

APPENDIX: V

DOCUMENT NUMBER: NTSB Record 20

DATE OF DOCUMENT: 2000

TOTAL NUMBER OF PAGES: 30

TOTAL NUMBER OF PAGES WITHHELD ENTIRELY: 30

TOTAL NUMBER OF REDACTED PAGES: 0

DESCRIPTION OF DOCUMENT: Preliminary sections of the
Safety Board's Aircraft Accident Report for TWA flight 800

This record consists of six sets of draft sections of the
Safety Board's Aircraft Accident Report for TWA flight 800
which are being withheld pursuant to exemption (b)(5).

Following the Safety Board hearing, the Board writes and adopts a report detailing the facts and circumstances it relied upon to determine the probable cause(s) of the accident and to make its recommendations. Excerpts from the official Safety Board Aircraft Accident Report for TWA flight 800 are found in Exhibit IV to the Moya Declaration. In drafting its report, the Safety Board reviews the material in the public docket and, as in this case, asks questions or presents analysis to the NTSB staff for review and comment. NTSB staff provide editorial and substantive comments, in this instance, to the parts of the Safety Board's report that address the flight path. (On certain

pages other material, such as the Debris Field, are also described. These items are considered non-responsive to the Freedom of Information Act (FOIA) request in contention in this case.)

The comments and questions were addressed to NTSB employees who were responsible for conducting the underlying tests or studies. These documents focus on the Main Wreckage Flight Path Study, with a section on the Trajectory Study, and some non-responsive information about the debris fields in the ocean. The documents were intended to summarize information the Safety Board found relevant in the Trajectory Study and/or The Main Wreckage Flight Path Study. (Both of these Studies, and their supporting materials, are available in the public docket and on-line at www.nts.gov., and are found in this Vaughn index as Exhibits VI through X to the Crider Declaration.)

The information being withheld clearly is predecisional and deliberative in nature, thereby exempt from disclosure. By virtue of the application of exemption (b)(5) of the FOIA, this document was withheld in its entirety.

The (b)(5) exemption for the protection of deliberative process materials has always encompassed the preliminary findings and recommendations made to the decisional authority so as not to cause harm to the quality of the

agency's decision-making process, and thereby the decision. Here the decisionmakers are seeking information from the NTSB staff as they are reaching their final conclusion - the Aircraft Accident Report. At the behest of the Safety Board, the documents include recommendations and suggestions from the NTSB staff clarifying issues and addressing the Safety Board's concerns. These statements from NTSB staff are their opinions and not the policy of the agency. Only the five-member Safety Board can determine the probable cause(s) of the accident.

Because the Safety Board is seeking this information as it is drafting its Report, the information clearly is linked and relevant to the final decision as to the cause of the accident by the Safety Board. The harm arising from the release of this information is that, without the protection provided by the exemption, full and frank discussion of options and opinions so vital to the decision-makers would be impossible. (See Declaration of Dennis Crider). In this instance, NTSB staff is providing its opinions and results to the Safety Board. The five-member Safety Board is the ultimate decision-maker as to the probable cause(s) of an accident, and the safety recommendations that follow from that cause. The comments and statements made in these draft report pages will assist

the Safety Board in its decisions that will either alter maintenance of systems, training of personnel, or construction of systems so as to prevent future accidents. Because it is purely predecisional and part of the deliberative process, this record is exempt under 5 USC 552 (b) (5).