

Legal Framework and Practices relating to Transportation Accidents in Japan

November 30, 2015

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Characteristics

A. Investigative power of prosecutors
and the police

B. No private/police prosecution
No grand jury or preliminary
hearing

C. Discretionary power to drop cases

D. Prosecution Review Commission

E. Tried by professional judges
(except lay judge system in **criminal**
cases since 2009)

F. No punitive damages in civil cases

G. No immunity and plea bargaining

H. Beyond-a-reasonable-doubt
standard for initiating prosecution

I. Prohibition of hearsay evidence
in **criminal** cases

J. Appeal against fact-finding
(including acquittal) and
sentencing



History

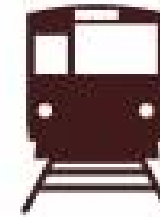
Marine Accidents

Aircraft Accidents

Railway Accidents

1897 Established
Disciplinary Action Tribunal of Seamen
(Ministry of Communications)

1949 established **JMAIA**
(Jun.) Japan Marine Accident Inquiry
Agency (Ministry of Transport)



1953 joined **ICAO**
International Civil Aviation Organization

1973 (Jan.) established **AAIC**
Aircraft Accidents Investigation Commission

2001 (Jan.) **MLIT:** Ministry of Land, Infrastructure, Transport and Tourism

Ad hoc Committee

2001 (Oct.) established **ARAIC**
Aircraft and Railway Accidents Investigation
Commission

2008 (Oct.) established **JTSB**
Japan Transport Safety Board



Japan Marine Accident Tribunal

Expected Nature

1. Independence

2. Fairness

From the final report of May 2011 of the
expert group meeting organized by the
Consumer Affairs Agency

<http://www.caa.go.jp/safety/pdf/matome.pdf>

3. Comprehensiveness

4. Expertise



Organization

JTTSB

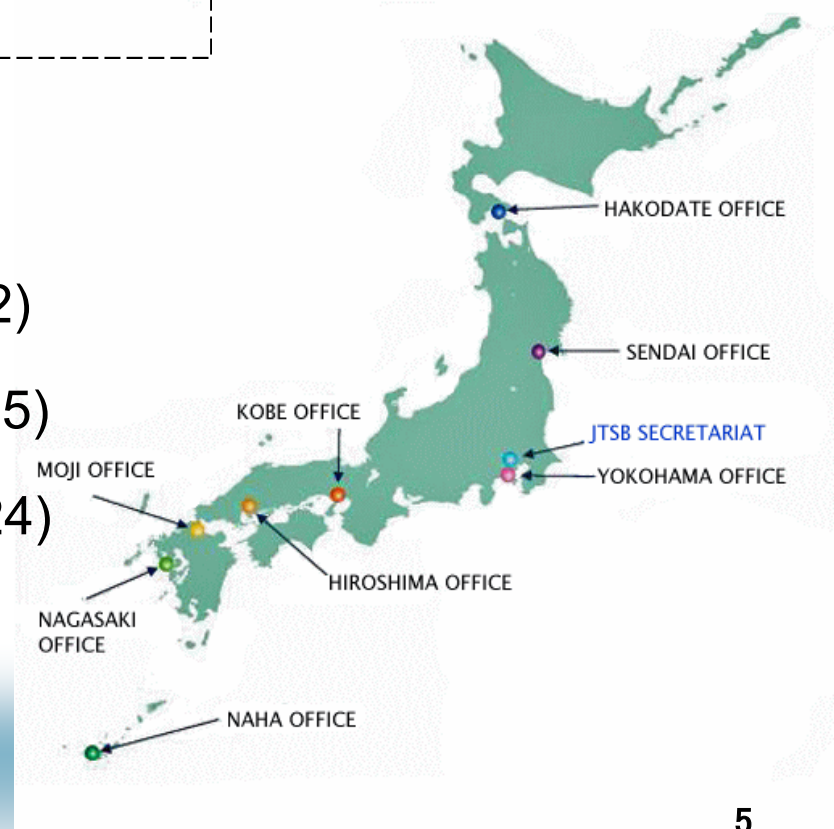
Chairperson (1), Members (12)

Secretariat

178 persons in total
(74 for regional offices)
as of 2015

<http://www.mlit.go.jp/jtsb/english.html>

- Director General
- Deputy Director General
- Aircraft Accident Investigators (22)
- Railway Accident Investigators (15)
- Marine Accidents Investigators (24)
- Regional Investigators (44)
- Director for Management
- General Affairs Division



Function



1. Administrative Organ with Independence

2. Mission

<http://www.mlit.go.jp/jtsb/english.html>

- a. Preventing reoccurrence of accidents
- b. Mitigating the damage caused by accidents
- c. Improving transportation safety

