

Lahr, May 21, 2004 on Burden

Dear Captain H. Ray Lahr,

May 21, 2004

Sir, I am respectfully submitting this document, for your consideration towards your lawsuit. The following presents an argument, which, although some of the points written herein have already been covered, I believe you will find other points, thoughts, and observations which you may be able to use in your argument against the NTSB. It is my hope that the points, thoughts and observations presented here may perhaps enhance your position and your argument.

As always, I truly wish the you the best in this endeavor.

Who has the Burden of proof?

An introduction to the rebuttal 'Burden of proof for proprietary claim'

'Intriguing' appropriately describes the many revelations which the independent investigation has pointed out. This case is also quite thought provoking and still an interest to many as well as to the families of the victims. As you well know, since the crash, several authors have published books and video's offering their experience with the case and what they believe the cause to be. And of course there still are disagreements regarding several aspects of the crash, one being the spontaneous center wing tank explosion verses a missile, and then if a missile, who's missile. Then there are the questions as to just how well the FBI and NTSB have conducted this Airplane crash, and that for the obvious reasons which have been pointed out by the independent investigation.

Article after article has been written covering the pros and cons of each theory and the reasoning behind each opinion. But given that the task which has been undertaken is to discover facts, let us look at the reports as they have been given in the official record. And it is with such published facts and the responses to, or lack there of which prompted me to write this rebuttal against any notion that there is, or can be any Data which is or is said to be used to support an aerodynamic response which the NTSB video portrays.

My concern in reviewing all of the available records from the NTSB is not just the NTSB articulation for what the Board has and is presenting as a factual occurrence, that being, the post explosion trajectory of the remaining fuselage, but, my concern is the lack of posture on Boeing's behest to the NTSB on their (the NTSB's) trajectory study with the implication that it was a Boeing aircraft which according to the NTSB docket reacted in the manner (flight reaction) which is said to have occurred because of the (or) a specific design characteristic of the 747-131 which has its (or a) performance ability only due to the intellectual prowess of one or more Boeing engineers, and that the method of computing such a physical and aerodynamic reaction lies only with a bit of data which is alleged to be of intellectual property to Boeing, according to an inferred design secret, which the NTSB has testified that it was Boeing supplied Data that shows how the aerodynamics of the 747-131 works, and such an aerodynamic reaction that cannot be understood in any other computer program except the NTSB in house program and that being supplied with some data from Boeing. The NTSB testified that " The Safety Board seeks commercially sensitive or proprietary information from the manufacturer during its investigation. The manufacturers often do not release the information given to the safety Board to the public." ... "in this case the Safety Board included all of the necessary information in the public docket. " (Letter to Ray Lahr from Jim Hall) <http://twa800.com/news/Lahr-2-23-01.htm>

So the NTSB is stating it had received Data from Boeing for the zoom climb, yet Boeing subsequently responded by saying, "Boeing was not involved in the *production* of the Video...nor have we had the opportunity to obtain a copy or fully understand the *data* used to create it. While we provided basic aerodynamic information to assist in the CIA analysis of the airplanes *performance*, we are not aware of the data that was used to *develop the video*." [Italics mine]

Nowhere did *Boeing* ever state that they, as chairman Hall has said, provided any sensitive or proprietary data to the CIA or the NTSB which in an of itself adds to the published data or in itself alone, disregarding the published data will result in an aerodynamic and physical response that the NTSB can claim as being a sole result of proprietary data from the manufacturer.

So we must question Boeings inaction to reply more vigorously in this matter. Given that much of what has been reported as the breakup sequence of the aircraft and the resulting trajectory, such is presenting a most unusual physical and aerodynamic response to the loss of the front 70 feet of fuselage. We must still ask the question, why Boeings Intervention interest now, with the filing of the lawsuit? Especially due to the fact that Boeing never took it upon itself to formally challenge the NTSB scenario. But there was evidently no need for Boeing to challenge the Trajectory conclusion and its implications as Boeing apparently offered to the Safety Board some bit of Data toward the computer program for which the conclusions were drawn. Even if not what is deemed to specifically be any aerodynamic data, it is still implied that Boeing data of some nature which cannot be disclosed, was used at least in some phase of the trajectory study compilation.

Regardless of the data used, if Boeing supplied any data to the NTSB was not Boeing aware that such a data and its intrinsic results would be incorporated into any result about the trajectory study? Boeing therefore supplied some bit of data which the NTSB says it cannot share upon request, with regard to how the NTSB arrived at its trajectory conclusion.(?)

So it at-least begs the question, what form of data did Boeing supply to the NTSB then, which has in some way a role in the trajectory study, given that Boeing said in a manner of speaking that it is not aware of how the trajectory study *concluded* in the manner that it did? So to what named data was supplied from Boeing which was utilized in part toward the compilation of data which ultimately resulted in the trajectory study? (Either in part or whole)

If Boeing in reality has no data concern in this matter (according to their own press release) then why is Boeing intervening in this matter given that Boeing has no interest or just cause to intervene over an NTSB conclusion on the trajectory? And especially in regard to someone else's lawsuit. Unless the Boeing data *has* a specific part in the compilation of data used for the trajectory study? And if so, then why the disclaimer made in the press release that (in other words) no Boeing data was used

which could be used toward the trajectory study (to wit) the remaining fuselages 'flight' characteristics *that were shown in the video*; and in Boeings own words,

[Press release: "Boeing was not involved in the *production* of the Video...nor have we had the opportunity to obtain a copy or fully understand the *data* used to create it. While we provided basic aerodynamic information to assist in the CIA analysis of the airplanes *performance*, we are not aware of the data that was used to *develop the video*." [Italics mine]

So Boeing *now* needs to intervene over some bit of information that's not even theirs? They did not supply any *additional Data* which was a part of the Video's portrayal of the flight characteristic. They supplied the 'basic aerodynamic

information' about the 747 therefore such, (the basic aerodynamic information) was the only data given to the CIA, which is assumed to be what was a part of the production. And as Boeing understands their aerodynamic data, and that is what they supplied yet they said that they don't fully understand the *data used to 'create' the flight response*. And then they said again, they were not aware of the *data used to develop the flight characteristic*.

So from whence comes the proprietary and trade secret plea about the data used for the video? The basic aerodynamic information is not proprietary, or a trade secret. Yet in Boeing plea in the lawsuit, their position is that there is a proprietary interest now, which apparently has to do with a performance aspect of the 747 after the loss of the front 70 feet.

And as the Basic aerodynamic information was supplied to the CIA, what then is the proprietary data being, 'sensitive and or a trade secret' which it was said of the NTSB that they received from Boeing for the NTSB video version? This same (new) data which the NTSB said Boeing would not give authorization to release?

So what bit of information does Boeing have a need to intervene over? And as the (or if) the information is not known to the public or other manufacturers already, is Boeing trying to stop the disclosure of such information? And again, what information/data is Boeing pleading as sensitive if it is not the basic aerodynamic information which has to do with how the NTSB and the CIA arrived at its zoom climb calculation?

Is this the same Information that Boeing supplied to the NTSB according to the NTSB statement that " The Safety Board seeks commercially sensitive or proprietary information from the manufacturer during its investigation. The manufacturers often do not release the information given to the safety Board to the public." ... "in this case the Safety Board included all of the necessary information in the public docket. " (Letter to Ray Lahr from Jim Hall)
<http://twa800.com/news/Lahr-2-23-01.htm> (?)

Is this information, 'other information' (data) apart from that which the press release statement is referencing?

And then is this Information, that which played a part in compiling the trajectory study conclusion?

And then is this Information such that has intellectual value about a discovery of an aerodynamic property that Boeing Believes it discovered or created in its airplane design?

But then we have to ask, if Boeing is not aware of the Data used in the Video, then what is Boeings interest in this lawsuit?

Is the Boeing data about the NTSB trajectory study?

Is the Boeing data about the trajectory of the frontless 747-131?

Is the Boeing data about the aerodynamic characteristics of the B747-131?

Is the Boeing data about the performance of a crippled B747-131?

As Boeing says it has no aerodynamic data which 'supports' the zoom climb, then by name, what trade secret data is Boeing pleading non-disclosure for?

If the zoom climb was a result of data which Boeing has no understanding about or neither was it Data which Boeing was aware of as it was used in the development of the video, then Boeing has absolutely no claim in this lawsuit.

So we must still inquire further since Boeing is pleading for nondisclosure of 'data' which has to do with the plaintiff request for the 'zoom climb' calculations.

Did Boeing supply *any* information to the NTSB which the NTSB ultimately utilized in its final trajectory study? If the NTSB concluded a trajectory report with data from Boeing, was Boeing aware that such data would be used within the body of the final reports conclusion calculations. Can the NTSB supply an affidavit from Boeing that Boeing supplied aerodynamic performance data to the NTSB which was utilized in the production and development of the NTSB's version of the video?

Can the NTSB supply an affidavit from Boeing that Boeing will state emphatically that they are aware and believe that the 747 sans 70 feet from the front will still fly as the trajectory to the crash sight insists?

Boeing did not supply any aerodynamic information to the CIA which will allow for the zoom climb.

Yet suddenly with the filing of the lawsuit, about the calculations that were made for the trajectory, Boeing pleads that such trajectory information is proprietary, and that they cannot or will not allow such data to be disclosed, and that the nature of that data, and where in the report it would be utilized, cannot be disclosed?

We must ask that Boeing at least identify by name what trade secret they are pleading non-disclosure for. I have failed to find any NTSB docket statement which Proclaims that there would be any form of Boeing corporation intellectual property That would or will enhance the understanding, to prove as fact, the trajectory position held by the NTSB as the final disposition for the trajectory and radar study, which MUST be in need of some bit of Boeing 'trade secret' or proprietary information used toward the same, and that without this Boeing 'trade secret', the trajectory can not be understood, nor the accompanying and supporting radar data which the trajectory study testifies is supporting the motion of the aircraft as then depicted on the video.

So it is yet to be clear, what *specific* Boeing data was utilized, which is being called the 'trade secret', that allows for the motion of the airplane, as seen in the video. There has been no plea toward disclosure of any radar data, or the trajectory study itself exclusively, even though each of those exhibit shows or is bearing witness (or) collaborating that the motion of the airplane fuselage continued "flight" (same word also expressly used in the exhibit 22c!) in the manner which was adopted into the visual presentation, to allow clarity as far as what the longitudinal and later motions of the fuselage are said to have been according to the trajectory study exhibit 22C.

Or to say, the Radar data is said to confirm the motion of the airplane fuselage, whereby the trajectory study is based upon, and now apparently supported by

Boeing only in as far as the NTSB version goes, given that there is some data that Boeing supplied in relation to the NTSB zoom climb version, which was not used in the 'CIA version' although both versions come to the same 'zoom climb' conclusion!

So it is implied from the defendant NTSB at least, that even as the lawsuit is based upon how they concluded a factual matter, in essence what *is already* disclosed in the radar exhibit as well as the supporting trajectory exhibit, (again reminding that both exhibits collaborate,) that there has been no opposition to disclosing any aspect of either of these exhibits, **but** only that opposition arises when the matter of **what** the radar indeed records, and then **what** the trajectory study subsequently affirms, and that being '**the motion**' of the airplane fuselage, **is** where the opposition to disclosing how the motion of the fuselage occurred. And then how the fuselage motion occurred is implied as belonging to Boeing, in that what the radar recorded, can only be explained by Boeing alone who knows **how the motion occurred** and this entails a trade secret interest.

The plea made by the NTSB, is that even though they, having knowledge (from Boeing) of how this zoom climb occurred, is such that can only be divulged by *Boeing who only has the authority* to explain how this occurred. (According to the NTSB.)

Boeing will not explain how the 'performance' occurred because such data is a trade secret according to their plea. But such data being performance related is in the realm of an aerodynamic performance that Boeing already attested to as having no understanding of what data was used apart from basic aerodynamic information. If the Boeing press release statement still applies here, then Boeing has **no data** for which it is now claiming to possess which **will** explain the zoom climb! And as we already know, aerodynamic performance data for the 747 is already known, the same which Boeing affirmed in their press release.

But if Boeing now wishes to retract its press release statement, then Boeings position would expressly infer that there is more data, apart from basic aerodynamic information which they shared after the CIA video was made, with the NTSB!

Therefore, Boeing just stated unequivocally that they did not offer the CIA any information which *would or could* allow for the motion as shown on the video! Yet now with the lawsuit, Boeing is stating that there does exist a data that is aerodynamically performance related which cannot be divulged given the plea of proprietary trade secret. And that this data was shared with the NTSB, (but not the CIA?)

Or to say that the motion on the CIA version, has no other additional Boeing data in it, (unlike the NTSB version) therefore they are not aware of how the CIA made its version. But then, that they provided such a data for the NTSB version, therefore they understand how the NTSB version was made? And that this other data (implied as being a trade secret) which is data used besides the basic aerodynamic information, is that data which explains or shows how the zoom climb occurred? And this data is 'non performance' data and so it cannot be divulged! Non-sense! Is Boeing's position that the 'data' in question is performance or non-performance? Boeing has already supplied performance data with the aircraft at delivery to the airline. And if this other so called proprietary data shows how the zoom occurred, then is it of a performance nature or a non-performance nature? Boeing can't have

it both ways!

The core of the argument is that if the result of a report, or the action of a report, *has* incorporated into it (any) data which is needed for the means to the conclusion, then such a data which is comprising, making up, causing the action and the reason for the action, must be made available, in as far as the data used for a conclusion must be based on a whole set of data and not data in part which would not arrive at the same result. Or to say, for the motion which was made by the animated airplane to react in the manner in which it did, the Boeing submitted data plus any and all data must be included (entered) into an aerodynamic program which recognizes all data entries pertaining to weight, arm, moment, calculations, as well as the fore and aft CG limit data for the airplane. The take off and in-flight performance data, gravity affect, stall table information and aerodynamic effects are all data to be considered.

The NTSB cannot insist that there exists performance data for a damaged airplane to react in an unusual manner contrary to what is known about flight dynamics, and that in the case of an airplane which has just lost 70 feet off the front, the way the plane unexpectedly responded (according to the zoom climb theory) is now a secret from Boeing!

The NTSB cannot also insist that the published Boeing data alone is all that is required to explain their trajectory conclusion, when the published data is lacking in its ability to set forth such a trajectory. Nor can they insist that this same published Boeing data is a partial and incomplete data list which, is all that is required for the public record, and then later (such was only brought up because of the lawsuit) to admit that only some additional information which the public cannot know, is what makes the published records trajectory conclusion complete. Or to say, the NTSB did not include into the official record any indication or statement making the public aware that Boeing supplied additional performance data which is needed to explain what the trajectory study shows.

