

CHAPTER ONE

Erode The Safety Margin

"If I were to remain silent, I'd be guilty of complicity."

Albert Einstein.

Clad in a distressed leather jacket, and the only one in the room who needed to have stood closer to the razor that morning, was Eddie. Pencil and notebook in hand, every scribbled sentence forcefully punctuated. The suits surrounded Eddie, whose choice of attire hinted at his chosen profession.

The closest of the suits was Scadeng. He was sweating like Nixon.

I finally had my opportunity: the moment I had been awaiting for a long and exhausting, eighteen months.

It was the last day in a week-long legal case going head to head against the might of a multibillion-dollar airline.

Representing the airline was a well-respected barrister supported by a legion of Thomas Cook legal and HR advisors. Representing me was a fifty-four-year-old Doc Martens-wearing airline captain who had spent most of his twenties sitting in the back of a transit van touring Europe as a drummer in a loud, post-punk, rock band. Unfortunately, sitting in front of a judge, my mix of experience from paradiddles to pre-flight checklists seemed to count for nothing in this formal and unforgiving environment. At this precise moment the most useful skillset would have been forged, not in a cockpit or sitting behind an oak custom drum kit, but in legal chambers.

The suit sitting next to me, Rob Hunter, was the head of flight safety from the pilots union BALPA. Rob was one of the leading fatigue and medical experts within the field of aviation. However, his appropriate legal knowledge was even more limited than my own.

The judge had just called 'seconds out' and had invited me to continue my cross-examination of the senior director of the airline. I had operated as captain for this airline for the last sixteen years, faultlessly. Sitting in the witness stand was Paul Hutchings, the airline's director of flight operations (DFO). In front of the DFO, the judge and myself were lever arch files. Each file contained over 1000 pages compiled for my case. Page 963 contained the paragraph I needed to nudge, provoke, irritate and generally manoeuvre Hutchings towards. Page 963 was where I wanted him. Page 963 was the 'Tercio de Varas.'

This case was not just about myself. It was not even about my immediate working colleagues. Ultimately the judge's decision would resonate within the entire pilot and flight crew community throughout the country, possibly even the world. It would have a direct effect on the safety of the millions of passengers who entrust pilots and airlines with their families' lives every day of the week.

Where I was sitting there should have been a knowledgeable, experienced barrister able to interrogate and cross-examine any witness who was obstructive or evasive. Where the doctor was sitting there should have been a well-briefed solicitor taking notes and offering support to the superior advocacy skills of a legal professional.

As a youngster, I had played a lot of chess, and this whole case had felt like a multi-layered 3D game played blindfolded and without knowing the rules. For the past four days, I had stumbled while finding my legal feet, working out how all the individual pieces moved. Somehow I was still in the game. Somehow I still had all of my pieces and, at least so far, I had been able to cover any attack by the opposition. Even more amazingly, I had managed to position my metaphorical rook on the opponents back row, and I was now picking off the Thomas Cook pieces in rank order. It felt like I was currently controlling the game, but I knew there was still a long way to go.

Before I continued my cross-examination of Hutchings, I consciously waited a minute or so. Let him contemplate what was about to happen. My pen idly traced the lines of some random text as if deep in thought. The reality was, this was more about setting a scene than absorbing any further information. My thinking had already been done.

Each second that passed would amplify a simple fact that Hutchings had to accept, appreciate and consider. As the DFO of a major airline, he was about to be cross-examined in front of a judge, under oath,

witnessed by two lay legal experts by one of his most senior aircraft commanders.

I let him marinate for a few moments longer in the knowledge that, unlike the previous eighteen months, he would now have to answer *my* questions. No longer, could he say something and then claim he had not said it. No longer could he instruct his subordinates to fire the figurative bullet and claim he knew nothing about the attempted drive-by. No! This time it was me, him and a judge. This time he knew everything that he said throughout my cross-examination would be recorded, analysed, countered and ultimately, judged.

I leant forward and stared at an individual who I should have been working alongside as part of a team. Instead, I was now intent on exposing and then demolishing Hutchings integrity. I held his gaze for a few moments as he shifted uneasily in his chair.

'In your capacity as the director of flight operations for Thomas Cook, can you confirm you are content for your passengers to be flown by pilots that are operating at a level of fatigue that results in the equivalent effectiveness of someone at the drink-drive limit?'

Thomas Cook's barrister sat bolt upright. 'Objection Ma'am!'

The judge looked at me with a wry smile. 'Sustained! Captain Simkins, It is not permissible to ask a leading question.'