3. Main Duties

- a. Investigation of aircraft, railway and marine accidents
- b. Providing recommendations or opinions to relevant people
- c. Research and study on relevant issues

4. Other Characteristics

- a. Expert group of science, technology, etc.
- b. Investigation shall not be construed as encompassing criminal investigation

Crime of Negligence (Main Provisions)

Penal Code

Art. 209 Causing Injury through Negligence

Fine (¥300,000 or less)

Art. 210 Causing Death through Negligence

Fine (¥500,000 or less)

Art. 211 Causing Death or Injury through Negligence in the Pursuit of Social Activities

5 years' imprisonment or less
or Fine (¥1,000,000 or less)

Art. 129 Endangering Traffic through Negligence

(1) Endangering the passage of a train, tram or vessel,

or overturning or destroying a train or tram, or capsizing, sinking, or destroying a vessel

(2) Committing (1) through professional conduct

Fine (¥300,000 or less)

3 years' Imprisonment without work or less
or fine (¥500,000 or less)

Act on Punishment of Acts Endangering Aviation

Art. 6

(1) Endangering aviation, crashing, capsizing, sinking or destroying of an aircraft underway through negligence

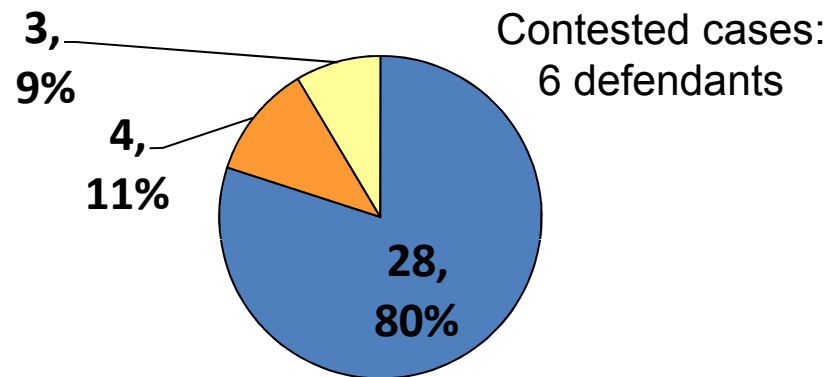
Fine (¥100,000 or less)

(2) Committing (1) through professional conduct

Up to 3 years' imprisonment without work or less
or fine (¥200,000 or less)

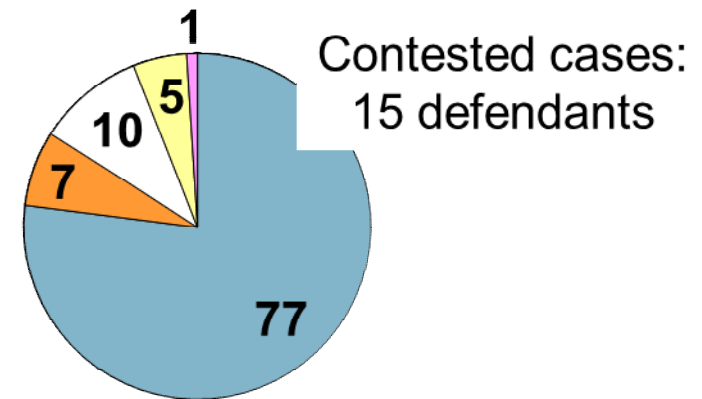
Statistics (2001 - 2014)。

Defendants Tried for Railway Accidents



- Suspended Execution of Sentence
- Imprisonment
- Acquitted
- Others (Dismissal)

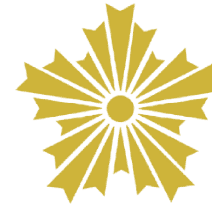
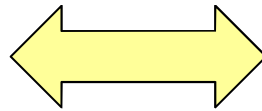
Defendants Tried for Marine Accidents



- Suspended Execution of Sentence
- Imprisonment
- Fine
- Acquitted
- Others (Dismissal)

Aircraft Accidents Tried:
4 Defendants for 3 cases (1 for acquitted)

Friction between Administrative and Criminal Investigation



Police



Prosecutor

- Expertise Responding to Systemic Accidents
- Different Purposes and Methods
- Chilling Effect of Criminal Investigation
- Contribution to Safe Transportation
- International Standards and Recommended Practices
- The United States' Legal Framework

Misunderstanding or Distrust?

Differences between Administrative and Criminal Investigation

1. Administrative Investigation

Identifying the causes of an accident and any factors surrounding the causes **for preventing future accidents**

Systemic Accident

Potential or probable causes and factors are taken into consideration

2. Criminal Investigation

Collecting evidence which connects to a person causing an accident in order **to prove a crime for criminal punishment**

Human Error

Proof beyond a reasonable doubt. Potential or probable causes and factors are likely to be ignored

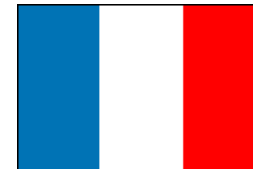
Which Investigation Comes First?

