulverised, killing the 144 passengers and crew of six and leaving few clues. France's Bureau of Investigations and Analyses confirmed that human voices and other cockpit sounds had been detected and detailed analysis forced them to release initial findings at a press conference on Thursday 25 March 2015. Rémi Jouty, director of France's Bureau of Investigation and Analysis, confirmed that audio of voices had been recovered from the voice recorder in the crash of the *Germanwings* plane in the French Alps, and he said:

*'Two major possibilities: Copilot incapacitating health event, plane flew itself into the ground. Copilot flew plane into the ground. So far, we don't have any evidence that points clearly to a technical explanation. So we have to consider the possibility of deliberate human responsibility. At this moment, I have no beginning of a scenario. However, there was not yet any evidence available that would support a theory of a depressurization or of a midair explosion.'*

### **A criminal inquiry has commenced**

Since the terrorist outrage of 9/11 in New York when over 3,000 died, one is flabbergasted that all aircraft, small, large, passenger, military and freight carrying, do not have the simple

device of CCTV in every part of every plane including the secure cockpit, in order that a server somewhere will have a record of exactly what occurred.

The Airbus has been a passenger flight for over forty years and so cannot be deemed to have had any mechanical dangerous design.<sup>1</sup> Could it be that electromagnetic pulses from nearby military aircraft were responsible for this crash? This plane was made in 1971. In the past, electromagnetic pulses from military aircraft caused the crash of several civil civilian airplanes in 1995, 1998, and 2000. Strong electromagnetic pulses generated by military machinery caused catastrophic electrical malfunctions to the planes that crashed.<sup>2</sup>

### **CCTV, encryption systems**

The United States President had, several years ago, said that the US government can know instantly what happens in every part of the planet Earth and can arrive in any place on the planet within a very short time. So why would passenger aeroplanes not have sophisticated electronic communications which the man in the street can enjoy for a few pounds, ie CCTV, accessed from anywhere in the world?

### **Trade secrets?**

The US has the Uniform Trade Secrets Act 2007 ('UTSA'), Anti-trust law, Unfair Competition Act 1995, etc. Section 7 of the UTSA, with some variation among the states, provides that the statute '*displaces conflicting tort law, restitutionary law and any other law... providing a civil remedy for misappropriation of a trade secret.*'

The case *ConFold Pacific, Inc v Polaris Industries, Inc*<sup>3</sup> provides helpful dictum about why one should not be able to fashion claims (here, for unjust enrichment) in information outside of recognized intellectual property laws. Multinational companies with substantial *worldwide* intellectual property portfolios are offering not only their domestic intellectual property rights as collateral, but increasingly, their international rights as well. Although today most major countries recognize the concept of trade secret protection, not all countries recognize the creation of security interests in intellectual property and, at the same time, offer a mechanism

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<sup>1</sup> As related in Jackson, R. (2005) *Infamous aircraft: dangerous designs and their vices*, South Yorkshire: Pen and Sword Books Ltd.

<sup>2</sup> Cawthorne, N (2007) *100 catastrophic disasters*, London: Arcturus Publishing Ltd.

<sup>3</sup> 433 F.3d 952, 959 (7th Cir. 2006).

for perfection. In today's rapidly changing global economy, intellectual property was cast in a new and dynamic role in commercial lending transactions. Trade secrets represent valuable intangible rights that are not only capable of enhancing a company's bottom line, but also function in a new capacity as a source of collateral and revenue.

But surely in this airplane industry, trade secrets cannot come into the equation, not with sophisticated encryption systems already available?

### **Language barrier over France?**

Whilst the Germanwings Airbus crashed into the French Alps, pilots from around the world were returning home from the first-ever Aerospace Symposium at ICAO Headquarters in Montréal today, a landmark event jointly organized by ICAO and the United Nations Office of Outer Space Affairs (UNOOSA).<sup>4</sup>

'...*Global civil aviation has an inherent safety concern here which must be recognized*', said ICAO Council President Dr. Olumuyiwa Benard Aliu in his opening address at the Aerospace Symposium.

UNOOSA Director Simonetta Di Pippo highlighted that the *'first step is to establish a common understanding of existing regulations and practices...'*. There were speakers from Australia, Canada, Germany, India, Italy, Japan, Poland, Sweden, Switzerland, UK and US.

In December 2001 the International Civil Aviation Organisation ('ICAO') the United Nations ('UN') body responsible for setting safety standards for air transport, accepted proposals to standardise the English used for communication between pilots and air traffic controllers in an attempt to end any confusion of instructions. These rules were adopted by UN member states in 2008 after protracted negotiations with countries hostile to attempts to impose English on them at the expense of their own languages. These rules are mostly flouted.

