

Journal of Air Law and Commerce

Volume 11 | Issue 1

Article 1

1940

Aeronautical Law Developments, 1939

George B. Logan

Follow this and additional works at: <https://scholar.smu.edu/jalc>

Recommended Citation

George B. Logan, *Aeronautical Law Developments, 1939*, 11 J. AIR L. & COM. 1 (1940)
<https://scholar.smu.edu/jalc/vol11/iss1/1>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

THE JOURNAL OF AIR LAW AND COMMERCE

Volume 11

JANUARY, 1940

Number 1

AERONAUTICAL LAW DEVELOPMENTS, 1939

By GEORGE B. LOGAN*

I am quite aware of the fact that most of you are much more interested in knowing something about the workings and operations of the Civil Aeronautics Act of 1938 than in any dull and dusty reports of the decisions of the courts during the past year.

There are, however, some very interesting cases, as interesting, I assume, as a lefthanded appendectomy to a surgeon; and these cases I would like to call to your attention.

JENSEN V. UNITED AIR LINES TRANSPORT CORP.¹

Last year, your attention was called to the case of *Dineen et al v. United Air Lines Transport Corp.*,² in which the New York Supreme Court held that the United Air Lines was not doing business in the City or State of New York; that the maintenance of a ticket office in New York, without performing any of the functions of transportation, did not make it subject to suit in New York. This decision was followed by a lower court in the case of *Jensen v. United Air Lines Transport Corp.*, growing out of a United Air Lines accident in Utah. However, the Appellate Division of the New York Supreme Court reversed the lower court in December of 1938 and held that the Jensen suit could be maintained in the State of New York, i. e. that United was doing business in New York.

GROSS AS ADMIN. V. UNITED AIR LINES TRANSPORT CORP.³

In another case arising out of the same accident, that of *Gross v. United Air Lines*, the U. S. District Court held that the United Air Lines could be sued in the State of New York.

*Legal counsel for National Association of State Aviation Officials.

1. 235 C. C. H. Aviation Law Service, par. 3055, decided June 21, 1938; reversed 255 App. Div. 611, 8 N. Y. Supp. (2d) 374, (December 23, 1938).

2. 166 Misc. 422, 2 N. Y. Supp. (2d) 567 (January 27, 1938).

3. 235 C. C. H. Aviation Law Service, par. 3058 (D. C. S. D. N. Y. March 8, 1939). See comment on this series of cases in 10 J. of Air Law 430 (July, 1939).

MORRELL V. UNITED AIR LINES TRANSPORT CORP.⁴

Three months later, another judge of the United States District Court, in the case of *Morrell v. United Air Lines*, in a suit arising out of the 1938 accident near Cleveland, held again that the United Air Lines could be sued in the State of New York.

There seems, therefore, to be three decisions now, all contrary to the *Dineen* decision, and all by courts of higher authority, which appear to establish the rule that it is not necessary for an airline corporation to be actually operating the air line in a state to be subject to the jurisdiction of that state's court.

Obviously, if the United Air Lines is successful in its present application to use the North Beach Airport as an alternate terminus, the question will be academic rather than real.⁵ It is, however, real in other instances. The United Air Lines has opened a ticket office in the City of St. Louis. Its nearest line is at Des Moines, Iowa. If the Missouri courts should follow these two federal decisions and the New York decision, then a person living in Missouri and having a cause of action against the United Air Lines could prosecute it in Missouri and would not have to go to a state where the company is actually operating.

S. S. PIKE & CO., INC. V. CITY OF NEW YORK⁶

New York has also produced another interesting case, which, as I recall, involves a subject discussed at the Omaha meeting. There was considerable discussion there about the right to regulate, and the necessity for regulating the sky writers and the flyers with advertising banners.