1. Administrative Investigation



The U.S.: NTSB (National Transportation Safety Board)

2. Criminal Investigation



France: Its Legal System (investigative judges)

3. Cooperation and Coordination



Japan: Agreement on Implementation between both agencies

Memorandum between The NPA and JTSC



Japanese version: <http://www.mlit.go.jp/jtsc/fukuchiyama/kensyou/fu04-shiryu6-1-20091207.pdf>

1. JTSC's investigation shall not conflict with the police investigation.
2. The JTSC seeks police opinion in advance.
3. The JTSC cooperates with requests for expert opinions from the police.
4. The police cooperate with requests from the JTSC.
5. Details for smooth and harmonious investigation are subject to discussion.

Key Points of Detailed Arrangements



Japanese version: <http://www.mlit.go.jp/jtsb/fukuchiyama/kensyou/fu04-shiryou6-1-20091207.pdf>

1. Preservation of Accident Site
2. Examination of Accident Site
3. Examination of Corpses
4. Interviewing and Questioning
5. Seizing and Maintaining Evidence

Non-Disclosure of Records for Administrative Investigation

1. Chilling Effect
2. ICAO Annex 13. – 5.12
http://www.fzt.haw-hamburg.de/pers/Scholz/dglr/hh/text_2013_11_07_ICAO_Annex13_AircraftAccidentAndIncidentInvestigation.pdf#search='ICAO+Annex+13'
3. Admissibility of Records as Evidence in Court
4. Admissibility of Final Reports of the JTSB
5. Practices

ICAO Annex 13 - 5.12

Non-disclosure of records

5.12 *The State conducting the investigation of an accident or incident shall not make the following records available for purposes other than accident or incident investigation, unless the appropriate authority for the administration of justice in that State determines that their disclosure outweighs the adverse domestic and international impact such action may have on that or any future investigations:*

- a) all statements taken from persons by the investigation authorities in the course of their investigation;*
- b) all communications between persons having been involved in the operation of the aircraft;*
- c) medical or private information regarding persons involved in the accident or incident;*
- d) cockpit voice recordings and transcripts from such recordings;*
- e) recordings and transcriptions of recordings from air traffic control units;*
- f) cockpit airborne image recordings and any part or transcripts from such recordings;*
- and*
- g) opinions expressed in the analysis of information, including flight recorder information.*

ICAO Annex 13 - 5.12.1

Non-disclosure of records

5.12.1 *These records shall be included in the final report or its appendices only when pertinent to the analysis of the accident or incident. Parts of the records not relevant to the analysis shall not be disclosed.*

Note 1.— Information contained in the records listed above, which includes information given voluntarily by persons interviewed during the investigation of an accident or incident, could be utilized inappropriately for subsequent disciplinary, civil, administrative and criminal proceedings. If such information is distributed, it may, in the future, no longer be openly disclosed to investigators. Lack of access to such information would impede the investigation process and seriously affect flight safety.

Note 2.— Attachment E contains legal guidance for the protection of information from safety data collection and processing systems.

Notification of Difference on ICAO Annex 13 – 5.12 (Japan)

The Criminal Procedure Code and the Civil Procedure Code of Japan **do not**, when the appropriate authority for the administration of justice makes “records” (Annex 13 5.12) available in judicial procedures, **require** the appropriate authority for the administration of justice to determine that **the disclosure** of these “records” **outweighs** the adverse domestic and international impact such action may have on that or any future investigation.

However, the Japanese Accident Investigation Authority does not disclose these records collected for itself for purposes other than accident or incident investigation without a decision or an order of a court.

Besides, a Memorandum and Arrangements have been made between the Japanese Accident Investigation Authority and the Japanese Police, on the basis of which activities such as seizure of related material evidence, questioning related people etc., are coordinated so that the procedures of accident investigation and crime investigation will be conducted without hindrance when they complete.

Types of Negligence

- A. Misconduct because of the lack of basic professional knowledge
- B. Misconduct or malpractice due to a misunderstanding of how to deal with a particular transportation situation
- C. Misconduct through professional negligence within the scope of regular professional duty.

Attitudes on Negligence

To err is human, to forgive, divine.



Alexander Pope
1688 ~ 1744

Pictures are from <https://www.wikipedia.org/>

To err and not change one's ways,
this is what it is to err.

(From *the Analects*)

像教行子孔師先

(子曰)
過而不改是謂過矣



Confucius B.C..551 ~¹⁹479

감사합니다

THANK YOU



Mt. Fuji