The NTSB though, did in fact reveal the so-called proprietary data unwittingly (according to their scenario) in that the action and motion of the video animated airplane can only react with the use of this alleged data. If the NTSB was forbidden by Boeing to 'release any data other than what is included in the public docket' [Hall to Lahr] then the Video could not have been created given that *in order to produce the motion* for the animated airplane response, the data, when included with basic aerodynamic information caused the 'reaction' to occur to the animated airplane, thus disclosing that such a response was possible with the out of balance B747.

And now, the public knows this. If this response was *known to Boeing alone*, and a proprietary secret, then there was no need to make the video depicting the in flight action which was to be kept a secret with Boeing. Even if no video was made, and the question arose about the post explosion trajectory of the plane, even to make a statement that the 747 due to its design, pitched upward and climbed a ways, would have still garnered many questions as to how this was to have occurred, still given all of the other evidence available that it could not have climbed.

Therefore it is the contention here that The NTSB did, and then Boeing themselves knew that '...any other data other than what is included in the public docket' was indeed released to the public in the form of the animation reaction. This 'any other

data' was indeed a literal part of the video creation, and therefore the subsequent result, as a matter of including the data into the computer program to make the motion, was releasing such data to the public. Now with the release of the video out side of specific parties need to know, the public is now aware of the performance characteristic Boeing is alleging its aircraft will do under 'damaged' circumstances.

Is Boeing calling this a trade secret because they don't want any other manufacturer to know how to make a broken airplane fly, and don't want them to copy the idea!

If it were a trade secret then there would have been no need to create the video. So why did Boeing allow the creation of the videos, if knowing that ultimately (given the premeditation of design) that their 747 sans 70 feet will still fly. And then willfully supply data to the NTSB for a video which was to be used for public release.

Did the public need to know this? And if it was such an issue, then even after the CIA published its version, then Boeing ought to have spoken up and said, don't air the video because it will show a flight characteristic only we need to know about, and that the video will only be viewed by the Board. But they then still willfully participated in giving to the NTSB obviously (according to the NTSB) more additional data which 'shows' how the zoom occurred. Even after they stated that they had no idea how the CIA came to their conclusion, given that Boeing did not give the CIA the same data they latter gave to the NTSB to make the zoom a possibility!

Therefore, the video is a part the 'public record', therefore all data used for the trajectory conclusion in the NTSB video which Boeing now claims to have a part in, must be released given that Boeing already submitted in exhibit, information for what would ultimately become a part of the public record and that being, the trajectory video.

If any part of the video is judged to be proprietary in content, and such is the case given that it is said to contain proprietary data, then the NTSB has to retract the video content in as far as it contains proprietary data which according to Boeing was not to be released to the public. And if the video requires proprietary data to make the zoom climb happened, and such data is then omitted, then this leaves us with basic aerodynamic information, whereby to asses the trajectory, which according to the laws of physics, and aeronautical information, will cause the frontless 747 to pitch up to full stall and begin immediate descent. Therefore Boeing was indeed correct when they first stated that they have no idea how the CIA came to its conclusion. So Boeing has no claim in this lawsuit. To insist that there now exists some information which Boeing is laying claim to and that they are now responsive to a trajectory position they once admitted having no stake in, given that they are unaware of *the data the CIA used*, is contempt of this court proceedings in this fact finding and discovery phase. Boeing seems to want to change the facts midstream.

Therefore it is the contention here that the NTSB did release data which (the NTSB said) that Boeing did not want to be released to the public. The CIA did not release proprietary Boeing data according to the Boeing press release, meaning that Boeing never supplied the CIA with any proprietary data, nor did the CIA as the NTSB has said, ever seek 'commercially sensitive or proprietary information' when Boeing stated "Boeing was not involved in the *production* of the Video...nor have we had the opportunity to obtain a copy or fully understand the *data* used to create it.

While we provided basic aerodynamic information to assist in the CIA analysis of the airplanes *performance*, we are not aware of the data that was used to *develop the video*." [Italics mine]

So if Boeing did **allow** the airplane performance characteristic **to be known** to the public, this same airplane performance characteristic which Boeing now claims is a result of or can only be understood with the use of a proprietary data, means that Boeing willfully participated in a video project which utilizing what they are now calling a trade secret data, did then knowingly release indeed *the performance data* for a performance response which they now imply required the use of the trade secret data, and such was displayed in the animation motion. Therefore for a plaintiff to seek the **data which was utilized in** the factual record and **offered to the public**, whereby such a responsive presentation has been made by free will, and especially given that data which is utilized everyday by pilots, airlines, physicists, will not allow for such a trajectory response, when the door was opened by the NTSB with the offering of the Video, *it then begged the question* by many who know aircraft, 'how did this occur? By what means did the NTSB use to come to this conclusion!

Nowhere did the public seek or demand a video be made to present what the NTSB has stated to have occurred. Thereby insisting that Boeing release data which is a trade secret, therefore compelling the NTSB to have to 'create' a document or an agency record to explain what occurred. (See Defendants Motion to dismiss)

Looking at the lawsuit, we must address the question, just what is the defendants argument and then what is it the NTSB is afraid of being disclosed? A trade secret is the only defensive stance? This is where this rebuttal is leading to.

As we look at the POINTS in the suit, The NTSB position is that the freedom of information act is inadequate for the plaintiff's request for information of an apparent airplane performance related matter, due to the allegation from the NTSB that such information for performance records belong with Boeing. In this case specifically, all information which was utilized to show the physical reaction to the severely damaged fuselage.

The NTSB can only uphold its trajectory decision if Boeing stakes a claim to any part of the trajectory study given that it was a Boeing airplane which successfully flew on for 2.2Nm. Or to say it appears that the NTSB position only has clout as long as Boeing pleads it has a stake in the information sought after by the plaintiff. The CIA is also banking on the assertion that what they know about the trajectory is only based on NTSB data, and that their conclusion is because of what information the NTSB gave them. Yet we know that this is not true. So the strategy is to pin it on Boeing aircraft. Then *what the plane did* performance wise, after the front loss, after the CG aft of CL Belongs to Boeing so it is really Boeing's and not the NTSB's decision as to the outcome of the total trajectory study and factual data?

Lets look at the Plaintiff's Court filing points. [] Brackets = my comments.

Pg 12 Line 13, "The NTSB must produce only those *records upon* which its publicly released reports are based..." Line 21, 'November 17, 1997 video animation (CIA-

produced, both NTSB and CIA deny being initiating agency.

[Some thought process used toward and as a part of the fact determination must have existed for the CIA to have 'concluded' as early as December 1996 such was the trajectory, and according to the CIA record, such a determination was made from their aerodynamicist. Therefore the 'conclusion' was not made initially by Boeing. Boeing supplied no trade secret or commercially sensitive data for the CIA aerodynamicist. So by what means did the CIA use to come to the zoom climb trajectory?

From CIA transcript; PG 27 Line 14 - -

"Go back to something else here in terms of how high that plane went after the initial explosion. We had an aerodynamicist, an engineer, who's very experienced. He's a pilot and he also built his own airplane. Took him eight years. He was working with several aerodynamicists at Boeing as he proceeded through this analysis. We were trying to match aerodynamic information along with radar information that we had and come up with an estimate of what the plane did. And we were doing this so we could try to get a sense of what the eyewitnesses may have seen."

CIA ANALYST #1: I asked our aerodynamicist to do a run, do a simulation where he cut off the engines within a few seconds of when the plane exploded and see if it had enough momentum and lift to produce a trajectory that would be close to what we thought the eyewitnesses may have seen with our original trajectory, and the answer came back yes. So you don't have to have the engines running to have the plane appear in a way that it would have for those early eyewitnesses,"

So in looking at these statements, if the NTSB was only to receive trade secret data,

then is such which has to do with loss of engine power a trade secret, and contributing to the zoom climb, or momentum being a trade secret which contributed to the zoom climb, or lift, being a trade secret and contributing to the zoom climb? But what was not mentioned by the CIA's analysis was the Center of gravity shift with the loss of 39 tons in 70 feet of forward fuselage. This was only mentioned by Mr. Young with TWA. "Pg 35 line 13; "and I guess the other question I have too, swept wing airplanes tend to be generally unstable and once you lose 100,000 pounds or so off the nose, obviously he was using the shift of center of gravity, but I'm concerned of why he would assume that the wings would remain level in that situation. Because that's the key to the airplane being able to ascend." But this apparently went on deaf ears, as the CIA opted for their aerodynamicists' unverifiable methodology. No mention of trade secret data with respect as to how the CG shift did not affect the plane, therefore having it remain wings level and able to sustain 'lift'.

No mention from the CIA that they were utilizing any other data apart from what Boeing gave them, and that which the CIA aerodynamicist used, or didn't use.

Then on Pg 33 line 13; "You've mentioned that you have an aerodynamics person that was on the analysis team and is a pilot. Is there anybody on your team that had experience with large aircraft of this size? CIA ANALYST #1: "Well if we include on our team the Boeing people we were consulting with, yes. MR. YOUNG:" Ok because I think part of your analysis, the airplane remains wings level. As it pitches up and at the very top we see the engines compressors stalling for effect, I guess,

symmetrically which was nice of them to do that. It turns out that this particular engine has a huge appetite for fuel and it would be at climb power at the time. And we found out unfortunately in normal operations that without what we call positive pressure to the engines, that they tend to flame out very rapidly, and of course with the nose off the airplane there would be no power to the electrical boost pumps to provide that positive pressure to the engines." It was then that the CIA gave the answer about the momentum and lift, still ignoring the more critical part of the equation, the CG and the critical AOA for the wings.

So are they Inferring Boeing was initiating agency given that the CIA was merely consulting with Boeing? Boeing data was supplied as far a basic aerodynamics. Then what data could Boeing also have given to the CIA for them to 'conclude' it was plane going up, as they so concluded in December 1996? Or what other data did Boeing give for them to conclude it was the plane going up? Absolutely nothing.

Getting back on track, with the plaintiff's response to the NTSB pleas;

Line 15, ' absent comments or data that were not ultimately incorporated into or relied upon in its reports.

[Comments relied upon and data relied upon and incorporated is agency record?] witness statements/comments said to be factual as they pertain to what the NTSB says; proclaims, they saw, and that being based on radar data. Ref: Pg 12 lines 22, 23; " December 8, 1997 video animation "flight path view". December 8, 1997 video animation "Flight path view from ground". If such was in fact the view, that the witnesses saw, then the angle and the climb must have been steep in order to appear in the manner only in which the board is interpreting the witness statements? Then for what need if the radar data is collaborating the motion of the plane? The CIA as we have read attributes some of the steepness of the 'apparent' climb somewhat to the 'aerodynamic' response of the plane but then to the 'angle' in which it appeared to the witnesses, looking like it was steep. The CIA can't have it both ways either!

Pg 13, line 10, "Additionally, contrary to the defendants claim, the selection of facts to be included in a report is not a part of the deliberative process."

[So called proprietary data is not deliberative as it implied that such was necessary (factual data Boeing alleges to possess) to cause/show the zoom climb.]

Pg 13 Line 12, "and contrary to the NTSB's claim, the reports of outside consultants, like party members, are afforded no deliberative protection under exemption 5.

[Boeing being an outside consultant in that they offered the necessary factual data, according to the plea, and such data was a part in the substantiating of the said fact/result of the trajectory, being an inherent response of the frontless 747 according to the Boeing position of having knowledge as how this occurs due to some nature of design that the 747 wing has which is the trade secret they are pleading about. IAW the NTSB position for reason of non-disclosure of a performance reaction!
Boeing data is not then deliberative but inclusive to the sum of the factual record.]

Pg 13 Line 14-17, "The four sets of zoom climb calculations are adopted in its four publicly released reports. In 1997, the seventh Circuit rejected an exemption 5 claim ordering disclosure of records underlying a published agency report."

[As mentioned already]

Therefore, the video **is** a part the 'public record', therefore all data used for the trajectory conclusion which Boeing now claims to have a part in, must be released given that Boeing already submitted in exhibit, information for what would ultimately become a part of the public record and that being, the trajectory video. The underlying information **is** that which **was** the factual statement of the NTSB trajectory conclusion, the sum of the data Boeing says allows for the climb plus then again the radar collaboration.

Any and all data used is a calculation toward the sum of the whole conclusion, the conclusion being the factual report itself. The three video views incorporate the calculations which concur with the written report, exhibit 22. The video's conclusions are the same as the written report. Any and all data that Boeing submitted and in which the NTSB has used in its conclusions about all four trajectory reports, must be made accessible. Not in part such as only the exhibit 22 Boeing data, but that which is said to enhance or make complete the factual statement about the trajectory. To wit, the data said to be in possession of Boeing which the NTSB asked for, this same trade secret data (as it is being called).

"underlying a published agency report." The Video versions, are the *published* agency report(s) of which is attested to in other NTSB documents such as Exhibit 22 as supporting zoom climb scenario and the radar data said to also support the zoom scenario. The final disposition of the post explosion trajectory is supported in all 4 of these records. Final disposition is also supported by Radar or so it is said by the NTSB. And, the alleged proprietary data from Boeing, any and all which were used in the final disposition are underlying records. In this case, the additional data (whether or not it is called a trade secret, was still used toward the final disposition of the agency record of fact, to wit the three video views allegedly reflecting the radar and what Boeing alleges its 747 **will do** with the front gone)

If any of such a data said to be a 'trade secret', was needed in order for the zoom climb to occur, is the NTSB saying that without such data, they would not have been able to complete their trajectory study? Could not the radar data alone explain the trajectory? Are any witness statements needed to explain the trajectory?

The factual documents state that the trajectory is based upon radar, and the zoom is based upon the trajectory studies from where came the video presentations. What if Boeing only supplied to the NTSB basic aerodynamic information as they did to the CIA. Would the NTSB have come up with a zoom climb based on that information alone? The CIA apparently did. Was this zoom conclusion based on what the radar data showed? Was the trajectory study solely based on the radar data? It appears that the radar study as well as the trajectory study is only good if the 747 zoom climbs!

Regarding Exemption 5.

Pg 13 line 16, "The privilege applies only to the opinion or recommendatory portion of (a document), not to factual information which is contained in the document." Given that the NTSB is seeking to cite exemption 5 regarding the FOIA here implies that they are pleading that the information sought is 'opinion' or 'recommendatory', that the so called Trade secret falls into the exemption 5 category? Therefore the trade secret for the trajectory is merely then an opinion of Boeings or a recommendation towards a theory about how the plane may have climbed, and therefore just a theory, and not at all fact, hence the claim now that the trade secret data, what ever it could consist of, is a trade secret in as far as it is just a recommendation or opinion from Boeing?