The City of New York passed an ordinance authorizing the police commissioner to issue permits for towing advertising banners and to suspend or revoke these permits where necessary for public safety. There were several accidents involving this type of flying and the police commissioner suspended all existing permits while an investigation was being made to determine the cause, and probably the necessity of future regulation. The S. S. Pike Co. brought an injunction suit to restrain the police commissioner from suspending its permit, and in the suit, raised the point that the ordinance was unconstitutional. The Supreme Court of Queens County, in a decision handed down on September 1, 1938, just about the time of our Omaha meeting, held that the ordinance was valid, sustained the suspension

4. 235 C. C. H. Aviation Law Service, par. 3059 (D. C. S. D. N. Y. June 6, 1939). See digest of 10 J. of Air Law 520 (October, 1939).

5. This application was granted by the Civil Aeronautics Authority on November 7, 1939.

6. 169 Misc. 109, 6 N. Y. Supp. (2d) 957 (September 1, 1938).

of the permits and refused to grant the injunction. We thus appear to have concrete evidence of the fact that city governments may strengthen, by proper ordinances, efforts of state authorities, in regulating airplanes where necessary. This rule of law, if sustained and continued, should offer real help to aviation state officials on the part of municipal officials.

GENTRY V. TAYLOR ET AL.⁷

South Carolina appears to have been forced to take a backward step in aviation by virtue of the language of its state constitution. The County in which the City of Spartansburg is located had voted a bond issue of \$40,000.00, which was to be contributed to the Federal Government, the Federal Government to expend \$300,000.00, through the W.P.A., for the purpose of building an airport at Spartansburg. A taxpayer raised the question that the bonds thus issued were void. Now the State Legislature had passed an act authorizing counties to issue bonds for these purposes. But the point was that the state constitution forbade the issuance of any bonds by counties, except for "ordinary county purposes". The Supreme Court held that the building of an airport was not an "ordinary county purpose" and that the Legislature was without authority to classify such an expenditure as an "ordinary county purpose."

The Supreme Court seemed to regret the necessity of reaching this decision, admitting that airports were desirable and that this was probably a wise expenditure, but held that the constitution could be amended by the methods therein provided if the taxpayers saw fit. This decision is contrary to the usual rule, in that, in determining what is a "county purpose", or what is a "municipal purpose," or what is a "governmental purpose," as these various phrases are used in state constitutions, the courts usually look for guidance, particularly in new problems, to the expressions of the State Legislature or to the expressions of the municipal governing body.

It is rather interesting to note that the Supreme Court of South Carolina evidently does not believe in "streamlining" its constitution.

There are some interesting cases arising in the field of negligence. I call your attention to one of them, chiefly because it is an example of the ingenuity of the legal profession, or rather of the lengths to which my professional brethern will go in attempting to establish a technical defense.

UNITED AIR SERVICES V. SAMPSON⁸

Out in California, an attorney, by the name of Sampson, hired

7. 235 C. C. H. Aviation Law Service, par. 1822 (S. C. - July 28, 1939).

8. 96 Cal. App. 29, Modified 96 Cal. App. 197, 86 Pac. (2d) 366 (Decem-

a plane for a charter trip from the United Air Services operated by Paul Mantz, whom, you will all remember, was the mechanic and assistant of Amelia Earhart for a long time. Mr. Sampson did not hire a pilot from Mr. Mantz, but hired his own pilot, one George Hoge. The plane was flown to Shandin Hills Airport near San Bernardino, and crashed in the attempt to take off. No one was killed but the plane was washed out. Mr. Mantz, or rather the United Air Services, operated by him, brought suit against Mr. Sampson, and in the trial court the technical defense to which I referred was sustained and Mr. Mantz was demurred out of court. The point was that the defendant, Sampson, the attorney, was not a licensed pilot; that he was not flying the plane; that although his pilot was a licensed pilot, his own liability, if any, was that of agency and that he could not be held as the principal of a licensed pilot in view of the fact that he himself was not a licensed pilot.

The California Appeals Court of the Second Division, in a decision handed down December 22, 1938, held that this technical point was a fine spun theory, but untenable, and the case was reversed and sent back for retrial.

Incidentally, in this case, at the trial, Amelia Earhart testified as an expert witness to the effect that the pilot was negligent in his operation of the plane.