I smiled back. 'I apologise ma'am, I am a pilot, not a barrister.'

I could blame my lack of legal etiquette and knowledge for my faux pas and the resulting light wrap on the knuckles by the judge. The point was, I had now communicated to the DFO but, more importantly, the tribunal, the central premise to the last five days of legal argument.

It was a simple question. Is it acceptable for an airline to take action, up to, and including dismissal, against a highly experienced airline captain because he refused to fly an allocated duty whilst so exhausted it would have had serious safety implications to his crew and passengers?

The judge then offered to ask my original question in a more legally appropriate form. I had learned quickly. Being litigant in person did have certain advantages.

The DFO looked uneasy. His usual self-assured demeanour had evaporated quicker than Prince Andrew's sweat. For the first time, he was now *not* playing on home territory. He was no longer controlling the game and no longer calling the shots. For the last few days, he had

witnessed my cross-examination of most of his flight ops management team. Now it was his turn to answer. It was *his* turn in front of the wall.

My original question and the subsequent rephrasing by the judge rested on the significance of a printout provided by the company that predicted a pilot's level of fatigue based on previous duties and sleep patterns. As I had planned, the DFO's answer to my now legally acceptable question left the door wide open for the only medically trained person to have looked at the printout to throw the knockout punch.

Had Hutchings been outmanoeuvred? Was his vision of a united front with his well-disciplined Thomas Cook management disciples, lined up against a single upstart, starting to resemble a house of cards?

Hutchings' own crewing manager, Jane Marsden, already had inadvertently exposed his and the company's view about the risks the airline appeared willing to take with passenger safety. She had little idea of the significance of her comment when she made the unguarded statement: "We cannot avoid operating duties in this zone (levels of effectiveness below the dotted line, i.e. below 77%) due to the nature of the program that we operate."

Rob performed the 'tercio de banderillas'. 'Mr Hutchings, please turn to page 545 in the bundle.' Hutchings began to hunt for the elusive page that the doctor and I already had open on the desk. 'Do you think the level of fatigue, where the trace is in the yellow zone, may endanger the flight?'

Hutchings' answer stunned not just myself, but the entire public gallery. 'This run of duties was not that unusual' before adding 'but I accept that that it could erode the safety margin.'

I looked over at the airline's solicitor, Lindsey Murray. She could not prevent herself from grimacing. This was not good. This was not good at all for a major company that was a household name.

I wrote it down in my notes "Erode The Safety Margin." I boxed it, underlined it, then stared at it and let the full implications of that statement sink in, as I suspected, did the judge and lay members of the tribunal. They were still all wide awake.

It was now time for me to administer the 'Tercio de Muerte'.

'Paul, turn to page 545.' I continued, 'You can see the trace shows that my predicted level of effectiveness for the duty I refused was down at 70%.'

The reply from the DFO produced yet another jaw-dropping moment. 'Yes, but if you look, that is only towards the end of the flight.'

I looked towards the judge, only to find that she, along with both lay members, was busy scribbling down the latest DFO soundbite. The most critical stage of any flight when any mistakes are significantly amplified is the approach and landing phase. Yet here was the DFO of one of the UK's largest airlines attempting to play down the significance of an '*effectiveness*' of seventy per cent because it was only at the '*end of the flight*'.

I delayed the next line; like a child slowly opening a Christmas present, I wanted to savour every second.

'Please turn to page 963 of the bundle, Paul.'

Again the DFO complied. The text came straight from the manual for the software that had produced the printout— the printout upon which Thomas Cook was basing their entire case. I slowly read the text for the benefit of the tribunal.

'In order to provide some guideposts to relate levels of effectiveness to elevations of risk of an error or accident, consider the following. Considering speed of reacting to a signal, effectiveness as low as 70% lengthens reaction time about as much as being legally drunk (0.08 blood alcohol content).'

I hammered this final nail into his and the airline's position. '0.08 blood alcohol content is the equivalent to the drink-drive limit in the UK or four times the blood alcohol content limit for flying.'

'I admit it's not ideal' came the less than ideal, at least from the airline's perspective, reply from Hutchings.

We had already heard from the flight ops management team that my run of duties was by *no means unusual*. So how many more pilots are flying at the effectiveness of that of a drunk driver?

Time to close this out;

'Is it *your* decision or *mine* if I am or if I am not fatigued?'

'Your decision.' Hutchings took a deep breath to launch, yet again, into another long-winded monologue.

I cut him short. I had what I had needed. 'No further questions ma'am.'

Eddie continued to scribble, Scadeng continued to sweat.