[The CIA and NTSB conclusions / video is not an opinion, or a recommendatory part of the record. The zoom climb, and resulting fuselage reaction / trajectory are said to also be based on radar, and the *known ability* of the frontless 747 to be able to continue flight, based upon the data said to be instrumental in showing how this was possible, such data for without, the trajectory of the fuselage could not be understood in that this reaction was (is) known to Boeing alone. (Inferring a premeditated design)

Unless the NTSB is now stating that 'whatever' data it is that Boeing is pleading a 'trade secret' was merely an *opinion* for possible flight reaction, based on a possible but rare aerodynamic reaction said to be formulated in theory by a Boeing engineer, and such was just a *recommendation* to the NTSB as to what it might have been that witnesses saw going up, then such can be classified as deliberative and under exemption 5. Here's the spin.

In citing the exemption 5 privilege is the NTSB then (now) trying to state that the zoom climb is (was) just a theory and therefore *any data* and information used, now falls under the exemption 5 category, even though they have presented the scenario as fact given as mentioned before, the collaborating radar data alleging to support the trajectory. Yet when the video was aired, there was no indication or statement made then, or in any exhibit, that the zoom was a theory, *but in fact what the plane did, what the radar recorded, and what the witnesses saw*. The NTSB can't have it both ways. But this still does not answer how the NTSB then came to the conclusion as did the CIA that it was ONLY an airplane in crippled flight which the witnesses saw. And when we read the CIA transcript, we do not come away with the impression or any specific statement that Boeing Believed its plane flew on for 2.2 Nm and in the manner depicted in the video and such is the only answer to explain witness sightings! Recall in the CIA transcript that they stated its really not important exactly how high the plane went, even though the CIA has an aerodynamicist that said it went 3200 feet higher due to 'momentum' and that 'they had radar'. Well, it is important how high the plane is said to have gone for two reasons, one being the aerodynamic impossibility, and two that it is said by the Board that this is what was seen streaking up, so how high is important especially when we look at the witness statements and try to compare such with what and where in the sky the witnesses saw the streak that was going straight up from the surface before any fireball. Remember, the fireballs streak will be trailing the plane, not going up to meet it.

But the witnesses saw a streak going up, not trailing down, and then the wing detachment 'fire', then trailing down. Although the last moment of descent of the fuselage was nearly vertical, this streak is not the one which many witnesses focused on. They didn't say they saw a streak coming down and then the fireball, the left wing one. They saw a streak which was *going up*, and when they *saw the*

one going up, there was not one coming down at the same time. This is what the CIA will have us believe. Great at spin they are, smart they are not.

So the NTSB is hoping that this court will see that their scenario was simply an idea representing a theory from Boeing? And if then just a theory and exempt under exemption 5 then there is no need for Boeing participation, when the NTSB in an of itself could simply plea that the zoom actually didn't happened, which then would not require Boeing to have to be a co defendant. For what is Boeing defending?

What is the reason and the just cause for Boeing to now intervene in this lawsuit? It appears that Boeing has more at stake in the NTSB zoom climb theory than the NTSB. Shall anyone hazard a guess? I believe it will be answered in the rebuttal "Burden of proof for proprietary claim".

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Burden of proof for Proprietary claim

Boeing Aircraft Corporation challenges Independent research group.

It appears in the recent court filing of a lawsuit by Captain (retired) H. Ray Lahr, that Boeing aircraft Corporation now wishes to Challenge the findings of several independent Research groups which strongly disagree with the National Transportation safety Boards conclusion, in their August 2000 final report that after the center wing tank of a B-747 was said to have exploded, that the aircraft continued in level and balanced flight for approximately 20 seconds, and gained altitude of over 1,200 feet according to NTSB records. This continued flight according to the NTSB was a result of specific parameters, ones which disregard several other more critical parameters which are the ones which cause or allow an aircraft to remain in stable and sustained flight. The NTSB narrowed its selective parameters for sustained flight down to two factors, both, which are determinable, but which according to the board far exceeded their boundaries as well as completely omitting other needed factors for continued flight. The reason for the sustained flight *according to the Board*, was (1) due to the coefficients of the aircraft wing, and (2) kinetic energy; enough kinetic energy to move the frontless aircraft upward over 1200 feet and for a distance of 2.2 NM before slowing enough to begin to free fall. But when mentioning the aircraft wing, we are not discussing just any aircraft wing; we are discussing the 747 wing. Because according to the manufacturer their wing can do what no other wing can do, and that means any information about how the wing performs is a trade secret, and even though the aircraft responded reasonably correct to the center of gravity shift when the front end detached from the rest of the fuselage, this particular wing design is able to do what no other wing can do, and that would be to keep an out of balance fuselage 'in balance', as well as provide a constant amount of torque to counter the fuselage CG shift aft of the center of lift. Although Boeing admits that the 747 fuselage was well out of balance in Mean aerodynamic Chord, flight was sustained given that *their wing design* allowed for sustained flight by design. (Or so it is being implied as such by Boeing) as they give no clear answer as to what factors translated to or from the wing that allowed for aerodynamic forces which gave the wing the ability to correct the fuselage that was so out of balance, resulting in a stable wing profile which allowed for the sustained flight as depicted in the factual report of the NTSB.

But actually, are the above statements a correct interpretation of Boeing intentions? Does Boeing actually believe their wing performed as portrayed in the NTSB and CIA videos of the post center wing tank explosion trajectory of Flight 800? So why has Boeing been named a Co-defendant in the *Lahr vs. NTSB lawsuit*? Boeing did not at one time appear to agree with the conclusions of the CIA/NTSB renditions of the 747 performance as shown in the videos. In their own press release, Boeing stated that they are not aware of how the CIA/NTSB came to their trajectory conclusions. Yet the NTSB later stated that they were only able to come to the conclusion that they did due to sensitive and proprietary information from the manufacturer which when used in conjunction with the NTSB in house computer program, and the intuitive calculations of Mr. Denise Crider, that they were able to 'create' the zoom climbing air plane.

A cursory observation of the data which Boeing submitted according to known weight and balance formulas used everyday by the Airlines will not allow for stable flight. Yet what seems to be implied without explanation is that the submitted Data, although valid, and not disputed, is not central to any performance characteristic the plane had taken on after the front-end loss, but that *the performance which resulted*

was a direct result and a sole response from the aircraft wing alone. Even in seeking to discuss the climbing planes performance as alleged by the board, just how the submitted Boeing Data was to play a part in the climb was not even discussed or offered as being {in} any part of the so called total formula which, consisted of some unknown bit of key information only known to Boeing but shared with the Safety board, and when coupled with the Board's 'in house' computer program, were the only factors to be considered in arriving at how the plane remained stable and zoom climbed.

In defense of such a position, The NTSB in speaking for Boeing claims that the information provided from Boeing to the Board is 'sensitive' and 'proprietary' to the maker of the 747, or literally in this matter, the maker of the wing, and to disclose this key bit of data which 'makes' the NTSB computer program work, if shared with outside interests could harm Boeing commercially and competitively. Other such information though, such as recognized weight and balance formulas, have not been mentioned by the NTSB. Also, no know formulas for kinetic energy application, or momentum have been offered as a defense for the NTSB zoom climb theory, from either Boeing or the NTSB.

Boeing to date has been silent about the matter, or was silent, until in the motion to dismiss the first lawsuit filing from Mr. Lahr that Boeing is now to be added as a Co-defendant in the matter. Therefore, we are back to the 747 wing as being the sole reason for the alleged zoom climb. Does Boeing now wish to retract (and or) amend its original weight and balance submission into the NTSB final report? The Boeing submission figures show that 'flight' was not possible, unless Boeing now is going to imply that although the data is correct, it is just that they know something the rest of the aviation community does not know, and even though the submitted data is correct, the wing once again due to something inherent in its 'design' overcomes the out of balance fuselage, and some key bit of secret information put into the NTSB computer program will show how the wing applied enough forward torque and without any other inputs to control surfaces, was able to keep the plane stable for 2.2 NM to turn to the left, then climb, then turn back to the right until all of the kinetic energy was lost and finally the plane, not by stalling, but by rolling over eventually dropped.

Former Chairman Jim hall wrote that (ad lib) 'although, the wing was stalling, or getting right up to the point of stalling; it could not continue to stall' (being the implication) due to the Coefficients of the wing, and the sweep back angle of the wing, and the kinetic energy available due to the high speed that the plane was going, that *this* caused the remaining fuselage to continue to fly on for 13,367 feet and gain altitude.

So *this* wing Coefficients coupled *with* and undetermined kinetic energy formula, *plus* the sweep back of the wing, and the speed of the (frontless) plane, and then by *adding in* the 'sensitive' proprietary data into the NTSB computer, this is what allowed the frontless fuselage to fly and climb for 20 seconds. Quite a defense for data which can academically be proven so wrong.

Also, the high speed which Mr. Hall was referring to was 288 Knots Indicated airspeed. This is approximately 331 mph. When given that the 747 was still climbing to its final cruise altitude this is not considered high speed, given that the 747-131 cruises at 550 mph. (averaged consideration) {other sources state that the velocity of Flight 800 at the time of 'the explosion' was 298 kt, although when we look at the last 15 seconds of the FDR data, the mean airspeed works out to 288 kt with the final value changing to 298 kt IAS}. So here is my rebuttal to the proprietary claim

of secret data which is suppose to explain how the 747 minus the 70 foot front section

continued flight simply because of the 747-100 series aircraft wing design.

Does Boeing own the principles of flight?

To be the Proprietor or the owner in a matter means they are solely the originator, and have exclusive and patented rights to the matter. This would also mean that the idea or concept must be (a) Unique (b) innovative (c) inventive (d) new (e) imaginative (f) distinctive (g) irreplaceable. The synonym for Patented is 'original'. Another synonym for patented is 'untested', and 'unproved'. This synonym also infers untested, 'untried', 'unproven', and experimental.

This word also infers first of its kind. The synonym for original is 'unique'. 'Rare' and 'uncommon' are words to describe unique. Is the 747 wing unique, innovative, inventive, new, imaginative, distinctive, and irreplaceable? The foregoing definitions as they apply to the proprietary nature of the matter, do they also apply to the 747-131 wing without cause for or right to redress. Is the 747-131 one of a kind as implied by Boeing in its ability to perform in the manner claimed? Is the 131 wing innovative in that it heralded a new type or generation of wing for Boeing which was known at the time of its design and production, and proven by tests that this wing will perform as so depicted in the video? Is the 131 wing inventive in that using the laws of aerodynamics and balance that this design was premeditated by Boeing to perform as depicted? Is the 131 wing new, for all of the above stated reasons, and in its performance as depicted? Can Boeing support a new design which is due to their sole inventiveness and that its reaction cannot be understood by any physicist, or aerodynamicist, but that the key to understanding how this wing performed is only known to Boeing and via a secret bit of integral data put into the NTSB computer program? Is the 131 therefore imaginative in design, distinctive to Boeing 747's and Boeing position on aerodynamics, which the rest of the aviation community cannot understand, nor will be able to understand? Is this 131 wing 'Irreplaceable' in its design function? Are we then to believe that successive 747 wing designs also incorporate this same design secret and that all current 200, 300, and 400 series 747s have this same design aspect, and to explain how Boeing and or the NTSB calculates weight and balance, would then (have to) reveal some aspect of the wing which has the ability to counter weight and balance shift?

Lets test this claim to proprietary secrecy.

First lets ask, what moral or ethical reasons in an accident investigation can Boeing and or the NTSB give for not disclosing the method used for coming to a conclusion as to the in flight reaction of a severely damage and ultimately crippled aircraft? What complete damage can occur for disclosing the method used to arrive at the kinetic energy formula used for a specific mass, which resulted in a said trajectory and fall of an aircraft to its crash site? Here we notice that the zoom climb, is an initial response to the sudden damage and massive airframe loss from the front; that being a 70 foot- 79,394 lb section according to the Safety Board and Boeing. Kinetic energy was given as a contributing factor. Can the Board or Boeing show how? The sweep wing was a contributing factor according to Mr. Hall? Can he demonstrate how? The Coefficients of the wing with the aforementioned was a contributing factor according to the Safety Board. Can they show how? Their defense is that they don't have to show how they arrived at their conclusions, because there is a key bit of proprietary information which when added to the weight and balance formula, and

the kinetic energy formula (not discussed or disclosed) and then coupled with the sweep angle of the wing, plus the wings coefficients, all put into an in-house computer program resulted in (a) keeping the wing from rotation through to stall, (b) allowed the wing to provide exceptional forward torque to keep the remaining fuselage from moving to gravity (c) allowed the remaining fuselage to increase altitude, (d) provides enough kinetic energy to move the aft fuselage 13,367 feet horizontally. (Without losing any altitude!)

As this Zoom climb is so central to the post explosion trajectory, why was it not mentioned in the Boeing submission report? The Boeing report and data ceases with the center wing tank explosion and no comments or review was made in the Boeing submission report about the zoom climb even though it is such a critical point with the CIA and NTSB. The insistence by both agencies is that this sustained 'upward' trajectory occurred, and (only because) this is what some witnesses saw. This claim is also disputed by radar data and is covered in detail by other investigative reports.

The witnesses also disagree with the NTSB and CIA video's . This is why they were not allowed at the hearing.

- As earlier mentioned, Boeing disclaimed any knowledge, therefore disavowing any so called sensitive data being shared with the CIA or the NTSB which is said to have made this zoom climb possible.

So the central claim is that the plane flew on because it countered a massive center of gravity shift. Only a theory by the CIA and NTSB, but as yet to be demonstrated by useful textbook training. Now I ask what Law allows The NTSB/ Boeing to make a claim that is otherwise refuted by academic demonstration, in accepted publications and in everyday aviation formulas, procedures, and practices. Boeing (or the NTSB speaking for Boeing) has yet to even identify by name what trade secret is being protected. Only inferred have been 'sweep wing', 'kinetic energy,' which are not owned by the Board or Boeing, and the insistence that some piece of intangible and unrecognized piece of information, suppresses already known formulas, and is responsible for the zoom climb data. How such secret data suppresses known formulas has not been demonstrated either. 'Pilot weight and balance handbooks', 'pilots handbook of aeronautical knowledge' will not allow flight 800 to fly on with 70 feet of the front fuselage gone! Yet the Board insists they possess the knowledge via Denise Crider and some secret data alleged to be from Boeing that it will and did, and that many witnesses saw this.