GALER V. WINGS⁹

Another interesting negligence case comes to us from Canada, in the case of *Galer v. Wings*, decided by the King's Bench of Manitoba. In this case, the defendant company, "Wings", had undertaken to send a party into the interior of Canada to an inland lake. There were three passengers and they were each sold tickets, although it seemed to be a special chartered trip. The tickets provided that the passengers assumed the risk of the flight and that the company was not liable except for actual negligence of the pilot. What happened was that one of the blades of the propeller broke off at the hub and the engine was jerked out of its fastenings and the plane crashed.

Mr. Galer, badly injured, brought suit against Wings and among the defenses interposed was the assumption of risk created by the language on the ticket. The King's Bench Court gave this defense no more "room" than has been given that same defense by many of our United States courts. They held that such a ticket did not constitute a contract, because the passengers did not read it and did not

ber 22, 1938). See comment 10 *J. of Air Law* 417 (July, 1939).

9. 3 *W. W. R.* 481 (K. B. of Manitoba, Can.) 1938 *U. S. Av. R.* 177, 235 *C. C. H. Aviation Law Service*, par. 1225, decided November 11, 1938. See comment 10 *J. of Air Law* 414 (July, 1939).

sign it, and even if he had, it would have been contrary to public policy as applied to a common carrier.

The case was, however, decided in favor of the company, because the history of the propeller was that it had been recently inspected, that the defect which caused it to break could not be seen by any sort of inspection which the defendant company was equipped to make, that it could probably have been found only by an etching test or by magnafux treatment, and that the rule of care imposed upon the company did not require it to make such tests nor hold it liable for failure to do so.

NOAKES EXECX. V. IMPERIAL AIRWAYS, LTD.¹⁰

Another case arising out of an airplane accident and coming within my classification of negligence is that of *Louise Noakes, Executrix, v. Imperial Airways, Ltd.* You will recall the crash of the Cavalier, with the loss of life of several of its passengers. One of them was Mr. Noakes. You will also recall that the Cavalier, being a flying boat, remained afloat a good many hours after striking the water. When suit was filed, it was filed in the U. S. District Court for the Southern District of New York, and the Imperial Airways made the defense that its liability was limited by the provisions of Title 46, U.S.C.A. 183,—part of the shipping code, which limited the liability of the owner of vessels to the value of the owner's interest in the vessel and the cargo. In this particular case, as you know, the value of the vessel and the cargo were nil as both had been lost. The court held, however, that this statute was not applicable to seaplanes; that although a seaplane could navigate on the water to a limited extent, it is primarily intended as a flying vehicle; and that Congress had no intention of including seaplanes within the Act. Particularly was this true because Congress had amended this entire section in 1937 when seaplanes were fully understood and fully known and had made no attempt to change the definition of "vessel" so as to include planes. The result was that the limitation which would have been a complete defense was not permitted.

DOLLINS V. PAN-AMERICAN GRACE AIRWAYS, INC.¹¹

This decision that I have just mentioned was parallel to and followed a decision of another Judge of the U. S. Court for the Southern District handed down on May 4, 1939 in the case of *Sue Dollins, Administratrix v. Pan American Grace Airways*. You will recall the loss of the Pan American plane, which, on August 2, 1937, took off

10. 235 C. C. H. Aviation Law Service, par. 917 (D. C. S. D. N. Y.—July 26, 1939).

11. 27 F. Supp. 487 (D. C. S. D. N. Y. May 4, 1939); 235 C. C. H. Aviation Law Service, par. 914.

in Colombia for Cristobal, Canal Zone and was never seen again. Wreckage was found fifteen miles out from Cristobal. There were no survivors. The Court held in this case that the owner of the flying boat was not entitled to limit its liability for damages to the value of its interest in the ship and cargo.

We have had other cases on this point, some as far back as 1914, and the courts have consistently held that an airplane does not come within the definition of a vessel or of a motor boat or of a motor vehicle.

One more negligence case and I am through with this division.

PIGNET V. CITY OF SANTA MONICA¹²

This case, I think, is one of interest to all State Aviation Officials, although it is not the first case of its kind.

