T HE WORLDWIDE TREND of increased aviation disasters warrants a critical assessment of what is achieved by this approach. More than ever before, everyone from maintenance personnel to pilots to air traffic controllers to airline executives may be prosecuted for acts of mere negligence that contributed to a crash. Where aviation accidents are more often than not caused by mistake and misfortune, not malice, and administrative and civil remedies are nearly always available, what is gained by prioritizing retribution over investigation? Criminal investigations concerned with apportioning fault and exacting punishment are often at cross-purposes with technical investigations, which are solely aimed at discovering an accident's cause so as to prevent recurrence. Judicial and safety investigators may simultaneously vie for access to the same critical evidence, while witnesses, participants, and corporate representatives who possess key information may turn reticent in the face of a perceived threat of criminal prosecution. There is widespread concern in the aviation industry that prioritizing the needs of the public and the victims' families to avenge the tragic consequences of an air disaster may impede aviation safety by creating a chilling effect on those with the most critical insight into the circumstances of a crash scenario. If the primary aim is to prevent future accidents, criminalization could prove more of a hindrance than a help.

To prioritize the preventative, safety-focused analysis,The unrestricted authority over the investigation to the safety investigation agency, giving the investigator-in-charge unhampered access to the wreckage and other relevant material. Moreover, the State of Occurrence is responsible for "protect[ing] the evidence and.., maintain ling] . .. custody of the aircraft and its contentsThe, certain sensitive records and communications receive protection from disclosure, such as statements taken from persons by the investigation authorities, all communications between the aircraft's operators, and cockpit voice recordings.' 6 Otherwise, this information, including information voluntarily communicated by those interviewed during the course of the investigation, "could be utilized inappropriately for subsequent disciplinary, civil, administrative and criminal proceedings."' 7 ICAO cautions that "[i]f 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