Supposing that (and only supposing) that the NTSB/ CIA are right, then every court case from now on could be decided on lack of evidence, or decided on a claim to secrecy, and decided for, even when conventional demonstration shows that any other conclusion cannot even be considered. Cases would be dismissed asserting that theory outweighs evidence, because the defendant has a right to disclose something that cannot even be tested or demonstrated! What Law or ethics give the right for the NTSB and Boeing not to disclose any information and deeming such nondisclosure as fact and as evidence!

So what remedy then constitutes proof? Given the weight of evidence which are verifiable and tangible, the case against the NTSB shows that the Board published an incomplete, and erroneous 'factual' record, a record lacking ALL pertinent facts as they occurred and as they occur. They have no Legal argument here, only philosophical pandering.

Neither Boeing nor the NTSB can show how this 747 could have maintained flight given accepted and recognized tools and formulas for calculating aerodynamic responses and in utilizing accepted weight - arm -moment calculations! Pilots are trained and learn to fly based on particular tools and methods and calculations for safe flight. These techniques must be adhered to in order to assure the safe operation of the aircraft. Pilots must know the capabilities and limits of their aircraft in order to operate as well as maneuver the aircraft in all contingencies. For Boeing to imply that the 747 due to its wing design will react in a manner only known to them and such aerodynamic characteristics are only known to them and are to be kept 'secret' from the pilots is quite a stretch.

Pilots are trained to be qualified for specific aircraft types, and such different aircraft types have to do about their overall performance, based on *tables and formulas used for loading, weight, balance, meteorological effects on aerodynamic responses in flight.*

In stating reasons of secrecy for not disclosing performance, Boeing is stating that they will not give the pilots all of the performance data needed for flight profiles, let alone proper weight and balance before flight. In that Boeing would be implying that their wing design responds differently to weight shifts, but this is no consequence even though the weight -arm -moment computations calls for a particular loading for the same aircraft! And then if the center of gravity moves back outside of aft limits, (according to Boeings own tables,) stall will occur, yet they alone know that the 747-131 will still remain stable, and they had a right to non-disclosure in keeping this information from the airlines on how this CG shift will not affect performance, because the wing design is such that {it} the wing has the ability to counter weight shift. But even if this were the case, such a knowledge that a wing could react in such a manner does not tell a competitor how it is done. But no such wing exists.

So I ask, how does Boeing's 'wing design' nullify weight and balance procedures? For stable flight, a pilot must know how the CG around the center of lift in 'mean aerodynamic chord' will affect the lateral axis of the plane. Tables for loading the plane, show the effect which will be upon the horizontal plane. The MAC data defines what the wing will do during changes of center of gravity. Pilot training and aircraft type training defines why the wing will do what it does at particular loading.

Performance procedures define what a pilot can and must do to compensate for CG changes in flight. (In flight 800s case though there were no options. There was no means of applying enough horizontal stabilizer input to even attempt to make up for the loss of forward counter weight).

The preceding paragraph answers the question about the lateral axis. And that being; what is the pitch effect of the fuselage and therefore the wing in an unbalanced condition, and (1) what does the wing do? (2) Why does it do it? (3) How does it overcome it? Then I ask Boeing and the NTSB, 'what force does the wing (in and of itself) use to counter out of balance aft-ward?' There is only one answer. The wing responds to center of gravity, it does not define it. When the CG moved off the chart according to Boeings own data, the wing as a functioning airfoil ceased to function, the wing stalled, and the defining center of gravity controlled the wing as a whole part of the remaining fuselage. Stall means, no longer functioning, and this means the action of 'lift' has ceased. There was no controlling factor available to get the wing back into the wind. This meant the fuselage immediately went to gravity.

The NTSB as well as the CIA misinformed the public, and then inferring Boeing as

being the harbinger for the secret data which 'allowed' the CIA and NTSB to come up with their zoom climb nonsense.

Cursory engineering data, pilot weight and balance, and aerodynamic models which were and are used to counter the absurd government climb are called irrelevant, immaterial and impertinent to the issue, in the motion to dismiss Pg 8.

The motion to dismiss wanted evidence exhibits based on current and accepted methods of demonstration to be stricken. They challenged the exhibits used to illustrate the very reason for the challenge. You would think that if the NTSB believes their position to be right, that they would welcome the charges and exhibits so they could show the ridiculousness of them. (In their estimation)

The motion to dismiss also claimed sovereign immunity against redress. What does immunity have to do with the government showing how they worked out a problem, which they voluntarily aired on national television as an explanation to a plane crash?

If the NTSB was able (and apparently legally so) to use a video to stress its case, then opposing views have the right to utilize drawings, viable texts, which can be verified to illustrate opposition as well as supporting arguments. (The NTSB data cannot be and is not verifiable)

I wonder if the NTSB would object in demonstrating their knowledge of aerodynamics?

But essentially the focus here has to do with the physical aircraft so the heart of the argument lies with Boeing and the implication on their wing design.

Once again, to be the Proprietor or the owner in a matter means they are solely the originator, and have exclusive and patented rights to the matter. This would also mean that the idea or concept must be (a) Unique (b) innovative (c) inventive (d) new (e) Imaginative (f) distinctive (g) irreplaceable. The synonym for Patented is 'original', 'untested', 'unproved' which also infers 'untried', 'unproven', experimental.

This word also infers first of its kind. The synonym for original is unique. Rare and uncommon are words to describe unique. Is the 747 wing unique, innovative, inventive, new, imaginative, distinctive, and irreplaceable in the alleged manner in which this wing is portrayed to be responding and according to the influences placed upon it? With the foregoing definitions as they apply to the proprietary nature of the matter, do they also apply to the 747-131 wing without cause for or right to redress.

Lets test this claim to proprietary secrecy. What does Boeiring know about this wing; what are they alleging about the design of their wing which exempts it from public scrutiny? The claim to design is different than a claim to what science says the design will do when subjected to immutable laws unless Boeing can prove that the laws of aerodynamics and physics don't apply to their product, in this case the wing.

Boeing infers that the wing will not react in the predicted and known manner given the uniqueness of their design but will react in other than the predicted manner even when known laws are applied. If this were so, then this would qualify the wing as being unique. First they will have to prove their wing has a patent and that this patent is based on the alleged criteria.

The alleged criteria being that an out of balance fuselage was (1) Compensated for due to wing design (2) Kinetic energy was greatly enhanced due to the wing design

(3) The wing design provided forward torque which applied enough force at station 1000 to keep the wing in a 'flight profile'.

In order for said patent to be valid it would have to be demonstrated that it functions in the said manner in order for its design to be unique. How you make it work is not what we are asking to have disclosed, but that Boeing demonstrate that it will work in the manner allegedly premeditated. So, in wanting to keep the information a secret about how the plane climbed after the front-end loss, Boeing claims a proprietary right to secrecy based on its design which they are implying they knew would, will, did perform in the manner as portrayed in the video. Therefore according to such an implication, Boeing is attesting to premeditation of or purpose in design which makes their 747-131 wing unique, innovative, inventive, new, imaginative, distinctive, and irreplaceable. So is Boeing claiming proprietary rights and nondisclosure based on its understanding and foreknowledge that the wing performed as expected, when the front end detached?

Not according to their own press release. Boeing seemed just as chagrined as the rest of the aviation community and the witnesses, with the release of the two videos. So I submit that Boeing has no understanding of the principles applied to the video in the flight path which the video portrayed of its aircraft, and further, that Boeing has no unique wing design which requires any sensitive or secret data that when supplied to an NTSB in house computer program will show how the plane climbed, as was portrayed, and in a manner that Boeing expected.

Premeditation of design?

In order for aforementioned points of defense to be valid, Boeing would need to demonstrate that during the design phase of the wing, Boeing had premeditated a design that would meet all of the aforementioned criteria. Boeing will have to prove that it's intention during design was that they were intending to develop a wing which will have the ability to counter center of gravity aft of limits and that even with a massive loss of forward structural weight; stability was to occur, based on their wing design. How would Boeing know that such a design would indeed perform as expected unless such a working model demonstrated a stable aircraft, after CG shift aft of aft limits, and in this case, the massive loss of the front fuselage?

Then Boeing needs to provide the data of testing which shows that their wing *performed* with all of the premeditated design responses. We are not asking for how they did it, just the records showing the dates when such tests were performed and that the *design function* was successful that when during the tests, as CG was shifted aft, the plane remained level about its lateral axis, defying the affects of gravity! Then Boeings wing design and the *data which produced* the wing can be called sensitive and proprietary.

Now unless they can demonstrate the performance of the wing in accordance with airworthiness certification criteria and meeting the approval with the Federal Aviation administration, then how was the aircraft to be certified as airworthy in the nondisclosure of performance characteristics? Was the criterion limited only to partial wing performance and partial performance data as far as weight and balance go? (Can an aircraft be certified airworthy based on willful omission of data pertaining to aerodynamic responses and or partial performance tables? That is; all known parameters for aerodynamic responses are not revealed, and, undisclosed knowledge about how such will affect the balance of the plane?)

Did Boeing ever market its 747 as having an advanced wing design which can counter CG shift? And if 'secrecy' is the key, how do we not know that perhaps Airbus or Lockheed has a wing that will perform just like the Boeing wing, but given that such information is kept secret, we won't know if Airbus or Lockheed has the same design.

{No competitive or commercial harm could come to Boeing if another manufacturer has a wing which performs similarly: the burden is on Boeing to provide proof of the uniqueness and performance of its wing design in order to be deemed, 'proprietary.'}

That would invalidate the uniqueness of the wing. Boeing needs to prove that it had a goal to design a wing that will counter weight shift and such a design is solely Boeings, and that for airworthiness certification that there are test results which prove that the design responded in the manner in which the alleged premeditation was intended, and that such performance characteristics were approved for airworthy certification and considered safe for public use.

Who approves a wing design for final production? What are the criteria for such approval?

Then I ask the question, does the design govern physics or does physics govern the design?

Can an aerodynamic design nullify a law of physics?

How does the NTSB define or what is its definition of a Normal flight profile?

Does the NTSB concur that weight and balance factor into a normal flight profile?

Does the NTSB believe that the 70-foot loss of the front fuselage still constituted a normal flight profile?

How does the NTSB say that the 'weight and balance factor' affect a normal flight profile?

How does the NTSB say that 'weight and balance factors' affect an abnormal flight profile?

Can the NTSB and or Boeing cite the following authorities;

Normal flight profiles can be altered by a non-disclosed and secret performance data. (or secret and non-disclosed performance data can alter a planes actual flight performance)

Are the weight and balance programs based on proprietary information?

Are the weight and balance programs based on wing design?

Are the weight and Balance programs based on wing coefficient values?

Are the weight and balance programs based on kinetic energy?

Are the Weight and balance programs based on kinetic energy of a damaged

fuselage?

- “ ” based on an irretrievable CG shift aft of specified aft limits?
- “ ” based on the loss of forward fuselage sections?
- “ ” based on a manufacturers wing coefficient data?

Therefore, how does the wing factor in, to allegedly allow an irretrievable weight and balance change, to keep the plane in a flight profile?

That meaning, a constant angle of attack to the wing whereby unhindered forward momentum is allowed or produced and that the same momentum is unimpeded by drag or gravity, but (and) actually enhanced, according to former chairman hall's statement

That kinetic energy plus the wing sweep plus coefficients kept the ability for forward flight momentum and with altitude gain for a horizontal distance of about 2.2 N.M.

Does the NTSB have its own statement apart from inferring that Boeing is supplying data in support of the sustained fly on, as to how the out of balance plane maintained stability? Foregoing Chairman Hall's comment?

Therefore their claim to a (Boeing) proprietary design is invalid as the wing does not, cannot produce the responses, aerodynamically, or in torque, and or in kinetic energy enhancement and or in the ability to counter the extreme shift in center of gravity as portrayed in the video alleged to have been developed with the use of specific 'sensitive' or trade secret data.

Explain how showing all of the post CWT explosion events; that being, an out of control airplane, is detrimental to Boeing commercially or competitively. And then how Boeings 'wing' design' translated into performance, performance which is subject to other factors, then nullifies these other factors and accepted weight and balance procedures, and those used by 747 pilots.

A claim to 'proprietary' does not mean immunity to disclosure, nor that the 'stated' reasoning plea for non-disclosure is valid. First of all Boeing needs to prove how their design (secret) will work in the manner premeditated. Boeing can show how their wing design will work. This is done in performance data for the aircraft as a whole.

This can be done by accepted means and methods for demonstration that does not involve divulging any alleged formula key which is said to show how it can be done, or how it is said to be done.

This can be done in a non biased setting by performing a demonstration using accepted means known about aerodynamics; weight and balance and center of gravity shift that will in a real world and real time test, show if the alleged inherent response is in deed fact. Or is Boeing stating that there are no means whereby another program or means of demonstration can be used to demonstrate a real time scenario?

If the real time results occur as claimed, then such will bear out that Boeing had a goal to 'design' a wing that will counter center of gravity shift, wherein that design is solely Boeings given that no other commercial jet airliner wing will respond as Boeing alleges its wing will. And therefore, no 'proprietary' data, as put into the video/

computer program will have to be divulged, which, according to Boeings plea cannot be disclosed. (or the plea the NTSB is putting forth, in speaking for Boeing).

Or, in other words if the real time results occur as claimed, this will show that Boeing indeed has a design which will counter center of gravity, wherein the design is solely Boeings and such was shown in demonstration; therefore, no 'proprietary' data will have to be or is needed to be divulged to explain how the wing was 'intellectually made', or that the disclosure of the unique intellectual attributes for the design have to be divulged. (given that the demonstration showed that the wing performs as the premeditated design claim is being made)

The plea being that such intellectual disclosure will allow another manufacturer to steal/clone/produce the same 'wing'.

- Can Boeing produce *any* test results which show that during Research and development that the wing design *responds* in the alleged predicted manner, via demonstration of a properly weighted and balanced aircraft, in this case a 747-131.
- Can Boeing produce any test results which show how the sweep wing adds to the performance of the aircraft, in countering CG shift aft?
- Can Boeing produce any Data which shows how Kinetic energy is measured and how it was measured for the flight 800 plane, which resulted in countering CG shift aft?
- Can Boeing produce any coefficient data which will show how such data will counter a CG shift aft?
- Can Boeing Produce any Data which will support that a sweep wing *plus* the coefficients of the wing *plus* kinetic energy allowed the 747 after loosing approximately 70 feet from the front, to maintain stability in an (a) aerodynamic sense (B) In a weight and balance sense, using accepted Weight-arm-moment calculations?
- Can Boeing offer any support to the zoom climb other than a plea that they cant? because the data is sensitive.
- Do any other aircraft fly, *due to* an inherent sensitive secret design principle?