On Clover Field, near Santa Monica, the W.P.A. was engaged in work on the airport. The employees of W.P.A., in driving their trucks with materials to and from the site of operations, drove them over the runways. Complaints had been frequently made by aviators using the field, and particularly by one Pignet, an operator on the field, who had a lease on a hangar, including the right to conduct an air school. This operator had frequently complained to the manager of the field, which was owned by the City, the manager being employed by the City. On the day in question, the operator was landing on the field when he struck a truck driven by one Van Gundy, who was on the runway delivering materials to the W.P.A. job. The suit was filed against the City of Santa Monica, Van Gundy, the airport manager, and others. The defense of the City of Santa Monica was that its operation of the airport was a governmental function. The Court disposed of that in the manner in which it has been disposing of it in many cases, to-wit, the operation of an airport is a proprietary function, and the City in the operation of an airport, is liable just as a private owner. The Court also held that it was the duty of the City, in the exercise of ordinary care, to keep its runways free from obstructions; that the danger had been called to its attention; and that it should have, by police action or by erecting proper barriers or other action, taken effective means to keep the trucks off the runways. and the City was held liable. This decision was by the California District Court of Appeals and was handed down November 17, 1938.

SEVERSON V. HANFORD TRI-STATE AIRLINES, INC.¹³

An interesting workmen's compensation case comes out of our

12. 29 Cal. App. (2d) 286, 84 Pac. (2d) 166 (November 17, 1938). See digest 10 J. of Air Law 433 (July, 1939).

13. 105 F. (2d) 622 (C. C. A. 8th—July 19, 1939).

own Eighth Circuit Court of Appeals. One Severson had been employed by the Hanford Tri-State Airlines in Iowa. The terms of his compensation and the extent of his duties were agreed upon in that state. He came out immediately to Minnesota as a traffic representative of the airlines. He then became a co-pilot and was injured while on a flight from St. Paul to Chicago, the accident occurring in Wisconsin. It was quite evident that Severson's attorneys desired to recover under the common law rather than under the Workmen's Compensation Law, and suit was, therefore, filed in the State Court and subsequently removed on the grounds of diversity of citizenship to the Federal Court, and there the defense was made that this injury was compensable under the Workmen's Compensation Law and that a common law action could not be maintained. It was the position of Mr. Severson and his attorneys that the employment had taken place in Iowa; that the Hanford Lines had never complied with the Iowa Compensation Law and that, therefore, he, Severson, was free to bring his common law suit. The Court held that the business of the defendant company, as well as the duties of the plaintiff, were both localized in Minnesota. The plaintiff had never performed any of his duties in Iowa, but had performed them all in Minnesota and hence the Minnesota Compensation Law applied and all plaintiff could recover was those payments provided for by that Compensation Law.

*AMERICAN AIRWAYS, INC. v. AETNA CAS. CO. & FORD MOTOR CO.*¹⁴

You will recall my telling you that the Manitoba Court held that the company was not liable for a defect in the propeller blade, which could not be discovered by ordinary inspection.

We have an interesting propeller case which comes from New York, decided by the Supreme Court for New York County on February 2, 1939. The American Airways owned a Ford Tri-Motor which they sent to the Ford Company to be reconditioned, instructing the Ford Company to make a thorough inspection of the plane in all parts and to advise the American Airways of everything which needed to be done to thoroughly recondition the plane. The Ford Company made its recommendations and the American Airways ordered all the work to be done. The reconditioning was completed on May 31 and on August 31 the plane crashed, with the result that the American Airways suffered a property damage of \$30,000.00 and the Aetna Casualty Co., its insurer, paid casualty claims amounting to \$60,000.00. It was discovered that the cause of the crash, which occurred two miles out of Cincinnati, was the breaking of a propeller blade at the hub. A tool mark was visible. It was barely visible to

14. 235 C. C. H. Aviation Law Service, par. 912 (N. Y. Sup. Ct.—February 2, 1939); see comment 10 *J. of Air Law* 414 (July, 1939).

the naked eye, but clearly visible to a microscopic study. The evidence showed that a tool mark has a tendency to weaken a propeller blade and, in fact, that was the subject of a factory memorandum circulated among the Ford engineers in 1930.