### **Unwillingness to spend money- the better reason?**

The real reason must be commercial in that airplane companies do not wish to disrupt commercial flights to install equipment that can alleviate these tragedies, in a similar way that they cut corners in aircraft maintenance and overwork of employees. Yet when tragedy

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<sup>4</sup> Among the many issues discussed at the ICAO/UNOOSA Symposium was an overview of existing regulations and practices, the safety management approaches and systems engineering methods presently being employed.

occurs, it costs millions of pounds to salvage information and deceased passengers. Consider the initial cost of the present airbus crash: if blame is put on a pilot, then aircraft unworthiness is never discussed; the airbus is replaced by insurance money so that shareholders of *Lufthansa*, the parent company of *Germanwings*; and less compensation is payable to the descendants of those killed. Let us look back at the many tragedies caused by cutting costs *not* in the public interest. The fact is that after 9/11 tragedy of airplanes crashing into the World Trade Centre Buildings, the Twin Towers in New York, United States, the airline industry suffered massive losses due to a decrease in passengers, causing companies such as *Swiss Air* and *Sabena* to collapse. To compensate, many airlines lowered their fares whilst many others became companies which were not 'going concern' companies and were forced to cease trading. Deregulation in Europe and the United States of America ('US') was the reason why many other airplane companies disappeared (for example *Braniff*, *Pan Am*, and *TWA*) and others embraced franchising and mergers and acquisitions and alliances. With regard to alliances, these include airlines across the world; for example, American Airlines, British Airways, Cathay Pacific, Finnair, Liberia Airlines, Japan Airlines International, LANChile, Qantas Airways and Royal Jordanian, such alliances often include maintenance and procurement.

From the audio recordings in the Airbus in March 2015, it was surmised that the copilot deliberately brought down the plane suddenly, according to cautious statements of the chief prosecutor who ruled out terrorism but suicide was an open question. Prosecutors in Marseille have been tasked with a separate criminal inquiry into the crash, and Brice Robin, the Marseille prosecutor met with the families of the crash victims on Thursday morning 25 March 2015, before the press conference. Rémi Jouty, the director of the Bureau of Investigations and Analyses, said at a news conference that the plane took off around 10 a.m. local time from Barcelona and that the last message sent from the pilot to air traffic controllers had been at 10:30 a.m., which indicated that the plane was proceeding on course. The managing director of *Germanwings* confirmed on Wednesday that two Americans were among the 150 killed when an Airbus crashed in the French Alps. Mr. Jouty said the plane slammed into a mountainside and disintegrated, scattering debris over a wide area, and making it difficult to analyze what had happened. It often takes months or even years to determine the causes of plane crashes, but a little more than a year after the disappearance of a Malaysian airlines jetliner that has never been found, the loss of the Germanwings flight is

shaping up to be particularly perplexing to investigators. One of the main questions is why the pilots did not communicate with air traffic controllers as the plane began its unusual descent, suggesting that the pilots or the plane's automated systems may have been trying to maintain control of the aircraft as it lost altitude.

Speaking on the French radio station *RTL*, France's Interior Minister Bernard Cazeneuve had said on Wednesday 24 March 2015 that terrorism was not a likely hypothesis at the moment, but that no theories had been excluded. He said the size of the area over which debris was scattered suggested that the aircraft had not exploded in the air but rather had disintegrated on impact.

*Lufthansa*, the parent company of *Germanwings*, has characterised the crash as an accident. The airline has not disclosed the identities of the pilots, except to say that the captain was a 10-year veteran with more than 6,000 hours of flying time in A320s.

The *French Bureau of Investigations and Analyses*, which is leading the technical inquiry into the crash, sent seven investigators to the crash site on Tuesday 22 March 2015. They have been joined by their counterparts from Germany, as well as by technical advisers from *Airbus* and *CFM International*, the manufacturer of the plane's engines. Speaking on *Europe 1* radio, Jean-Paul Troadec, a former director of the *French Bureau of Investigations and Analyses* said one of the big challenges for investigators would be to protect the debris at the crash site from inadvertent damage. 'We need to ensure that all the evidence is well preserved,' Mr. Troadec said, referring to the pieces of the plane littered across the steep slopes as well as to the remains of the victims.

### **Victims**

The identification of the victims will require matching DNA from the remains with samples from relatives. The recovery effort will be a laborious task, given the state of the wreckage, the difficult terrain and the fact that the crash site is so remote that it could be reached only by helicopter.