Or wherein the manufacturer will claim they have such a secret about flight dynamics?

Or how the planes balance will ultimately react based on their design principle which has the ability to counter imbalance with a massive weight loss?

▲ Was it known prior to the flight 800 'accident' that Boeing knew or was aware or had knowledge that the 131 wing would surely react in the manner as depicted on the video? According to Boeing's press release they were not aware of how such a response could occur; and that the published data in the NTSB docket will not allow

for flight according to academic training for aerodynamic response to an airframe which has the listed CG shift, and given that there was no longer the ability for stability input to the wing either for lateral response or for directional control.

Who approves a design for final production? What are the criteria's for wing performance acceptance in order to procure an airworthiness certificate for the aircraft?

Does design govern physics or physics the design? Can any design nullify a law of physics? And if so how would Boeing prove this is so without demonstration? Or how could Boeing claim their design reacts in a manner without demonstration. {Not a very affective marketing tool.}

1. How does 'lift' coefficients add to the kinetic energy?
2. How does 'lift' coefficients regress/stop/alter a CG shift to the aft of C.L.?
3. How does "lift' coefficients keep inertia from changing after a CG shift aft of C.L.?
4. How does 'lift' coefficients increase with a swept wing? How does 'lift' coefficient of the swept wing counter the affect of CG shift aft?
5. How does 'lift' coefficients keep the critical Angle of attack from being attained? (According to Mr. Hall, the wing stalled but yet *not quite*, or to the critical point given to the sweep wing and its coefficient.)
6. How does 'lift' coefficients allow an out of balance plane to the aft, to remain stable longitudinally, start to gain altitude, then to roll left to 50° and continue to climb, and then roll Back over the other way?
7. How does 'lift' coefficients stop an out of balance plane's rotation aft/ downward, from continuing?
8. How much kinetic energy does it take to move a critically out of balance plane to the aft, over 13,000 feet horizontally as it is also in a 120 fps vertical climb? How was the amount of kinetic energy ascertained?
9. Name all components that go into a weight and balance formula.
10. Does the NTSB concur that the Weight and Balance, factors into a normal flight profile? Then how do the W/B factors affect an abnormal flight profile?
11. Does the NTSB believe that the CG shift aft to 57° was still a part of a normal flight profile?
12. Are W/B programs based on proprietary information? Did Boeing publish its 747-131 Handbook omitting any performance data?
13. Are the W/B programs based on any aspect of the wing design?
14. Are the W/B programs based on any integral (secret) data whether or not Such data has been disclosed?

15. Are the W/B programs based on wing coefficients values?
16. Are the W/B programs based on kinetic energy input as it would or could affect the fuselage with a CG shift to aft?
17. Are the W/B programs based on the Kinetic energy of a damaged airframe? And to what degrees of variable damage, are these kinetic energy values based on? what formula values are assessed, based on varying degrees of damage, and where are the test results which show the anticipated response of the fuselage according to the specific degrees of damage?
18. Are the W/B programs based on what would occur to an irretrievable CG shift aft?
19. Are the W/B programs based on the loss of a forward fuselage section?
20. How does the wing therefore factor into an irretrievable W/B change? How does the NTSB state that Balance was maintained after the loss of the front 70 feet? Aside from Mr. Hall's comment? Do any exhibits show the Weight-arm-moment calculations made?

In order to assess a W/B formula for a particular airplane, would not the (a) wing coefficient value for varying flight profiles (balanced- unbalanced) have to be revealed in order to create a W/B formula for that particular airplane, as the wing design and its values are indeed an integral part (in reality) of the weight, balance, moment formula? Or is NTSB and Boeing stating that the wing design is not factored into W/B? But is there then, a separate factor for calculating the W/B formula for the planes wing, apart from the calculation made for the fuselage as a whole; whereby affecting the W/B as alleged in the video?

If it is inclusive then it is not proprietary in the sense that it cannot be divulged given that any aspect to the performance of the plane and how it *will handle* is a part in a (the) whole of how and why the plane will perform in the manner that it will, given the way in which the aircraft is to be loaded and flown in accordance with *performance tables supplied by Boeing* which are needed as a whole to insure the proper training and instructions for the pilots in operating the airplane in a safe and efficient manner.

If some performance aspect is said to be non-inclusive in the performance data published, then where or how can it be added in later, to explain a performance characteristic?

If some part of performance data is said to be non inclusive, then the claim that such data affects the flight profile (and performance) must now be shown given that the procedural use of performance data in determining the Weight -balance- moment in and of themselves, *show how* the plane is balanced, and how such balance affects the in flight performance and response characteristics, which therefore means that inherently the plane will respond as it is being alleged. And this then means that there is no need to divulge information as to how it occurs if indeed such a performance occurs! In other words you don't have to specifically show any part of a data to explain what has already occurred. Or to say, if Boeing claims that some part of their performance data is not included in the performance tables, this does not

then mean that the plane wont react in a specific manner because the data is not there. They are saying that it will. If their claim is that it will respond in a particular manner, this is therefore inherent, not because of the data used to *show how* they come to that conclusion, but in the actual performance of the wing itself. But aerodynamic principles along with weight -arm -moment calculations which are made everyday, will show that this wing will not react as claimed. So for Boeing to *claim* that their wing will respond *differently* does not mean Boeing has a claim to a proprietary secret.

Therefore any wing data used as mentioned above, will tell us that any aspect of the wing data which results in the whole of the accepted formula, resulting in particular performance, whether or not some part of the data is said to be 'secret' is still intrinsically a part of the whole. That is, the performance results would be the same. (there cannot be additional data which is alleged to be a part of the wing performance, yet will now result in a different performance than that which was assigned to the performance tables that in reality caused the plane to fly, and then how it will respond during different flight profiles, again according to the same original performance data. The wing will react the same, whether or not an apportionment of the data said to be 'a part' of the whole, is said to cause the wing to react differently if used in part.)

Therefore no performance data can be said to be separate. The wing therefore is not going to act or respond differently than that which has already been determined by all of the factors which dictate how air aircraft according to known principles, will fly. If there is (secret) wing data which is not a part of the published performance tables, Boeing or the NTSB cannot state that {it} will affect the Weight-balance-moment, if added in as a separate entity to the already whole data which causes the plane to fly and respond to weight shift in the first place.

Boeing's possible replies and reasons for 'secrecy'

Further Rebuttal to the premeditation of design theory.

Although this subject has been covered in the preceding pages, I wish to expound a bit further in going outside the box to express other possible defense tactics for reasoning offered as to why there is allegedly some bit of data which was used to support a 'wing performance' response, alleged to have occurred. First I might ask 'why was such data used solely in the self created computer program by the NTSB and not used and generated from Boeing.' Boeing did submit in Exhibit, Data which reported the Mean Aerodynamic Chord center of gravity position before the 'explosion', and then the center of gravity position after the 'explosion' related to the remaining weight of the fuselage. The result of this published data is that the aft fuselage, (with wings still attached) suffered a CG shift well aft of the 747 performance tables maximum allowable 'aft' limit for CG shift in order for the aircraft to continue to 'lift'. Yet surprising, even with this knowledge at hand, The CIA purported an entirely new format of inferred data, or that the data supplied still resulted in the performance as depicted in the videos. We would only later learn that Boeing had a conference with the CIA and that with this exchange, this somehow this gave the CIA the 'ok' that the proposal which was to be presented by the CIA was somehow valid. But valid by Boeing reasoning and Data, or CIA reasoning and data? Or was the proposition only valid as a theory alone, and a theory which was to *give an answer* for a streak of light as seen by many witnesses. But then was this theory the CIA's or Boeings? Did Boeing have a reason to have to explain the witness

sightings?

According to the data supplied by Boeing as part of the docket, did this data suffice for the CIA or the NTSB?

In the Boeing /CIA conference who was the initiator in this exchange that the aircraft indeed was what was seen going up and therefore hatching the 'zoom climb' explanation. Did Boeing offer Data at the meeting with the CIA for such a 'possibility.'? It does not seem so, as The NTSB said that the Safety Board often seeks information from the manufacturer. It did not appear in the CIA record that the CIA sought out any information from Boeing as did the NTSB. Nor did Boeing offer any specific data to the CIA such as would be called 'sensitive' or 'proprietary' in which the CIA then used, to support the feasibility of the zoom climb.

Also, to support this statement; when a FOIA request was sought from the CIA on the data used for the CIA video, the CIA replied that the information that the CIA used for the video came from the NTSB. The CIA never responded that they asked for or were offered any data from Boeing which would give them 747 performance information which would support the climb. Further, the CIA report states that they used their own aerodynamicist in making their own model, to create the depiction of the zoom climb to explain what the witnesses saw.

Further support lies in the CIA record itself which, even though a conference was made with Boeing, it was the CIA analyst who came to his unsupported view that the sighting of a streak of light 'going up' was the 747 in crippled flight. This is covered in more detail in my article, 'Exploding aircraft don't fly, and flight data recorders don't lie'.

So who actually is in total support for this 'zoom climb'? Boeing once denied knowledge of any information used in such a theory. Now against my plea in my other article where I stated; "it would be in Boeing best interest to remain silent in this matter" Boeing appears to be co-defendant auspiciously within the suit filed against the NTSB. For whom this 'zoom climb' theory seems to be of most importance is only with two government agencies. Therefore it is with great importance (and consequence) that the NTSB unrelentingly sticks to their story and pleads out *any reason* which hopefully will curtail any discovery of the 'truth' of the matter that the zoom climb simply cant occur.

If there was any validity to the zoom climb, if there was any validity to the so called 'integral' data which is sensitive, and proprietary, and commercially and competitively of value to Boeing, then these facts should be born out in an engineering perspective. It would then therefore be up to Boeing to defend its data rather than the NTSB. It would also be up to Boeing to explain why they retracted their press release statement. It would be up to Boeing to explain why they are now in alliance with the CIA and NTSB in their theory. It would then be up to Boeing to explain either the validity or inaccuracy of the NTSB statement that Boeing supplied data to the NTSB which in turn was needed, or crucial in being able to 'show' how the zoom climb occurred, even when tangible and viable data simply cant allow for this climb.

Why was it only mentioned, or made known, that there is some type of 'additional' secret data for the subject of the 'zoom climb' only after the lawsuit was filed? As already mentioned, in the Boeing submission report, and in the NTSB docket record of facts, no mention about the technical aspects of the zoom climb are ever mentioned, only that *it did* occur. The central theme centers around the exploding center wing tank, and in the trajectory exhibits, or radar exhibits, only the supposition is presented that the 747 pitched upward and rocketed up, and this is what was 'seen' by the witnesses. Now that the independent aviation professionals

are challenging the zoom climb; out of the closet comes the secret data story, almost as if this is an addendum to the report, but this secret data explanation is not in any addendum, and the only reply given to inquiries is that the NTSB cannot discuss the technical merits of flight, because this belongs to Boeing aircraft corporation alone. Nonsense!

From an engineering perspective, we can approach the theory of the climb from several angles. (1) was it even possible? (2) could this wing have been so designed to respond as alleged? (3) the physical reaction of the fuselage.

Since Boeing or the NTSB in speaking for Boeing states that it is fact, that the remaining 747 fuselage pitched up at the open end of the fuselage or just at the wings or just at a point slightly forward of the wings center of lift, and then continued to 'climb' this means that the original axis of the remaining fuselage would had to have moved! In reality it barely moved. So now we apparently have *another angle* to the NTSB argument that there now existed two 'axis' in which to refer. But this of course is false. because the axis did not move nor could move given that the means whereby an axis is created, and that being counterbalance was gone. So here the NTSB is inferring that there was *the 'axis'* position before the explosion, and then *an 'axis'* position after the explosion; (and even with the loss of the forward structural weight, or the means for the axis!) This only compounds the problem for the NTSB's zoom climb story.

In weight and balance computations and the resulting data, used for loading an aircraft for flight, it is only to be considered that the CG will change in normal flight with the consumption of the fuel, and with that CG move from the fuel consumption, stability will be maintained by the balanced weight fore and aft of the center of lift.

The Center of Gravity point, with the Center of lift point just aft of the CG, and the beam being equally balanced, causes an 'axis' to be available.

Before the explosion, the beam (longitudinal plane) had stability by the balanced axis point. Then with the explosion and massive loss of the forward structure, this resulted in a entirely shorter beam that just lost its 'axis' point, with the loss of the counter balance.

The axis and CG point which was pre flight calculated for the anticipated fuel loss and the resulting Center of gravity change, was within the performance tables 'fore and aft' limits for a CG shift. The fore and aft limits which refer to keeping the wing stable for continued lift capability. But with the change in length of the longitudinal plane, the counter balance was gone. This means that the center of gravity is no longer opposite the center of lift. The CG now will find itself aft of the center of lift, and going to gravity.

Only the CG on an entirely counter balanced longitudinal plane is expected to move so far, but if the longitudinal plane is now unexpectedly shortened (and) the CG shifts AFT of a center of lift, then there is no point of counter balance, and therefore no 'axis' can exist. No counter balance, no axis, no axis, and no stability.

This is not just a situation where the CG changed somewhat and control could have been influenced in part by the remaining total weight of the airframe, that weight being fore and aft of the (a) center of lift, meaning that the possibility of recovery from a CG change existed and therefore some control might have been made in order to control the 'plane'.

The situation which occurred with flight 800 was that the 'plane' itself lost weight, the weight forward of the center of lift which is needed in order to give any control that would be needed in order to recover from a CG shift aft. This forward fuselage loss meant that any possibility for recovery from the CG change was gone. The physical capability in a balance stand point for any axis input for balancing the 747 was gone.

In order for the 747 to have been able to 'fly' in any manner, this would mean or this would require that the possibility for CG recovery existed. This would mean that there would have to be some means for counter balance and that with a point of leverage focus or a center of lift. Such a possibility did not exist given that 70 feet of structure forward of the center of lift was gone. Even if there was any extreme horizontal stabilizer input as instantaneously as the sudden loss of the forward structure, there would have had to have been a new axis or pivot point well aft of the original in order to get or keep the front end of the fuselage in a downward angle. That is to say, that the weight needed to keep the plane level would have had to have been forward of where the new center of lift is implied.

The zoom climb with the loss of the forward structure is implying that there was leverage, that there was stability, and that there was (a) counter balance, or that there was leverage for stability because there was an axis and this axis was created because there was counter weight forward of this 'new' implied axis point.