The Court held that the failure to make such an examination as would discover the tool mark and the failure to do what was necessary to correct it, in view of the Ford Motor Company's knowledge of the subject, was a breach of its contract, and held the Ford Company liable for the \$90,000.00 paid out by the American Airways and its insurer.

STATE OF MO. EX REL MUTUAL LIFE INSURANCE CO. OF N. Y.
V. SHAIN¹⁵

The final case to which I want to call your attention is a decision by our Missouri Supreme Court, an insurance case, decided February 22, 1939, being *Shain v. Mutual Life Ins. Co.* A young lady in Kansas City, employed as a physician's assistant, took out a life insurance policy for \$1,000.00. The policy provided for double indemnity in case of accidental death—in other words for \$2,000.00—but provided that the accidental provision should not cover anyone while operating or riding in any kind of aircraft, while as a passenger or otherwise, except as a fare-paying passenger in a licensed passenger aircraft. Further down in another part of the policy, it was provided that "this policy is free from restrictions as to occupation."

The young lady, after taking out this policy, took a course in trained nursing, became a trained nurse, and in time became a stewardess on an airplane. The plane crashed and she was killed. Her family claimed that they were entitled to the \$2,000.00 instead of the \$1,000.00 because the provision that the policy was free from restriction as to occupation permitted her to become an airplane stewardess, and that that provision overrode the provisions as to liability.

The Kansas City Court of Appeals agreed with this contention, but the Supreme Court of Missouri held that the provision limiting liability was too clear for any dispute as to its meaning and that the permission to engage in any occupation pertained to the life insurance portion of the policy, and did not change the meaning of the double indemnity accidental feature. I, therefore, point out to you that you cannot, while you are working at a desk job, take out life insurance, then become a transport pilot, and expect the accident provisions of your life insurance policy to remain in effect.

¹⁵ Supreme Court of Missouri Div. 2, decided February 21, 1939, 235 C. C. H. Aviation Law Service, par. 528. See comment on this subject 10 J. of Air Law 421 (July, 1939).

THE CIVIL AERONAUTICS ACT OF 1938

This Act was discussed somewhat by me in my 1938 report. At that time, there was only the bare Act to discuss. We knew none of its workings, none of its problems. We are all aware of the fact that engineers can plan and build a beautiful machine on paper; that model builders can build one of these machines from the plans and make it work; but we also know that when a new machine of this type is put into production and put into the hands of the public, "bugs" are discovered which take time and patience to work out.

It might be well to point out some of the problems that were not known to exist at the time the Act was passed, but which, in practice, have presented some "bugs".

Among other things, the Civil Aeronautics Act provides that an air carrier may make charter trips or perform any other special service, without regards to the points named in its certificate, under such regulations as may be prescribed by the Authority.

In another paragraph it is provided that an air carrier must file tariffs showing all rates, fares, and charges. These tariffs must be filed, posted, published and maintained and no other change may be made other than those in the tariffs.

The question arises, first, can an air carrier conduct a charter trip without first having filed a tariff, and the question also arises whether the Authority can require the carrier to file a tariff for charter trips when it is not between points served by the carrier, and finally, how can a carrier possibly file tariffs covering all charter trips in view of the thousands of different places to which persons may wish to go and the thousands of different circumstances under which they may wish to go, and the different equipments which they may wish to use. As yet, the Civil Aeronautics Authority has not made any regulations with respect to filing tariffs for charter trips. This is one of the bugs in the Act which has not yet been worked out.

One of the hardest nuts to crack is presented by the labor legislation included in the Act. The Act requires the air carriers to maintain the rates of compensation, the maximum hours and other working conditions relative to pilots and co-pilots, so as to conform with Decision No. 83 of the National Labor Board of May 10, 1934. The National Labor Board went out of existence when the Wagner Act was passed in 1935 creating the National Labor Relations Board. The decision itself was to stay in effect only one year. Yet the Civil Aeronautics Act says that the decision must be complied with notwithstanding any limitation in the decision as to its period of effectiveness.

