

## Lawyers, NTSB hold clashing views of Amtrak engineer Brandon Bostian

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Call it a clash of cultures.

The investigation into the horrific crash of Amtrak Train 188 on May 12, 2015, is proceeding along two paths, and the two couldn't be more different.

The National Transportation Safety Board so far has taken the lead, opening its probe one day after the crash. Its cautious and collaborative approach to rail and aircraft disasters has won praise for encouraging witnesses to open up, but also criticism for seeming to pull punches.

Dozens of personal-injury lawyers also want a crack at explaining what happened, and have filed 111 lawsuits involving the crash. They're taking an adversarial approach and are spoiling to put train engineer Brandon Bostian under oath, since he was at the controls when the train derailed, traveling at more than twice the posted speed limit.

NTSB investigators conducted two interviews with Bostian, one May 15, three days after the accident, and the other in November.

Those interviews revealed very little. Bostian said he had only limited recall of the moments before the crash. At the end of each interview, NTSB investigators asked Bostian if he could make any recommendations for improving safety.

The technique is common in crash investigations, in which a blame-free approach can elicit more information.

**Yet "the interview was hardly a probing examination," lawyer Thomas Kline of Kline & Specter said. "This is not questioning that a trial lawyer would describe as probing or confrontational."**

Kline and fellow personal injury lawyer Robert Mongeluzzi together have filed 24 lawsuits on behalf of family members and victims of the crash. They argue that the public was ill-served by NTSB investigators, who allowed Bostian to ramble on without once challenging his account.

Kline and Mongeluzzi are not alone in their frustration over the NTSB process. A 2000 RAND Corp. study found the NTSB practice of permitting equipment manufacturers, trade

unions, and other involved parties to participate in probes had the potential to compromise results.

"It's often a soft peddle," said Chicago personal-injury lawyer Robert Clifford, an outspoken critic of NTSB investigations. "It deliberately avoids accountability."

The NTSB says its accommodating approach to witness interviews is no accident. It is designed to elicit cooperation, and avoid scenarios in which participants lawyer up as they run for the exits.

"Our objective is to gather information from the individual providing it," NTSB spokesman Peter Knudson said. "We are not interested in doing any kind of prosecutorial or adversarial action."

In the crash of Train 188, all of the signs point to operator error. A few weeks after the derailment, the NTSB suspended Bostian's engineer certificate for operating the train at excessive speeds. It declared early on that equipment failure was not a cause of the derailment.

But little is known about Bostian himself, his employment record, and his training.

Mongeluzzi and Kline assert that a full-blown civil trial may tell us more about what really happened in the fatal seconds before the crash.

Even then, Amtrak might escape accountability. If the estimated claims by family members and injured survivors exceed the \$295 million cap set by Congress for payouts on Amtrak crashes, Amtrak might simply concede liability and turn over the money to a judge or an arbitrator.

At that point, the only issue would be how to divide up the money among the victims.

But if the damages fall well short of the cap, the plaintiffs' bar will surely seek punitive damages to get to the full \$295 million. That is when Bostian and, no doubt, a long line of Amtrak senior officials will be put under oath to explain how Train 188 accelerated within a matter of seconds from 70 mph to 106 mph, and why Amtrak had failed to install automated braking equipment on the tracks leading into the curve.

With Bostian and others under oath, the lawyers will want to know all about Bostian's medical history and performance evaluations.

We still don't know whether Bostian simply lost track of where he was or fell asleep at the wheel, or whether there is some other explanation.

It's a safe bet that Philadelphia's hungry plaintiffs lawyers won't be asking Bostian to opine on possible safety improvements.