This further implies that there would have had to have been enough front end torque or another center of gravity point forward of the implied new axis point, within the remaining fuselage. So lets look at this claim. But before we look at this, let me point out that in a normal stable aircraft, the center of gravity being forward of the center of lift is what allows or brings a stalling airplane back into longitudinal stability. This occurs when the angle of attack is so high, that the wing stalls. This results not in altitude gain, because lift has been diminished (but that) the entire plane begins dropping at the stalled angle until, because of the CG forward of the center of lift, the front of the plane will then start to drop down rapidly until there is stability again. But if the CG is farther back than the center of lift can control, then there no longer remains an axis point. The CG and structural weight going to gravity is all on the same side. This was the case with flight 800. The plane immediately started to fall.

But still given all of this irrefutable evidence the NTSB still claims that their in house computer program with the 'sensitive' data from Boeing makes the remaining fuselage have all of the means needed to sustain a flight profile, and one for 2.2 NM. This ought to be very embarrassing for the Safety Board to continue fighting this and especially so for Boeing. For the crux of the zoom climb position lies with the wing. But given that 'Kinetic energy' and the 'sweep wing' have been mentioned as a reason for the 'flight' and with no mention of any Balancing factors as contributing in keeping the plane horizontal, we are back to the wing as being the sole reason. We can rule out kinetic energy as pushing this plane along and upward for 2.2 N.M.

But then I ask, was it the wing with kinetic energy being the contributing factor, or was it the kinetic energy with the wing being the contributing factor? Given that the sweep wing and its coefficients were mentioned, it appears that we are back to the wing. I don't believe that Boeing can claim that kinetic energy is the 'proprietary' data that the NTSB says Boeing shared with them. So that leaves us once again with the wing. The wing minus any balancing influences from the airframe, this is what the NTSB wants us to believe. But as the Board has not given the independent

investigators a straight answer, they are putting the burden of proof on Boeing, by stating that it was Boeing that gave them the data. So they are inferring that Boeing is the author of the zoom climb? It's their Data, in the NTSB program! But we have already seen that Boeing had no interest or understanding about the CIA/NTSB zoom climb scenario. Not until the lawsuit against the NTSB. Even though the CIA originated the climb, and the NTSB made it the factual reason in as far as witness sightings go, it appears both the CIA and NTSB now need Boeing to get *them* out of culpability for this scenario? So the plea is, from the CIA that the witnesses saw the plane going up, and the plea from the NTSB is that Boeing showed us how this is so, *therefore* ultimately if Boeing supplied data which is suppose to show how this climb occurred, then Boeing is testifying that their 747-131 possesses a unique ability to fly with a massive CG change aft, and this due to their wing design.

No, they are not saying, nor can they say that Boeing is the author of the zoom climb, but they can say and they are saying that Boeing alone has the data to support it!

Who really is the author of the misinformation for the fly on scenario? Who really benefits from this tale? By who's Insistence must this story remain in the 'factual' record? It boils down to misinformation in that the NTSB asserts to *know about* more information by which they insist validates how the plane flew on and climbed. This nonsense has gone so far as to even be aired on the several other television programs. "Flight 800 what really happened", "TWA 800: The investigation" on the Learning channel, "minute by minute" special on A&E whereby the FBI's Jim Kalstrom just basically played the apologist, explaining why all these conspiracy theorist, as well as the witnesses are just so wrong.

I highly doubt that Boeing can win a premeditation of design argument. Trying to explain that they shaped the wing in such a manner that its purpose was to counter a center of gravity shift aft of limits, or that they designed the wing so that the purpose in mind was to alter or affect the CG calculations in the event of a CG shift aft, and how this weight shift would not affect the CG (affect) due to the 'wing design'. The argument they would have to win is that they can again demonstrate the design performance, and this being "proprietary". Proprietary meaning that with intent, ingenuity, and foreknowledge, they so 'designed' the wing to 'function' in a performance manner as alleged. Foreknowledge, that a CG shift aft of limits can be 'altered' by the performance of the wing.

They would have to win the argument that the way in which the wing responded was because there are other performance criteria's for the wing which were not published with the aircraft performance tables; and therefore legally cloaked in a 'proprietary design' argument.

Or they may attempt the secondary condition argument. Other conditions such as wind direction or updraft existed, which contributed to the lift, but such a meteorological condition can not be demonstrated again. but digging the hole deeper this detracts from their original sole proprietary known performance reaction, or trade secret. Yet again, they will still have to demonstrate that under varying atmospheric conditions that the design intent will react under real time varying atmospheric conditions. And still arguing such as being proprietary, and such cannot be revealed. The implication still being, that even under varying conditions that the wing was the sole cause for lift, (but with a little help) and still with the airplanes imbalanced condition. They dig deeper still.

Design, inferred or real must be based in practicality. This gets us back to testing a design. This requires records of performance data. This performance data is required for the proper loading and balancing formula for the safe handling of the aircraft in flight. There are no existing performance tables for an out of balance airplane, which state that the out of balance plane can remain stable, and due to it's unique wing design. No such performance tables exist in the Boeing files.

Design implies testing for function. Was Boeings wing design based only on theory with no testing? And with no testing, how can Boeing affirm that the wing performed as so alleged? Is a theory then proprietary data? A theory of an out of balance plane still flying, and that theory being legally proprietary?

What is the trade secret?

Can such an alleged performance response, and that which can only be understood by

Using additional non published performance data be used to stress a case for an alleged performance reaction when known performance tables and flight dynamics which are utilized everyday cannot allow for such a performance response under the given conditions of flight 800? Can a manufacturer know of, yet not publish and keep from airline pilots, any aspect of a (known) performance reaction which *could* occur to their aircraft. And then again how do we know that such a performance reaction will or can occur unless it has been demonstrated?

The NTSB position for the performance of the 747 is that this plane stalled, yet the stalling action was ceased, due to the wing geometry and kinetic energy, and a direct result of the out of balance fuselage and the CG shift aft, was that the plane increased altitude, and forward momentum for 2.2 NM.

This truly would be a feat of unsurpassed engineering genius which has the ability for a mechanical airfoil to overcome all known parameters that engineers use in designing an airfoil. So we must now ask the following.

- * What does an engineer/designer have to know about the wing being designed?
- * What areas of foreknowledge must he posses wherein he is translating such into a feasible design? Is a wing that will not fully stall (even) with the CG aft of aft limit's a needed or feasible design? This must be kept in mind; 'balance controls the wing, the wing does not control balance'.
- * How does he know he has a design that functions as theorized or premeditated?
- * How does he decide how such a design is to function?
- * How does he decide why a design is to function in a particular manner?
- * what affects how this wing will operate as a whole part of the entire fuselage in a real world in flight environment?
- * How does the operation of the wing affect the longitudinal balance of the plane?
- * How are the fore and aft CG limits established?

- * why are the fore and aft limits established?
- * How does the wing operate and function in flight?
- * When is a wing not operating/ functioning in flight?
- * How does a wing, by virtue of its design and resulting function control and out of balance airplane?
- * How does a wing, by virtue of its design, cease the progression of a stall when a CG shift to the aft is unrecoverable? (is the NTSB and Boeing testifying that the 747 minus the 70 feet forward was able to recover from the stall?)
- * What is a stall?
- * what causes a stall?
- * How is stall recovered from?

To reiterate, for the 747 to have maintained a flying profile needed to gain altitude (climb) means that balance was still needed. So now their Legal argument would include as they are testifying that wing coefficients data, balances the plane, and that they still make the plea for non-disclosure of the method for used for calculating the Weight-Arm-moment, and that such can still be contested, or even simply just how balance in this airframe was maintained and therefore that the wing's expected performance (according to Boeing) is proprietary and sensitive?

The 'expected' performance, had this reaction been premeditated, still falls under performance characteristics, and not a trade secret. How an airplane is expected to respond, react, handle is a matter of need to know. But with the publishing of the Video, the cat is now out of the bag, so why did they make the video? And with the alleged trade secret needed to be kept a secret, why show a performance characteristic which was expected to occur that can only be explained as a performance response which only Boeing knows how it happened and that only they possess the information which is key to this reaction?

Why would Boeing need to premeditate a design for a situation never expected to occur? And then again where is the data for the testing? Was it necessary to explain what the witnesses saw? Or was there the needed reason to explain how the plane ended up where it did (crash site) because it was said to have flown on. Then this begs the question, where did the plane actually explode, and then where was the actual crash site?

To be stressed given that there is suppose to be a defense for the climb and fly on, No record exists or are there any verifiable exhibits offered to demonstrate the published conclusions. There are no docket submissions other than the Boeing data which will not allow for the 'fly on', therefore no NTSB argument can be presented in connection with defending the video contents by unverifiable methods that have been concluded only by a few individuals in the CIA and NTSB to be a factual event, and given that the only alternative offer of proof for the climb and fly on is offered in the government interpretation of a select few witness sightings. And as or since no record "exists" for the alleged data used to create the performance for the plane, the NTSB cannot provide a defense for a record that does not even exist in the first

Place?

Do these documents even exist?

The crux of the NTSB's anti freedom of information stance lies with their testimony that there exists in some form, intellectual property which cannot be shared with the general public. This intellectual property called 'proprietary' exists as far as the information or Data which was and/or is still being used in support of an already existing video, which, still being defended after the fact, and that fact being, the 'data's intrinsic inclusion into the format of the video which allows it to portray; or demonstrate, what is called by the defendant, a reaction of aerodynamics and physics which has its inception in, or solely by the design merits of the Boeing Engineer's who designed the 747-131 wing, which resulted in the performance response that the video shows, that being the loss of the front 70 feet of the fuselage, and the immediate response of the remaining fuselage to loss of the front 70 feet. The fact of this Data's existence is what is being defended. That is, the claim is being made by the NTSB that this data exists, and therefore is affirmed as being in existence, and therefore a point of fact or the point of defense by the NTSB. The question here, is in what format does this Data which is said to allow for the 'zoom climb' exist? Can this data be duplicated? Which is to mean, Can this data be retrieved from any storage device for reproduction in print or electronic viewing? Or is such Data only retained in the memory alone of those who purport to have a need to know. Not meaning to sound ridiculous but it is worth asking the question directly? In order to reproduce the airplanes flight path for the video, a computer system must be given specific parameters of information in order for it to cause the animated airplane to move about in the manner shown. Information, generally mathematical based on the formulas for aerodynamic computations and balance, as well as physics. Such are to be based on known characteristics which must be keyed into a program. The result of the input data will result in the sum of an output for the physical reaction to the airplane based upon the forces placed upon the animated airplane according to the data which is said to be the cause for such a reaction. The output or result is as only as good as the acceptability and soundness of the data placed in the computer. What the plaintiff is seeking is the Data which was used, and the program used which resulted in the zoom climb.

So the bigger question now looms. The data which was used, is this the data which was used by the engineers who designed the wing, the data which was on their drawing board, and or in their test tunnel, which according to the claim that this wing was so premeditated in design, to keep an out of balance fuselage steady and level with the loss of the front 70 feet of the fuselage, and or with a shift of the center of gravity aft of the center of lift? With the subsequent testing of this wing design, there would exist a table or record of design data which would be used in the manufacturing procedure for this wing. Such data would be kept in the archives for engineering data. And then in such a case as the flight 800 crash, in order to 'explain' how the remaining airframe was able to fly on and gain altitude, the data which was used to create the wing would be sought after, given that Boeing knew, or was aware that in their original design of this wing, that due to the uniqueness of this wing in their premeditation of design, that such would not react like any other wing attached to an out of balance airframe, but would respond totally different. But given that the design intent was to be classified a trade secret, only this 'sensitive data' could be shared with the safety Board, so that when such key data was placed into the NTSB computer program, the results would show how, according

to the design data, how the remaining fuselage was kept stable, and how altitude gain was possible. I know this sounds ludicrous but this is essentially the reasoning the NTSB is putting forth.

So the trajectory of the plane, was based on the handling performance characteristic of the B747-131 wing design. But understanding how this trajectory occurred goes only as far as the limited performance tables will show, only disclosing basic aerodynamic information, and not the other information which the NTSB says Boeing cant share because it is a trade secret. And its this other data which 'explains' the trajectory of the remaining fuselage.

But with getting back to the first question, in what manner does the so called data exist in? could such be produced if so ordered by the court? And would the criteria be such that can be accepted by aerodynamicists and aircraft engineers? For the NTSB to plea that a data was used, and such a data was premeditated by Boeing engineers, does this mean that such data must exist in a tangible form, and being retrievable as a document in a printed, or electronic format? Or is that information such which is kept only to memory by a specific engineer? Then it is asked, by what means was the key information which the NTSB says it received from Boeing given to the NTSB for usage in the creation of the video? How was the data transmitted to the NTSB? From what source was the data retrieved from as it was entered into the in-house computer for generating the animated airplanes reactions? The question as it broadens, according to how the NTSB's states its defensive position to be is, specifically, who possess the data and or how is the data being retained?

We will now cover in part, some of the reasoning the defense offers for non-disclosure of the material being sought by the plaintiff. The rebuttal here will now point out the tactics used by the defense in pleading non-disclosure of documents which do not even exist.

The Plaintiff has amended his complaint and has outlined in another document specifically the particular information whereby the NTSB has based it factual findings upon. This rebuttal believes the specific documents which plaintiff seeks does not exist. That is to say, the data requested, either residing in electronic storage or in printed form does not exist and therefore cannot be supplied by the defendant nor retrieved by the plaintiff. Therefore, in a matter of fact the defense cannot produce, or retrieve the specific documents being sought after. And those specific documents being, the methods, mathematical figures, aerodynamic formulas used by the NTSB to arrive at their Factual conclusions in the public record about the post explosion trajectory of the 747. Such a data does not exist given that no aerodynamic and physics data which technically viable can or will show the 'zoom climb'. So the position that such a (Viable) data even exists is simply a falsehood.

It is the contention here that there does not exist any record(s) of the methods used for calculating the weight-arm-moment, or aerodynamic data for the flight characteristics of the 747 which are alleged to have been used by the NTSB, (to wit, the so called proprietary data from Boeing) and such data according to viable engineering data which could be put into an accepted computer program which will result in the flight performance response which is portrayed in the NTSB and or CIA videos for what is alleged to be a factual response to the remaining airframe with the loss of the front 70 feet, and which can only be understood by adding in this additional 'proprietary' data.

It is the contention of this this rebuttal that the NTSB as well as the CIA utilized an individualized, self created, and purely fabricated data which like with any fictitious

display can generate any reaction for motion which is based purely on fanciful idea and not science. Therefore the in-flight reaction of the post explosion 747 according to the NTSB and their portrayal of the zoom climb is fraudulent, a hoax, and not based on any credible engineering or aerodynamic data which can be scrutinized in a computer program so designated to depict the performance response.

