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The Brasher Warning by jdpricecfi

In 1987, in an NTSB case entitled Administrator v. Brasher, Mr. Brasher (the pilot) contended that the controller who found his piloting skills unsafe, had failed to give him a “possible pilot deviation” notification. As a result, Mr Brasher contended that because of that omission, the FAA waived its right to impose any sanctions against Mr. Brasher. The Board held that “the pilot deviation notification provisions “prescribe a duty, . . . imposed on FAA employees and instituted, at least in part, for the benefit of pilots”.

Hence, we have what is called the Brasher Notification, or Brasher Warning. It’s something like your Miranda rights, as in, **you have the right to know that the FAA is not happy with your flying skills.**

When an air traffic controller determines that pilot actions affected the safety of operations, the controller must notify the flight crew as soon as operationally practical using the Brasher Notification phraseology:

(Aircraft identification) POSSIBLE PILOT DEVIATION, ADVISE YOU CONTACT (facility) AT (telephone number).

The “Brasher Notification,” or “Brasher Warning” is intended to provide the involved flight crew with an opportunity to make note of the occurrence and collect their thoughts for future coordination with Flight Standards regarding enforcement actions or operator training.

If you receive a Brasher call from ATC, there are some things to know.

- There is no need to make the telephone call immediately. Take time to think.
- Call an aviation attorney before you make the phone call to ATC.
- Your call will almost certainly be recorded. The AIM specifies that such calls are recorded and since you have the AIM memorized, legally that is sufficient notice. There is no tone or announcement. You may ask if the call is being recorded and to speak on an unrecorded line instead. The request may or may not be honored.
- Anything you say can be used as an admission in court against you. Be polite, but not prolific when speaking. It’s discourteous to not return a call, but nothing says you have to spill your guts.
 - “This is N1234X. I was asked by _____ to call you after I landed. Can you tell me why?”
 - “I’d rather not say anything about it right now.”
 - “I’d like an opportunity to hear the tapes before I say anything.” (Pilot’s Bill of Rights)

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What happens when a Brasher Warning is not issued and out of the blue, a pilot receives a letter or call from an inspector? Sometimes an inspector will contact an airman about a flight that occurred weeks or months earlier that was, from the airman's perspective, completely uneventful.

In this case, it may not be too late to file a NASA form (<http://www.mooneymart.com/siteintro/nasaarc.php>). According to Advisory Circular 00-46E, the 10-day clock starts ticking from the violation date, "or date when the person became aware of or should have been aware of the violation." If it is debatable whether the pilot should have been aware initially, an argument may be made that the pilot was not aware of any problem, until he or she was contacted (or ambushed) by the inspector, making the report timely. A late filed report will not prevent the FAA from imposing a certificate action or civil penalty, but even a late report is evidence of the airman's constructive attitude that may prevent future violations. Therefore, filing a report, even if late, may still be advisable as long as the event was not done in the spirit of criminal activity or if an accident occurred as a result of the action.

Keep in mind that even if you hear from the FAA unexpectedly, you are entitled under the Pilot's Bill of Rights to the air traffic data, such as recorded audio or radar data. Since you were not on notice at the time, you may have missed the opportunity to preserve your own data that could be useful in your defense, such as GPS tracks or GoPro footage. This makes it even more important that you exercise your right to review the FAA's data.

In addition to considering a NASA filing and requesting ATC data, please, do not make any admissions. One pilot received a letter six months after the flight in question, and he had no memory of the flight since it seemed routine at the time. Since you may not even remember the flight, it is important not to speculate on what may have happened.

It may be encouraging to know that unintentional pilot deviations that are the result of issues such as minor mistakes or diminished skills are within the scope of the FAA's Compliance Philosophy, which focuses on resolving these matters through education, training, or counseling. Nevertheless, it is wise to keep your rights in mind and seek legal advice early in the process.

Mr. Proactive

A pilot received a Brasher Warning and before the FAA contacted him, he proactively started to do something about it. The FAA Inspector called the pilot about a week later. The pilot was very "humble" about the matter and had already logged some remedial ground and flight training with a CFI. This proactive attitude impressed the inspector and he asked the pilot to send copies of those logbook entries containing the CFI training. Upon receipt of the logbook proof of training, the case was closed.

The Value of Wings Participation

If you are a FAA's WINGS Program participant, and find yourself are in "trouble" with the FAA, inspectors look upon your WINGS participation quite favorably. Man, you're a righteous dude!

Legal Advice

You can join AOPA and sign up for their Legal Plan. If an Inspector calls and you say, "I will need to consult with my attorney", that's not looked upon as being uncooperative. No, it's just smart.

Remedial Training

If you are offered a plan wherein you receive some remedial training from a CFI, and you refuse to participate in that plan, then you will be looked upon as uncooperative and nothing good will come from this.

Know Before You Leap

I hope you never hear a Brasher Warning directed at you. But, if you do find yourself in trouble, protect and arm yourself with knowledge and good legal advice before you leap into a friendly conversation with the FAA.

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