UGA Law Day/Family Day
University of Georgia Chapel, Athens, Georgia
March 31, 2000 2:30 - 4:30 p.m.

THE AVIANO TRIAL:
MILITARY PILOTS OUT-OF-CONTROL OR
A TRAGIC ACCIDENT?

Welcome
David E. Shipley
Dean, School of Law

Introduction
William H. Weber IV (J.D. ’96)
Director of Advocacy, School of Law

Re-enactment of Aviano Trial

Question & Answer Period

Conclusion
David E. Shipley
Dean, School of Law

CAST
Lt. Col. Robert Nunley (military judge) ................ Bill Weber
Lt. Col. Carol Joyce (lead prosecutor) .................. Holly Cox
Maj. Dan Daughtery (prosecutor) ....................... Patrick Ferris
Mr. Frank Spinner (lead defense counsel) ............ Professor Ron Carlson
Maj. Bill Weber (military defense counsel) .......... Brian Jarrard
Capt. Jon Shelburne (defense counsel) ............... Brian Jarrard
Lt. Col. Muegge (squadron CO) ......................... Wright McLeod
MGSgt. Victalino (maintenance chief) ................. Jason Samuels
Mr. Scott Randall (government expert) ............... Dean Clarke
Mr. Bob Fitzgerald (government expert) .............. Ben Pearlman
Mr. Bernie Coogan (government expert) ............. Professor Tom Eaton
Italian Witnesses ........................................ Wade Green,
Laura Peel, Caroline Catalano, Jake Eby, Daisy Drury
Dr. Elizabeth Loftus (defense expert) ................. Nikki Day
Mr. Mark Bitterlich (defense expert) ................. Mark Mitchell
Capt. Richard Ashby (defendant) ...................... Sean Mikula
Synopsis

The trial of Captain Richard Ashby lasted for five weeks. More than fifty witnesses testified including 21 expert witnesses. The government charged Capt. Ashby with twenty counts of involuntary manslaughter together with multiple counts of the destruction of military and civilian property. In order to get a conviction on the manslaughter counts, the prosecution’s burden was to prove that Capt. Ashby’s flight was grossly negligent. If they failed in this burden, it was still possible for them to get a conviction on negligent homicide if the evidence showed that Capt. Ashby’s flight was merely negligent, but not grossly negligent.

To prove their case, the prosecution relied on three primary sources of information: (1) many eyewitnesses to the flight from various points along its route who claimed that the plane was much lower than was authorized; (2) expert witnesses who attempted to prove that the safety equipment on the aircraft was working properly on the day of the flight; and (3) a reconstruction of the flight from data retrieved from the aircraft that seemed to show a flight that was consistently too low and too fast.

This presentation will track these three themes through the trial from opening statements through critical direct and cross examinations and, finally, to closing arguments. You will hear testimony from both prosecution and defense expert witnesses as well as extracts from the testimony of Capt. Ashby himself. Sub-themes that will be covered include information about the maps used for the flight as well as conflicts within the defense team as to what direction the defense should take on several key issues.

Glossary

Marine Officer Rank Structure

From most junior officer to most senior, the ranks are: 2nd Lieutenant, 1st Lieutenant, Captain, Major, Lieutenant Colonel, Colonel, and then the four General Officer ranks. As a rough guide, officers will
generally be promoted to Captain after five years of service, Major after ten, and Colonel after twenty.

**AGL**

Above Ground Level. This is the height (in feet) of a plane above ground level as opposed to the height above Mean Sea Level (MSL). Instruments on military aircraft provide the MSL height only unless the aircraft is 5000 feet or lower AGL.

**EA6-B**

The Vietnam-era military jet aircraft involved in the Aviano accident. It carries a crew of four and is designed to jam enemy radar and radio signals.

**Squadron**

The smallest military unit comprised of pilots and their aircraft. An EA6-B squadron contains six pilots and is commanded by a Lt. Colonel.

**RadAlt**

Radar Altimeter. A device that tells a pilot his height above ground level by bouncing a radar signal off the ground under the aircraft. The RadAlt can be set to warn a pilot that he has gone below a specified height. When the plane descends below that height, a warning tone will sound in the pilot’s headset and a bright orange light will flash on the instrument panel.

**Bug Setting**

The height (AGL, see above) at which the pilot has set his RadAlt to sound its warning.

**INS**

The Inertial Navigational System of the EA6-B aircraft. This system is designed to give the pilots a rough idea of where they are at all times. It must be reset to a predetermined spot prior to take off. After take off, it senses the banks, turns, speed, etc. of the aircraft and reports to the pilots their location. Its accuracy gets worse and worse.
the longer the flight.

**RRS Tape**
A removable tape that records various aircraft information from the EA6-B every 11 seconds. It records aircraft speed, MSL height (see previous definition), attitude (climbing, diving, or level), INS location (see previous definition). It is from the information on this tape that the prosecution attempted to "recreate" Capt. Ashby's flight in a video presentation.

**NIMA**
The National Imagery and Mapping Agency. The federal agency that created the map that Capt. Ashby used to plan his flight. The map did not depict the gondola system that he struck even though Italian maps did show the system.