### **Boeing 373 jet crash in 2005**

Cabin depressurisation, one of the possibilities speculated about on Wednesday 24 March 2015, had occurred in the crash of a Cypriot passenger plane in 2005, *Helios Airways Flight 522*, when all 121 people on board were killed approaching Athens. However, in contrast to this Airbus crash, Flight 522 suffered a slow loss of pressure which rendered both pilots and all the passengers on the *Boeing 737 jet* unconscious for more than three-quarters of an hour

before the aircraft ran out of fuel and slammed into a wooded gorge near Athens, the capital of Greece. Investigators concluded that the primary cause of that crash was a series of human errors, including deficient maintenance checks on the ground and a failure by the pilots to heed emergency warning signals.

### **Initial conclusion on crash of 2015 Germanwings Airbus A 320 flight to Germany**

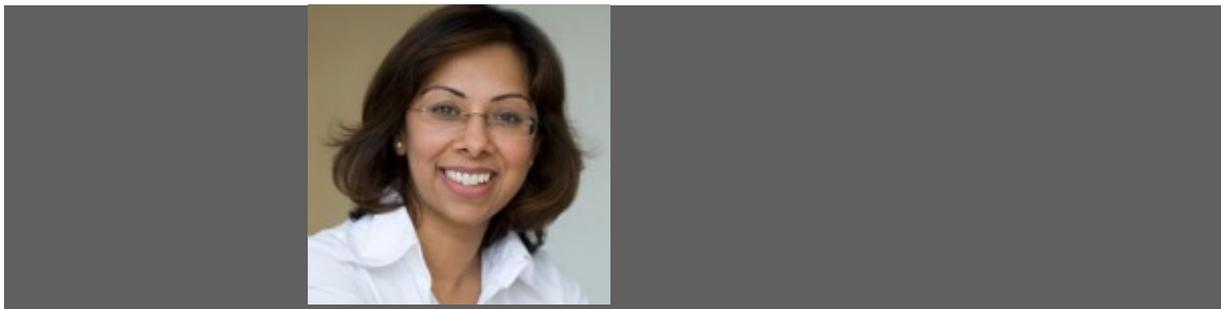
At present, investigators do not think that this is a terrorist act nor do they think it is a suicide. The pilot went to take a comfort trip to the toilet and could not reenter the cockpit. The airbus steeply descended from 12,000 feet to 2,000 feet and crashed. Was the telepad to open the cockpit faulty? Did the plane suddenly lose height? Was this an electronic hijacking from an anonymous computer hacker elsewhere? These possibilities are feasible because voice recording cannot be so highly technical as to conclude *breathing* as being ordinary or medically induced; because there would be no need for a black box if this were so efficient and we must consider commercial protection when a plane that is 44 years old crashes.

### **References**

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## Female committee chairs appointed by Law Society of England and Wales

On 25 March 2015 the Law Society announced the appointment of three female committee chairs. The new chair of Immigration Law Committee is Sharmila Mehta, formerly of *Magrath Hill LLP* of 66/67 Newman Street, London, W1T 3EQ, and is an experienced corporate immigration lawyer.



Solicitor Sharmila Mehta

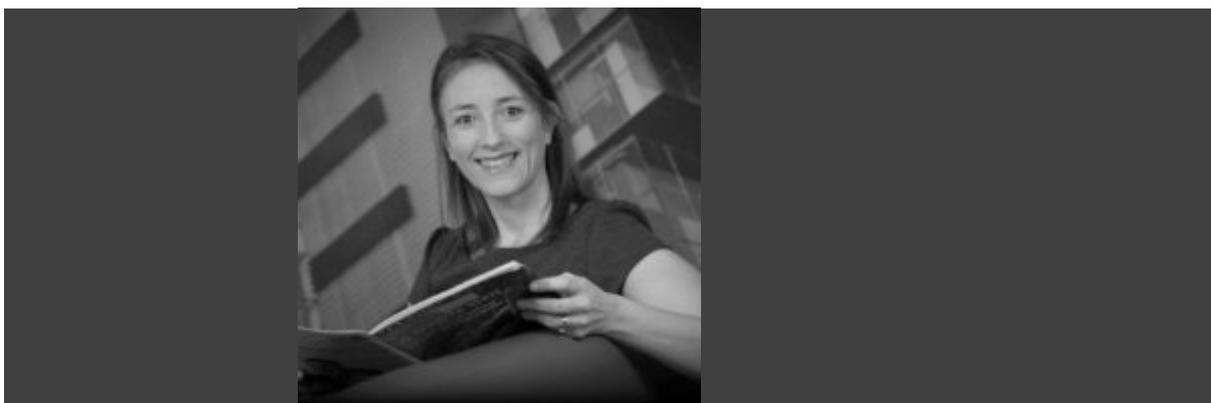
Sharmila Mehta is a partner and co-head of the UK immigration group at specialist London law firm *Magrath LLP*, where she has responsibilities for some of the firm's major investment banking, financial services and global commodity clients acting for influential business people, wealthy families and entrepreneurs for whom she has built a personal brand as a trusted adviser and friend. She advises on all aspects of corporate immigration as well as private wealth client migration issues. The law firm's advertising website states that 'the Magrath brand for immigration is recognised worldwide for its support and assistance to ultra net worth individuals, international celebrities and household names in arts and sports. The firm's employment practice acts for a wide range of major corporations, private companies and senior executives dealing with a host of compliance and strategic employment matters, employment disputes and HR advice.'