Therefore the plea for 'non disclosure' of what the NTSB is deeming an existing and viable and credible source data, for reasons of proprietary secrecy is (in my opinion) contempt of court and these legal proceedings, wherein the documents which are being sought do not even exist. yet even as the defense continues to allege by inference that such documents and or the related data being sought after does exist; and that the very data and or document they claim by such implication to exist, being the sole reason for their continued plea for non-disclosure, is in my view contemptuous and misleading to the court.

(you cannot plea non-disclosure of a data or a document listing such data for a data or documents listing the data that does not even exist; or which can not even be retrieved)

The NTSB is willfully misleading the court and delaying the proceedings by their pleas for non disclosure, in stating that the data from such an (alleged) document or (alleged) electronic storage, even that very same information which is being sought for by the plaintiff, regardless of where such data is being stored; and in what ever format or device for storage or record keeping this inferred data is suppose to be existing in; this same data which the NTSB is pleading non-disclosure, this same data being the same information the NTSB says it used in the video creation, and so far being inferred as to exist in part with some bit of Boeing proprietary data.

Regardless of the plea that such is sensitive or proprietary, this fabricated data disqualifies the NTSB for pleading non-disclosure given that such material data {said} to be used in the creation of the video, which results in the zoom climb, does not nor cannot exist, (reason) given that only viable data alone in an approved computer simulations, will not allow for such a zoom climb, and continued flight. Viable engineering data and approved aerodynamic computer programs show an immediate falling airplane. Therefore there is a fundamental difference and technical disagreement as to how and by what means the NTSB concluded that the plane responded aerodynamically and physically in the manner they reported in their final factual report.

Therefore it is the contention of this rebuttal that such a data said to exist does not even exist, given that viable data for all scientific parameters of the flight 800, 747, simply cannot produce the post explosion trajectory which the NTSB has concluded.

So, we must ask the NTSB, do the 'documents' in question according to the freedom of information act request, from the Plaintiff even exist? Or more specifically, as already pointed out, regardless of the manner of how such an alleged record is being kept, does the data said to be used in the production of the video even exist?

We will now examine in part the NTSB opposition to the first court filing by the plaintiff. This is a partial list of the objections from the Board to the Freedom of information act request from Ray Lahr, the plaintiff, for the data and method used for the zoom climb. We will look at the objections point by point with the appropriate reply to each objection. A more exhaustive report on all points is forthcoming, which will outline the methods employed by the NTSB to circumvent accountability for their report.

No NTSB records exist, nor is there any docket information, nor are there any other additional records, that are claiming a proprietary clause about the post explosion trajectory. In no NTSB document regarding the post explosion trajectory (zoom climb) are there any statements made which directly or by implication state that the trajectory study is a matter of Boeing secrecy, or that the public cannot understand the conclusions made by the CIA and NTSB due to airplane design secrets.

Such a proprietary argument only surfaced with the freedom of information requests. Therefore no proprietary or hidden document plea can be made with respect to the Boeing published data, and the same which was and is said to be utilized in part which results in the zoom climb and the forward momentum of the plane for 2.2 NM. The NTSB cannot provide a defense for a document or a data alleged to exist, or to say, for one which does not exist. In their own statement they said they are not required to produce documents which don't exist.

The NTSB published as a part of its final report, some radar graphs, and a specific trajectory of the frontless plane which resulted in the reported latitude and longitude for the crash site being a direct result of the zoom climb and forward momentum of the plane, based on an aerodynamic model said to explain how the plane moved 2.2 nm from the point of center wing tank explosion to its fall to the ocean. That is, the zoom climb scenario results in a trajectory to the reported crash site.

Without answering any of the freedom of information act requests from the Plaintiff, the government wishes to strike the requests, and deny responding to any of the specific questions pertaining to the aerodynamic and physics equations made by either the CIA or NTSB zoom climb model.

From the Motion to dismiss (in part) Pg 1 lines 10 - 14 "...the majority of the plaintiff's complaint (and indeed Exhibit A, the plaintiff's diagram of how he theorizes TWA flight 800 had to have crashed) is an argument about the investigation of the TWA flight 800 crash, his disagreement with the NTSB's conclusions,.....

Reply: Yes the majority of the FOIA request is based around the specific data's which intrinsically bear out or substantiate in aerodynamic and engineering mathematical terms, how the weight -arm- moment calculations arrived at by the CIA as well as the NTSB could not have concluded that there was indeed forward momentum, coupled with acceleration and lift, as well as balanced stability which caused the 'fly on' of the remaining fuselage! (2) The diagram presented by the plaintiff represents not a theory, but an representation of what the published Boeing data, as well as what the weight -arm- and moment calculations in engineering terms will show what will occur to such a longitudinal plane based on the center of gravity shift and subsequently the aerodynamic reaction to the fuselage under such a damaged and imbalanced condition. Defense is obligated to prove how such a diagram is only a theory. Can defense show how such a diagram based on known and accepted methods for weight arm moment calculations is theory alone? Pilots handbook of aerodynamic knowledge, plus pilot's training manuals are based on known principles of flight, not theory. Plaintiffs diagram is therefore a genuine effort based on viable data and which when compared to the NTSB conclusion is a justifiable 'disagreement' about the NTSB conclusions.

{Side note; notice that in the defense motion to dismiss, *they* used the words; "NTSB's conclusions". Not, NTSB possible deliberative theory!}

Pg 3 lines 20 - 27 thru Pg 4 lines 1-4 (in part)

Lahr predicates his action and the jurisdiction of this court upon the freedom of information act 5 USC 552, et. Seq. (complaint pg 1) The waiver of sovereign immunity under the freedom of information act permit's the court to have jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant 5 USC 552 (a) (4) (B) (emphasis added) as reflected in the ninth circuit's decision in spurlock v. FBI 69 F. 3d 1010, 1015 (9th cir. 1995) "(t) he supreme court has explained that federal jurisdiction (to order disclosure) is dependent on a showing that an agency has (1) "improperly" (2)"withheld" (3) agency records.

Reply: As already pointed out, where does this alleged record of data said to be proprietary exist? Does the data the NTSB is defending exist in printed form or in electronic form? If in electronic format, it is still a record, and it is not unreasonable to request a copy of the data into printed form. But the argument relates to the actual tangible existence of a specific record, (regardless of its format) and only if such a 'record' does indeed exist. It may appear that the NTSB is citing that it does not itself possess the specific record, given that a bit of data (information) was supplied to the NTSB from Boeing, yet this presents a problem for the NTSB in that if such a bit of data was given them, such must exist in a format which is able to be put into a computer program. (Hence Boeing and not the NTSB should be sought for the Data.) The result though, would still constitute a record, with the out put or retrieval of the data. The NTSB may be inferring that such a bit of data as supplied to them from Boeing, was not given to them in the fashion such as a written record, or in a medium for storing information which they still possess, but rather, that the information, which was keyed into their computer program, came from the memory of and was input by a specific individual at Boeing. Therefore the specific data does not reside as a part of any NTSB record, or retrieval system but that only the result of the data input exists, and that which we are already aware of in the video. Therefore the tactic the NTSB is using is that they do not actually possess a retrieval system or any tangible copy either in print or in electronic storage which could generate a copy of the specific data used, which is said to be the data which allows for the zoom climb, being based only upon the Boeing 'proprietary' supplied data. Therefore if such key data is not in the records system of the NTSB they are therefore not 'improperly' 'withholding' an agency record which does not exist. In that the NTSB does not have an 'agency record' of the data put into the NTSB in house computer. The results are of no consequence to the NTSB in that the Data does not belong to them. This is where the proprietary clause is being used, as far as the 'records' issue goes. As mentioned in the 'open letter to all flight 800 investigators' the issue at hand here may be more than just a simple FOIA request path.

Pg 4 lines 1-10

1015 (9th Cir, 1995) "(t) he supreme court has explained that federal jurisdiction (to order disclosure) is dependent on a showing that an agency has (1) improperly (2) withheld (3) agency records. Kissinger v reporters committee for freedom of the press 445 US 136, 150, (1980) Unless each of these criteria is met, a district court lacks jurisdiction to devise remedies to force an agency to comply with the FOIA disclosure requirements. Department of Justice v Tax analysts, 492 US 136 142 (1989) 69 F 3d at 1015. Thus the court has no jurisdiction over agency records not withheld, or documents not improperly withheld.

Reply: In a loophole so to speak, there is not a showing that the NTSB has improperly withheld, (cannot withhold that which one does not possess) an agency

record (the medium for which the record /data would exist in) which does not exist. Therefore the NTSB cannot produce the record of the data for which it has no record of! Therefore the FOIA request even for the data, whether or not it is subsequently being presented as a proprietary sort, does not exist in the NTSB records system, what ever form or forms such may constitute. But as stressed earlier, neither does Boeing possess such a data in their Data base, or records storage system, given that again, it is the contention of this rebuttal that any viable data which would be said to allow for the zoom climb is simply a falsehood, and the assertion and assumption made that such a data exists and being pleaded as proprietary; the reason for non disclosure, is a falsehood, and therefore contempt of court. Reason of proof once again, is that any such information said to be put into the NTSB computer program is merely a fabrication, and digital manipulations to cause the animated plane to fly in the manner shown on the video was not based on any viable aerodynamic data for performance which was used in an accepted and recognized computer program for aerodynamics.

Pg 8 Line 23 -24 thru pg 9 lines 1-27 & pg 10 lines 1-7

Finally, defendant hereby moves this court to strike the relief sought in complaint pg 4 lines 21-23. Because the waiver of sovereign immunity permit's the district court authority only to enjoin the agency from withholding agency records and to order the production of agency records improperly withheld, the court is without jurisdiction to order the relief sought by the plaintiff in the complaint at p.4 wherein plaintiff asks "that the NTSB show how any commercial aircraft could have zoom climbed under similar circumstances." it is well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a FOIA request.

"A requester is entitled only to records that an agency has in fact chosen to create and retain. "agencies are not, however, required to commit to paper information that does not exist in some form as an agency 'record'. Thus, they need not write an opinion or add explanatory material to a document. "A requester must take the agency records as he finds them." The FOIA was not intended to compel agencies to become ad hoc investigators for requesters whose requests are not compatible with their own information retrieval systems." (upholding that FOIA applies to "agency records", not information in the abstract, and that there is no obligation to create documents). The freedom of information act provides a mechanism for a requester to request records and the requester is required to reasonably describe such records.Further FOIA does not require agencies to respond to questions, but rather relates only to the production of records responsive to a particular request.

Reply: As the NTSB does not possess the data which was used for the zoom climb, the defense for this matter, is for the Boeing proprietary data which the NTSB says was supplied to them as a part of an integral program from the manufacturer. (or so it is inferred).

The in house NTSB program is only complete with this integral data, (the data in question) and the NTSB was not given the data to keep or to put as a separate entity into their record system, but to only momentarily incorporate the data to be used into the computer program to generate the video. Since the said data is said to be proprietary and given that the agency was not allowed to or chose not to create a record (file) or retain the same, then the requester will not be able to procure a copy. And as the same does not exist in any form as an agency record, the requester is again not able to procure a copy. Therefore the requester must take the agency records as they are, (or as he finds them) and in this case, such a record literally does not exist. Therefore the agency cannot surmise or recreate what the Boeing

data is suppose to be implying. As mentioned earlier on, 'No, they are not saying, nor can they say that Boeing is the author of the zoom climb, but they can say and they are saying that Boeing alone has the data to support it!'

The NTSB is not expected to ad hoc a document about the Boeing data, in order to create a document of data, for the requester, since the NTSB does not possess this needed bit of alleged data which makes the computer program show a zoom climb.

But back again to the request being made, the NTSB still cannot supply the requester with the record even if the description of the record is reasonable, because here the NTSB is pleading to cite secrecy about the data because they in fact do know what data is being requested. So to state that the plaintiff has not reasonably described such a record is incorrect given that the NTSB responded to the plaintiff in stating, *"The safety board does not possess the computer program the Central Intelligence Agency used to produce the motion seen in its animation. The computer program that the Safety Board used to simulate the accident flight contains a manufacturers proprietary data, which is an integral part of the program. ...the safety board seek commercially sensitive or proprietary information from manufacturers during its investigations."* (Former Chairman Hall to Ray Lahr).

So the NTSB **knows exactly** what it is being sought from the plaintiff, as chairman Hall reasonably described back to Mr. Lahr what it is that Mr. Lahr was seeking! Computer program information and the data used in the same!

But such a statement is inferring that such a viable data from Boeing exists and was used by the Safety Board. The same alleged data said to have been shared with them, but which they don't actually possess in record form. (given that such a data is non existent)

And even as the NTSB wishes to cite or in attempting to cite the deliberative process privilege; those articles leading up to the conclusion, are apparently what the NTSB would say are being sought after. If the proprietary clause wont work, then they appear to be using a deliberative process argument regarding the data used in the factual conclusion? Therefore the NTSB position would be that the (so called) Boeing proprietary data is of a deliberative nature? And it would then have to mean that the video and its presentation is not based on fact or factual data's then right? And if the zoom climb is not based on any factual information, then the Boeing 'proprietary' data is moot and the zoom climb is a theory and the NTSB has no argument for claiming the zoom climb as fact, if merely part of the deliberative process. So what data then was included into the video zoom climb calculation which make the zoom climb a fact?

So, can the data which the plaintiff is seeking, be found via the FOIA path alone, or should another path of discovery be made? Given that it is apparent that the NTSB zoom climb position is, according to them, a fact of the accident, according to all docket exhibits, then what path can the plaintiff take in order to discover and have disclosed the data's which were utilized in arriving at what is testified as being a fact?

* Agency is not required by FOIA to create a document that does not exist in order to satisfy a FOIA request.

• Plaintiff is not asking the NTSB to produce or create a document that does not

exist, but to simply retrieve the document that exists whereby the facts to the zoom climb were ascertained. Or to reproduce in kind the same format of data which lead to the factual conclusions as demonstrated by the NTSB, about the zoom climb.

* "A requester is entitled only to records that an agency has in fact chosen to create and retain.

- If agency did not create a document of data whereby the zoom climb calculation came from, then what is the reliance or the basis for the facts which the NTSB utilized and in what form does the same data exist in? Hence, if the NTSB did not create a document of the data resulting in the purported facts for the zoom climb, and or has not retained the same document of data, for what basis of defense does the defendant have in stating that the zoom climb report is indeed based on factual data or circumstances which allow for the zoom climb? If not via the FOIA channel, by what other means can the public be assured of the correctness of the NTSB factual record regarding the zoom climb trajectory? If they have not created or retained the methods utilized to come to their conclusion, how can the public be assured of the correctness of the NTSB stance given that the opposition (the plaintiff) set forward data which is in clear disagreement with the NTSB 'factual' record?