When one examines this decision, he finds that the hours are

limited to 85 hours per month. The regulations of the old Bureau of Air Commerce and of the present Authority limit the hours, from a safety standpoint, to 100 hours per month. The old decision did not say whether, after 85 hours, time and a half should be paid, or any other form of compensation. It simply set a limit. To that extent, it conflicts with the power of the Authority to make safety regulations and is inconsistent with its present regulation.

The old decision said that the differentials existing on October 1, 1933 for pilots and co-pilots flying over hazardous terrain shall be maintained. It has been since discovered that there were no known or fixed differentials between pilots and co-pilots on October 1, 1933. While there was a differential for pilots flying over a hazardous terrain, there was no differential for co-pilots. All this helps to make it easy.

The present National Labor Relations Board, which succeeded the old National Labor Board, has taken the position that it has no power to interpret this famous Decision No. 83.

But that is not all. This decision, you will note, fixes the rate of pay and the maximum hours. Apparently, the Civil Aeronautics Authority is called upon to enforce it by seeing to it that this decision is not violated by air carriers.

However, another section of the Civil Aeronautics Act requires that as a condition precedent to continued operation as an air carrier, the air carrier shall comply with Title II of the Railway Labor Act as amended. This is the Act of April 10, 1936, which made air carriers and their employees subject to the National Railroad Adjustment Board and gives either party to a dispute the right to appeal to the Board. Is the Civil Aeronautics Authority, therefore, authorized to enforce Decision 83, and if so, does not this deprive the carrier of his right to go to the National Railroad Adjustment Board? Assuming that the carrier does not comply with the Railway Labor Act, is the penalty found in that act or is the Civil Aeronautics Authority required to cancel the carrier's certificate? This is another bug which has not been fully dragged out to the light. When it is dragged out, will it be stepped on or just swatted?

The matter of schedules under Section 405(e) is at present very much up in the air. Each air carrier is required to file with the Authority and the Postmaster-General all schedules and all changes in schedules. Now the Postmaster-General is authorized to designate any of such schedules for the transportation of mail and may, by order, require the air carrier to establish additional schedules. The carrier cannot make any change in the schedules designated or ordered by the

Postmaster-General, except upon ten days' notice and the Postmaster-General may, by order, disapprove any such change or may alter, amend, or modify any such schedule or change; but on the other hand, any person aggrieved by the Postmaster-General in this respect may apply to the Authority within ten days for a review and the Authority may review the order and amend, revise, suspend or cancel the order of the Postmaster-General.

Again, just to make it complicated, it is provided that no air carrier shall transport mail in accordance with any schedule other than a schedule designated or ordered to be established for the transportation of mail.

Finally, may I call your attention to the fact that Section 401(f) provides that no term, condition or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules as the development of business and the demands of the public shall require. Thus we have the air carrier with an apparently unlimited right to change schedules, the Postmaster-General with the authority to order new schedules and to change or amend a proposed change of schedules, and with the Authority having the right to review and make such orders as public convenience and necessity may require.

No application for the establishment of a new airline, except those made mandatory by the Act itself, has as yet been acted upon by the Civil Aeronautics Authority. Several hearings have been had and completed. The difficult, I take it, of handing down prompt decisions on these applications is inherent in the Act itself.

The Act provides that the Authority shall issue a certificate authorizing the transportation covered by the application, if it finds that the applicant is fit, willing and able to perform such transportation properly, and to conform to the provisions of the Act, and that such transportation is required "by the public convenience and necessity".

Most all of us know what is meant by "public convenience and necessity" as applied to railroads, power lines, and motor carriers. The simplest way of expressing public necessity in these instances is that where there is no railroad, or no truck line, or no power services, public necessity exists. It even exists where the present service is inadequate.