The Law Society's new chair of the Access to Justice Committee is Jenny Beck, an experienced legal aid family lawyer and managing partner.



Solicitor Jenny Beck

Jenny Beck joined The Co-operative Legal Services (CLS) in 2011 and later set up and Heads the Family Law Team at CLS. An experienced spokesperson, Jenny Beck is a member of The Law Society's Advanced Family Law Panel, the Association of Lawyers for Children, the Association of Women Solicitors, and holds advanced accreditation with Resolution. The new chair of the Money Laundering Task Force is Amy Bell, head of Risk and Compliance with QualitySolicitors.



Solicitor Amy Bell

In May 2014, Amy Bell gave a talk at a QualitySolicitors conference about Anti Money Laundering, the common mistakes she saw fee earners making, and how to prevent this; highlighting the proposed changes in the 4th Money Laundering Directive and the changes that must be made in order to be compliant.



## UK March Budget

- (i) Personal tax free allowance rises to £10,800 in 2016 and £11,000 in 2017.
- (ii) The 40p threshold to rise above inflation to £43,300 by 2017/18.
- (iii) A new personal savings allowance to take 95 per cent of taxpayers out of savings tax. From April 2016, first £1,000 on savings from earnings will be tax free and the upper tax payers allowance will be set at £500.
- (iv) Lifetime pension relief allowance reduced from £1.25m to £1m, allowed to be indexed from 2018
- (v) Charities will be able to claim automatic Gift Aid on the first £8,000 of small donations, up from £5,000
- (vi) Beer: duty by 1p; cider: duty down by 2%; Scottish and spirits: cut by 2% and wine: duty frozen.
- (vii) Police and firefighter widows to remarry without facing a pension penalty.
- (viii) Sale of £13bn mortgage assets held from *Northern Rock* and *Bradford and Bingley*. The money to be used, as well as lower interest payments, to pay down the national debt
- (ix) Sell £9bn at least of Lloyds Bank shares in coming year
- (x) Libor fines to contribute another £75m to armed services charities, including a memorial for Afghanistan veterans.
- (xi) Raise the rate of the bank levy to 0.21 per cent, to raise an additional £900m a year.
- (xii) Help to buy ISA to be introduced, for every £200 saved for a housing deposit; the government will contribute £50 more.
- (xiii) A more flexible ISA to give complete freedom to tax money out, and put it back in later in the year, without losing any tax-free entitlement.
- (xiv) Five million pensioners to have access to their annuity, the next year punitive tax charge to be abolished and only charged at the marginal rate.
- (xv) Loans up to £25,000 to be available for postgraduate PhD and masters research students.
- (xvi) Farmers allowed to 'average out' their income over five years for tax purposes. £1.3bn of support for the oil and gas industry.
- (xvii) More money for security services against terrorism
- (xviii) £25m to be provided to help the UK's eldest veterans, including nuclear test veterans.
- (xix) £1.25bn for mental health services for young people and new mothers.
- (xx) New rail franchise for the South West, with £7bn of investment in roads and air links.
- (xxi) Expanding broadband vouchers to more cities, committing to a national ambition to 100 megabits per second to nearly all homes in Britain.
- (xxii) Cancelling the fuel duty increase scheduled for September 2015.
- (xxiii) Treble funding for church roof appeals. A new personal savings allowance to take 95 per cent of taxpayers out of savings tax. From April 2016, first £1,000 on savings from earnings will be tax free and the upper tax payers allowance will be set at £500.
- (xxiv) Lifetime pension relief allowance reduced from £1.25m to £1m, allowed to be indexed from 2018
- (xxv) Charities will be able to claim automatic Gift Aid on the first £8,000 of small donations, up from £5,000.

