

## Capturing Little Bits of History

Understanding the circumstances that have molded our way of doing business

Editorial, by Jon L. Jordan, MD, JD

**Just a few days ago**, I received a decision by the United States Court of Appeals for the Ninth District regarding the legal propriety of some of the questions on our Form 8500-8, Application for Airman Medical Certificate or Airman Medical and Student Pilot Certificate.

This decision reminded me of the significant impact that forces outside the Office of Aerospace Medicine have on the establishment and continuation of our medical certification policies and practices and in some cases, the medical standards themselves. In most cases, the impact comes from the administrative, judicial, or legislative branches of government or from organizations outside the government.

I am frequently asked, long after the fact, what generated the establishment of a certain practice or policy, and I sometimes find myself straining to remember. Fortunately, I have a very good memory (several of my staff say my memory is so good that I can even remember things that never happened!), but there are times when recalling events is a problem. There is currently no good mechanism for capturing these little bits of history other than relying on one's memory. For that reason, I will try, in this and future columns, to address a few of the circumstances that have molded our way of doing business.

The recent Court of Appeals decision titled *United States of America v. James M. Culliton* was filed on April 30, 2003. It involved the felony conviction of an airman for making false statements on the Form 8500-8. The airman appealed a conviction in the lower court, in part, on the grounds that the form is fundamentally ambiguous and that answering the questions on the form cannot serve as the basis for a false statement prosecution. The Court rejected the airman's contention and concluded that the form is not ambiguous under any standard of review. Coincident with this decision, the Court withdrew its earlier August 22, 2002, Opinion in this case that reversed the airman's conviction on the grounds that the questions on the Form are so confusing and capable of various meanings that a conviction based on answers to the questions is inconsistent with an individual's Due Process rights.

What makes this case historically interesting is that the Ninth Circuit's August 22 Opinion, which gave us significant concern about being able to use answers on the 8500-8 to prosecute an airman for falsification, was similar to the Eleventh Circuit Court of Appeals decision in *United States v. Manaplat* 928 F.2d. 1097 (11th Cir. 1991). In that decision, the Court found the Form 8500-8 confusing in respect to the placement of questions related to convictions among

purportedly medical questions and affirmed a lower court decision dismissing the indictment of the airman for falsifying the form.

For those aviation medical examiners who have been with us for a while, you may recall that in 1988, U.S. attorneys handed down 27 indictments as a part of a Federal crackdown on airmen failing to disclose alcohol- and drug-related traffic convictions on medical certificate applications. Images from T.V. news of airmen being escorted to jail in handcuffs remain in my memory. The Manaplat decision pretty much ended the action in those cases and caused us to revise the 8500-8 Form in an attempt to conform to the decision.

If you ever wondered about the origin, for Item 18 on the Form, of the phrase, Have you ever in your life, and why the Conviction questions 18v. and w. were removed from the Medical History, and why we provide airmen with such detailed instructions on how to answer the question related to a conviction, it was in response to this litigation.

The reversal of the Ninth Circuit's decision in Culliton causes us to breathe a sigh of relief. Had the original decision been allowed to stand, we would have been left with the uncertainty of how effectively we could continue to use the current Form. The alternative would have been to attempt to revise the Form and provide complex instructions to applicants for answering the questions. This would have been an extremely complex task that would have likely resulted in a dramatic change to our Form. This, I am delighted to say, is a task that we do not now need to accomplish.

**JLJ**