* Agencies are not, however, required to commit to paper information that does not exist in some form as an agency 'record'. Thus, they need not write an opinion or add explanatory material to a document.

- Again Plaintiff only seeks what exists as far as the NTSB's factual agency record is, pertaining to the calculations made for producing the zoom climb motion on the video.

Plaintiff does not seek the NTSB's opinion or any explanatory notes pertaining to the video motion, only the factual data used in producing the motion as shown on the video. In a flight dynamics sense, this would include Weight-arm-moment calculations made before the loss of the front 70 feet of fuselage, and then the weight-arm-moment calculations made after the loss of the front 70 feet of fuselage, and the results of or the response, of the fuselage to the front 70 foot loss, and the weight -arm- moment calculations used to arrive at the zoom climb conclusion, stated as fact.

* "A requester must take the agency records as he finds them."

- To date the plaintiff has not received any agency records pertaining to how and by what method the weight -arm- moment calculations were made by the NTSB which would result in the motion as depicted on the video. What the plaintiff has only received from the NTSB was explanatory material in the form of a letter explaining how the data used for arriving to the facts of the motion as depicted in the video rests with Boeing and is commercially sensitive, and proprietary. The data in question being other or additional material or data, is such that will not be released with the public docket.

"We consulted with the manufacturer about the release of the information, and we were denied the authority to release any data other than what is included in the public docket". The letter went on to say, " as we discussed before, Mr. Crider is available to speak with you about the main wreckage flight path study, and the errata and Addendum II to the main wreckage flight path study. He cannot however, disclose any of the proprietary information used in the creation of the NTSB's computer simulation of the accident flight path." (Letter from Chairman Hall to Ray

Lahr)

Captain Lahr *did* take the agency records as he did find them, which consisted of NTSB exhibit 22C. In this exhibit, we cannot find any statements which state that there is any 'sensitive', or 'proprietary', or additional data which would be in an addition to the data already published which would add to the understanding of the NTSB trajectory of the remaining fuselage. Nor does the exhibit explain that in order to understand the published Boeing data, that the inclusion of other such additional or 'sensitive' or 'proprietary' data from Boeing is needed in order to understand the trajectory of the remaining fuselage. Then we must also consider that the NTSB did not include any data in the exhibit which explains the physics aspect to the trajectory or the zoom climb.

No where in the exhibit do we find any statements which state how the wing coefficient numbers, or how the swept wing characteristics of the 747 wing, or how the kinetic energy was measured and contributed to the zoom climb. No where in the exhibit do we find any mass property calculations, or how the kinetic energy was determined and measured, and how the same, affected the weight -arm -moment calculations for the fuselage with the center of gravity aft of the center of lift, and how such propelled the fuselage onward for 2.2 NM even before beginning to lose any altitude, let alone onward and upward and with forward momentum for 2.2 NM before losing any altitude.

Foregoing any Boeing data and from a purely physics approach, even one with a high school diploma would be hard pressed to understand how 574000 lbs of uncontrollable mass could continue forward and upward for 2.2NM. Taking into consideration, time, distance, velocity, wind resistance, gravitational effects, you would think that the NTSB would take such into account when calculating an aerodynamic and physics problem. Yet there is no explanation in the exhibit for how they quantified the kinetic energy, or how the swept wing worked with the kinetic energy, which is said to have been a contributing factor apparently in line with or a part of the Boeing secret data, which when used separately or, with the published data, allowed the zoom climb, and forward momentum, to occur.

* upholding that FOIA applies to "agency records", not information in the abstract, and that there is no obligation to create documents).

At no time did the plaintiff request that the Board present any abstract information, only that information which has to do with the airplane motion in the video and the means and methods whereby the calculations were performed. The information being sought if it exists would be retrieved from the agency records storage and not in abstract form as such is not the request of the plaintiff. Nor at any time did the plaintiff seek from the NTSB information which was to be created in the abstract.

Given that the NTSB zoom climb theory is not based upon recognizable methods for calculating weight - arm -moment as is done everyday in the airline industry, the question was framed in simple rhetoric, that therefore, given that no aviation professional outside the NTSB can under the method used, "that the NTSB show how any commercial aircraft could have zoom climbed under similar circumstances. The public is entitled to know how the NTSB came to its erroneous conclusion."

For the NTSB to answer this question is not presenting an abstract view, given that the NTSB so published that indeed the plane under the circumstances in which it was

in, so did 'zoom climb', and to seek or ask how this was possible in an aerodynamic and balance fashion, is not stepping outside of the parameter of the FOIA request given that such an agency document, (given that the scenario has been published as fact), should be made available to the public just as any and all other known means for calculating weight and balance are already available to the general public and contain no secret data for its determining, and under such conditions as a massive center of gravity shift, or with the loss of about one third of the entire front airframe.

Therefore the trajectory that the NTSB published (reported) must either be pleaded as a fact or theory. They cannot attempt to do both. If pleaded as fact, then the Deliberative process cannot apply, given that the public docket as well as the video, do not imply such as being the Governments theory on the post explosion trajectory. And if pleaded as theory, then the present position which is that *such is as being a fact*, and such being viable data *which will result in the zoom climb*, must be stricken from the NTSB record, and that which was being implied by the NTSB to the court as fact, that being their withholding of the alleged secret Boeing data from the plaintiff, must also be stricken from any summary judgment consideration in that no such data even exists.

Then how they arrived at their so called 'fact' in the zoom climb must be based upon other known relevant, researchable, coherent, data's wherein they or in order to purport such as factual, must include in part to the summation of the whole conclusion, viable, intellectual conclusions supported with or by academically accepted properties.

Albeit brief, the above is just an example of the tactics used by the NTSB to keep the information which is alleged to exist, from being disclosed. But as mentioned, no Data exists for the zoom climb, simply because it cant happened as depicted in the video. Therefore the NTSB is seeking non disclosure of data which in reality has no substance.

The core of the argument for the plaintiff is the use of accepted and viable data and assessment programs which demonstrate aerodynamic and physical reactions to an aircraft in flight. The case cannot be approached by the FOIA path alone, for information as to how the theorized zoom climb was to have occurred according to the government scenario entails concepts far reaching a simple agency record. Other means of argument have indeed been implemented which show that the zoom climb was not possible, as well as other mitigating circumstance about radar data, flight data recorder information, witness sightings, autopsy inquiries, and simply the government theory of a super powerful exploding fuel tank.

The NTSB's own motion to dismiss argument disqualifies their non-disclosure pleas. For if such a document does not exist whereby they plea in the affirmative that such does exist, then the plea for non-disclosure of their methods used is still improper withholding of an agency record/ data/ information, which its data was used in part or whole to create as a factual occurrence a flight path which the NTSB says occurred.

{but, which cannot be supported by aerodynamics, radar, witnesses.}

Therefore it begs the question, what method and mathematics and computer program was utilized, whereby the NTSB produced a video which was presented to the public as 'the last moments of TWA flight 800' on the CBS evening news Dan

rather reporting.

Then where comes in the plea of proprietary information which was said to be used in the creation of the video? The plea comes because that disclosure of that data which does not exist and or which cannot support the scenario will prove out the fraudulent claim made by the NTSB in these proceedings. Or to say, the plea comes because *discovery will ultimately be made* that such a data is non-existent. This will fall under inevitable discovery. The fact still does and will always remain that there is no Data outside of purely fanciful creative garbage data which will show that there was any possibility for the 747 to have reacted in the physics, aerodynamic, manner in which the video shows. Using an approved and known evaluation and simulation program for aircraft response using tangible and recognizable data will never show a zoom climbing 747 being pushed on ward, and upward, wings level, in a stable flight profile for proper angle of attack, gaining over 1200 feet, for 2.2nm after it just lost 70 feet of counter balance, with a 288 kt wind blasting into an open cabin, and the center of gravity having shifted aft of the wings center of lift. Pigs don't fly either, although I'm sure the CIA will try to convince the world they can.

In all of the preceding pages we can see that the Government does not have a valid argument for the zoom climb, or how it could occur, nor a valid reason for non-disclosure of the methods used to publish the video's.

In not taking the FOIA path, there certainly must be another path which questions by law must be answered by the Board, the CIA, and Boeing. Many questions based on 'knowns' have been presented here, and information can be sought by other methods than simply a FOIA for a specific agency record. The agency record for the zoom climb is not needed to prove that the 747 did not zoom climb. Because any agency record if it were to exist about this matter will not contain data which will show how the 747 zoomed, which would then be having the rest of the aviation community say, "ooopps" we were wrong, sorry. If the NTSB is so sure they have all the facts and the rest of the world is wrong, then here is the golden opportunity for the government to show us up and prove its case, and make examples out of us. But the fact is, they don't want their day in court, they want to keep this lawsuit squashed.

Taking this matter to law, and to the people will require discussion and debate, and demonstrations, not just allowing the NTSB and CIA to hide behind the defense that a specific document must exist for each specific question from a requester, and or that the agency is not required to explain its actions and the methods used to arrive at its factual record, when data and methods exist which are used everyday which can refute the government position.

The final last ditch effort!

Again as mentioned before, weight and moment calculations do not belong to Boeing. Defendant cannot claim WAM as commercially sensitive or proprietary. In regards to the health and safety of the passengers and crew and the safe operation of the airplane, the NTSB must show (that they understand) the calculations used by pilots. Does the NTSB understand and can they utilize the tools and methods used by pilots and the airline industry for WAM? Can the NTSB show us a federal ruling or

regulation whereby they are allowed to use other than accepted and viable computations for working out WAM computations? Does Boeing utilize a training program other than or a part from what pilots use in calculating the WAM of an airplane, whereby other data or data added to existing data is utilized for determining performance characteristics, and by law, such performance data can legally be withheld from the pilots or the airlines? Is not this data used for WAM to be released or made accessible to the public to assure correct WAM calculations are being done by the airlines and pilots, and then the accident investigators given charge of an air crash?

How does Boeing calculate WAM? Does the WAM calculation entail any wing coefficient data? Are pilots taught anything about the wing coefficients as it relates to an out of balance fuselage? Are they taught anything about the benefits of particular wing designs which is said by the manufacturer to counter a fuselage out of balance? Not that these pilots would be told how this occurs given that it is a trade secret, but simply from a performance aspect, how they would control the plane in the event of a CG shift causing an out of balance fuselage, and the expected performance reaction of the plane due to the wing coefficients affect and its design which will cause a particular handling characteristic unlike any other plane. But then again wouldn't this also be inevitable discovery? Or would not Boeing explain to the pilots and airlines how the design of their planes wing will alter how the plane will stall even if the CG moves aft of the C.L.? This gets back to the need to know. If Boeing had so designed a wing and only they knew that its handling and response characteristics were such that for commercial secrecy, they can't even tell the pilots how the plane will handle due to this superior design, is this not a willful omission of factual data about the handling performance tables for this airplane. When has Boeing ever not disclosed the handling characteristics of their planes in full, and kept some feature of performance a secret to where the data for the performance response characteristic is not accessible?

Not that any pilot would ever expect to be flying along, and then suddenly have the CG move aft of CL. But according to Boeing, there would be no surprise, because the plane would not be affected on its longitudinal plane. If, with the loss of 70 feet of counter balance, this plane still remains level due to the wing design, then it would be to no consequence to the pilots because they, according to Boeing, wouldn't even know it, and it wouldn't appear to affect the handling of the plane.

Aerodynamic engineering implies foreknowledge. Foreknowledge based first on known properties and then upon experimentation to discover other known properties. Even discoveries are still subject to aerodynamic and physics law and such which have to do with expected action and reaction. Did Boeing know during wing design that this 747-131 wing would be able in and of itself, by virtue of its design (foreknowledge of the engineer put to application) that specific coefficient occurrence to the swept wing with loss of forward fuselage would result in stable flight continuing, and this is the trade secret which the NTSB needs to keep secret from the pilots, the airlines, the flying public, and other aircraft manufacturers?

But perhaps Boeing did not know until the flight 800 crash that this response, the zoom climb and forward momentum for 2.2NM could occur. Then with some further researching during the investigation, discovered that with the front third of the fuselage gone, the swept wing had an amazing coefficient response which increased the forward momentum, and kept the plane stable and able to fly on and upward for 2.2NM. But is this discovery considered Proprietary? And then the data used in the discovery, is the data which the NTSB says Boeing shared with them which shows

how this zoom climb occurred also proprietary and now a sensitive trade secret?

This means then that Boeing had no design intent which could contribute to the zoom climb. They were unaware that the 747-131 could fly on with the front third gone, but at the insistence of the CIA and then the NTSB, they discovered that this indeed did occur, given that many witnesses saw this? (the exploded plane still climbing and flying on for 2.2NM) But now with this new discovery, the data produced by Boeing, which Boeing then gave to the NTSB, who then gave it to the CIA is the reasoning, and the sensitive and proprietary data which allows for the zoom climb? So here with this revelation if indeed it is the case, how might Boeing or the NTSB answer these questions without reverting to the proprietary argument.

1. Once an aircraft begins to stall {nose pitched up with wings level} that is, the progression toward and to the stall point, the stall being influenced solely by the center of gravity having shifted itself to a point 'aft' of the center of lift, will the stall progression cease? (a) with pilot ability for elevator input (b) without pilot ability for elevator input.
2. Will the stalled angle improve the wing coefficient?
3. Will the wing coefficients stop the stall?
4. Will the stalled angle with the CG aft of the CL, cease the stall and then regain lift for altitude gain due to the wing coefficient of the wing design? That is, will the stalled angle improve upon the wings coefficients causing the stall angle not to continue (go beyond) the critical AOA even when the CG is aft of CL?
4. Does the wing coefficients improve with the stall angle, that is, the wing coefficient will not allow the stall to go beyond the critical AOA or stall completely even with the CG aft of the CL?
5. How does the stalling wing cause the forward momentum to increase and how does it increase the kinetic energy imparted to the fuselage with the CG aft of the CL?

Boeing and the NTSB cannot appropriately answer these or any of the questions offered in a manner which can defend the position for the zoom climb.

There is no proof of *Proprietary data for the "zoom climb"*.

There is no *crippled aircraft performance data* Boeing possesses which will make a front-less 747 fly on.

The NTSB factual record of the post explosion trajectory and the alleged method for its calculation is criminally fraudulent in its entire scope, intent, and presentation.