Obviously, it does not follow that the mere absence of air transportation conclusively shows the necessity for such transportation. If towns A and B, forty miles apart, have a population of 50,000 each and are not connected by a truck line, we can assume from those facts alone that a truck line is a public necessity. We cannot assume that an airline between two such towns is a public necessity. We cannot

even assume that two towns of 500,000 each, one thousand miles apart, without an airline, establishes the necessity of such a line. There would have to be shown that there were such business relations or community of interest between the two towns that air mail, air express, and air transportation would be used. But just what are the yardsticks by which the desire for air service can be measured? Does the fact that between two cities there is daily movement of package freight of a certain volume guarantee a daily use of air service of another certain volume? Do the telephone calls give any indication? Do the telegraph messages or the express shipments, or the railroad passengers? Do all of them together constitute an average yardstick by which the saleability of air service can be gauged?

This is one of the problems which is confronting the Civil Aeronautics Authority. I do not know whether this problem is capable of solution by yardstick or not. It seems a little difficult to assume that there is a fixed relationship between the demand for air service and the use of other business facilities. There probably is, but what the relationship is, or may be, is very much of a mystery.

However, the economic aspect of the problem, as complicated as it is, would probably be capable of simple solution were it not for the other factors which have been very properly and necessarily injected into the problem.

Under the Civil Aeronautics Act, the possible acceptance and use of air service to the extent that the airline would probably be profitable, or at least self-supporting, is not the sole criterion. Congress had more than the solvency of the air carriers, old and new, in mind. Congress was directed by Section 402 of the Act to consider as being in the public interest and in accordance with public convenience and necessity six different things, of which two are pertinent to our problem.

The first was the encouragement and development of an air transportation system, properly adapted to the present and future needs of the foreign commerce of the United States, of the postal service, and of the national defense. The second was the encouragement and development of civil aeronautics.

Let us consider first the word "encouragement", which is used twice, once for the encouragement of the system of air transportation, and once for the encouragement of civil aeronautics.

A system of air transportation which is to be "encouraged", as well as developed, clearly indicates that Congress did not mean that the present mileage, and the present mileage only, was to be flown. It clearly indicates that Congress intended that the system should be

increased, should be broadened, that more towns should be put on the airlines, that more and better connections should be made, and that more and more people should be offered the advantages of air transportation, which advantages are not only becoming more and more self-evident, but are becoming more and more accepted as a truth by the general public.

What is meant by the language "present and future needs" if an expansion of the present physical plant of air transportation was not contemplated by Congress?

Further, it is necessary to note that Congress evidently makes a distinction between commerce as such, and air mail. We presume that Congress, by the term "commerce" means "passengers and express", because we find that this system which is to be encouraged and developed is not only to be adapted to present and future needs of foreign and domestic *commerce*, but is also to be adapted to the present and future needs of the "postal service". This thought itself gives some wings to the imagination. It doesn't necessarily mean that every town in the United States should have an airport and that at each airport there is to be air mail service, but evidently it does envision a future where air transportation is adequate for the needs of the postal service. This would seem to indicate that Congress had in mind that as long as I live in Bingville I might not be able to travel on a plane, but I ought to be able to get my air mail letters into the big cities, and get my air mail letters back from the big cities, in the reasonable future.

Finally, we come to the present and future needs of the national defense. This language again seems to indicate that Congress did not feel that the national defense was adequately provided for, insofar as our present system of air transportation was concerned. And what is meant by a system of air transportation which is adequate for the national defense? Does it mean only such a system that could carry soldiers or ammunition from one point to another as needed, or does it mean that there shall be many commercial airports which are available for use by army planes? Or does it mean that by the development of factories which manufacture civil planes, we can create a reserve of manufacturers who can, if necessary, make military planes? Or does it mean that our system of air transportation should be such as to teach thousands of men to operate and maintain planes who, in an emergency, can be used to do the same for military planes?

And finally, we come to the second sentence to which I referred, and that is that there should be considered "as being in the public interest and in accordance with the public convenience and necessity",

the encouragement and development of civil aeronautics. You will note that this goes far beyond a system of transportation. It goes beyond the needs of the postal service. It goes far beyond the national defense. Civil aeronautics would certainly be broad enough to include the use of planes for all purposes by civilians, the building and development of planes adapted to general use, the support of airplane factories, etc.