## **Police detention of a mentally disordered person- Code of Practice Mental Health Act 2003, in force from 1 April 2015**

The question usually posed is this- if a person is only detained for an assessment, no offence committed, no interview envisaged- is he a PACE prisoner? If he is, does he have a right to have a solicitor present? **A person can be detained under Section 136 of the Mental Health Act by a constable who believes that the person is mentally disordered in a public place. The constable must take the person to a designated place of safety, which could be a hospital, mental hospital or police station (it shouldn't be a police station, it is completely the wrong place for someone with mental health issues, but that is a subject for another topic). The person is NOT under arrest, they are detained.**

The custody record is not a record under PACE.

Regardless of whether a solicitor is called or not – *this is a matter for mental health professionals to decide whether the person should be sectioned and neither the police nor does a legal advisor have the knowledge or training to contradict their opinion.*

If mental health detainees are taken to a police station because they are exhibiting signs of mental disorder, they are not there for criminal matters. In this case a custody sergeant will not administer his rights. The only reason they were taken to the police station is because no other place of safety is available. Would the detainee have the right to have a solicitor if they were taken straight to hospital? Other such categories of people include those remanded back into police custody by a court (3-day lay-down, not extended detention), breach of bail, breach of the peace etc. Clearly they must all be given rights. Most persons arrested under the MHA are done so as a result of harming self / attempting or threatening suicide or being incapable of caring for themselves. Rights and entitlements must still be put in the usual way. Normally, a person is placed under s136 and taken to a place of safety. A mental health solicitor, advocate or MIND advocate might wish to be present. But usually, an approved social worker and section 12 doctor attempt to assess the patient quickly. If s136 is converted to s2 or s3 then the person becomes a patient has automatic right of appeal to managers or tribunal, with legal representation. If he does not fulfil the criteria for detention, he returns to the Police, and they decide what to do with him. Also, there is the duty of the police officer to preserve life, if they didn't attempt to prevent it they would be in (at least) disciplinary trouble. If a person comes under the definition of a vulnerable person and so be entitled to advice at the police station in any circumstances. Such a person, detained under s136 is entitled to legal advice. It is one of their basic rights and entitlements served on being booked in. However, such advice is restricted to telephone only advice by CDS Direct, unless they complain of serious maltreatment by the police, or require the services of an appropriate adult (which for a standard MHA assessment they don't), or they are unable to communicate on the telephone, in which case CDS can deploy the case to a duty solicitor can then decide to attend to advise in person provided there is sufficient benefit in doing so. CDS will provide advice on, for example, breach of county court injunctions.

The Mental Health Code of Practice in force from 3 November 2008 stated:

*'Rights of persons detained in places of safety*

*10.45 A person removed under section 136 is deemed to be "arrested" for the purposes of the Police and Criminal Evidence Act 1984 (PACE). This means that police officers have the power to search a person they detain under section 136, as they would in the case of a person arrested for an offence. Under section 54 of PACE, the custody officer at the police station has the power to ascertain what items the person has on them, to remove items (where permitted) and to search the person as necessary for those purposes.*

*10.46 Where a hospital is used as a place of safety, the managers must ensure that the provisions of section 132 (giving of information) are complied with. In addition, access to legal advice should be facilitated whenever it is requested.*

*10.47 If a person is detained in a police station as a place of safety, they have a right of access to legal advice under PACE. The conditions of detention and treatment of the person must be in accordance with PACE Code of Practice C. Among other things, this requires that the person must be notified of their rights and entitlements, both orally and in writing. This will be achieved by handing the person a copy of the Notice of Rights and Entitlements.*

*10.48. In all cases, the person detained should be told that the maximum period of detention is 72 hours.'*

However, the UK has a *revised mental health code of practice* announced on 15 January 2015 *in force from 1 April 2015*, because there have been significant changes in legislation, case law, policy and professional practice since the code was published in 2008. The main changes to the code include:

\*Five new guiding principles.

\*New chapters on care planning, human rights, equality and health inequalities.

\*Consideration of when to use the Mental Health Act and when to use the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards and information to support victims.

\*New sections on physical health care, blanket restrictions, duties to support patients with dementia and immigration detainees.

\*Significantly updated chapters on the appropriate use of restrictive interventions, particularly seclusion and long-term segregation, police powers and places of safety.



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