Now having developed all these frothy bubbles of conjecture, it might be a good idea to throw away the "kicker" and draw three cards. But let's see if I can get back to the subject which I started to discuss, which is just what are the standards upon which Civil Aeronautics Authority shall base its decision as to the establishment of new airlines.

The first decision will be of the utmost importance. It should insofar as possible, lay down a guide to be followed by the Authority in subsequent applications. It should discourage unworthy and frivolous applications, but at the same time it should so encourage aviation as to offer practically an unlimited future to carriage by air.

It is unfortunate that Congress did not give us the standards to be followed, but in the very nature of things, Congress could not. To show my mental agility, I will say that it is exceedingly fortunate that Congress did not, because no Congress today, nor tomorrow, nor next week, could lay down any hard and fast rules, upon which such certificates could be granted or denied. One thing this industry does not need is hard and fast rules.

The first decision of the Civil Aeronautics Authority will go a long way towards encouraging, vitalizing, and enthusing those engaged in air transportation. It can, at the same time, go a long way towards discouraging. A fine judgment and balance is needed to steer aviation between the danger of over-booming it, on the one hand, and of failing to give it the encouragement that Congress clearly meant it should have, on the other.

In spite of the fact that I am, and have been all of my voting life, a staunch Republican, in spite of the fact that my predilections and judgments are contrary to most of the New Deal legislations and policies, quite apart from my appreciation of some of the splendid qualities of the President, I nevertheless feel that the Civil Aeronautics Act was, in the first place, a splendid piece of legislation, for what one might call the first attempt, and second, I feel that the personnel selected by the President is such that the industry should feel comforted, encouraged and enthusiastic.

There are, though, criticisms which I have heard. There is the

criticism that there is not the proper coordination with the State Aviation Officials. If this were something new, it would be distressing, but this criticism, to my certain knowledge has been present from the time of the formation of this Association until now.

This criticism was voiced when Bill MacCracken was the Assistant Secretary of Commerce for Air and when Clarence Young held the same job. It was voiced concerning Major Vidal, who was Chief of the Bureau of Air Commerce, and was not even silenced when our own Fred Fagg had the same position.

Also, in the nature of things, it probably never will be silenced, and probably never should be silenced. Here is a state official with a particular job to accomplish, a job which keeps him thinly spread over many aspects of aviation work, and here is a federal official with also a job to be performed. The two jobs are never quite the same. In certain aspects, they are identical; in certain others, they diverge. The state officials being closer to their problem, probably having a much longer experience, and probably having a much more practical experience, are naturally impatient that the federal government does not see with them eye to eye on those points where their problems are identical.

Criticism of the federal government official naturally follows, but I believe that the federal officials, if such criticism is of a friendly nature, and of a constructive nature, will appreciate that the desire of the state officials is only to elucidate the problem and to educate the federal official as to the backgrounds of the problem.

So far, I have seen no disposition on the part of the Civil Aeronautics Authority members themselves, and very little on the part of subordinates, to take the position that they knew it all. It might be that there are very few state officials who know it all. Sometimes, I am amazed to find that I don't.

I believe that there is now being put into effect, with every possibility of great success, a sound plan for the cooperation between the Civil Aeronautics Authority and the National Association of State Aviation Officials. This particular movement is under the general supervision of Dick Boutelle and under the particular supervision of Elwood Cole, both of whom are respected former members of our official family and both of whom are conversant with the peculiar problems, aims, desires and objectives of the State Officials. The fact that the coordination effort is under the charge of these two men is as encouraging, I believe, to State Officials as is the personnel of the entire Authority to aviation in general.

A policy of patience and cooperation will, I believe, work out

these bugs. In any event, the Civil Aeronautics Act is the Magna Charta of aviation. With some defects and some uncertainties, it is nevertheless the finest thing that has happened to aviation since the World War conclusively proved its practicality.

I hope that this Association will lend the great weight of its influence to assisting in an effective and helpful interpretation and administration of the Act, and effective and helpful amendments where needed.

This isn't the first time that I have taken advantage of this opportunity to do some preaching. I think it is now time to take up the collection. I thank you.