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Editorial

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EDITORIAL

AIR LAW, RESEARCH AND THE UNIVERSITY

WITH the vast technical progress in airplane design and all-weather navigation that resulted from the impetus of war, it is now the *legal, economic, and political* problems that retard the fastest and fullest fruition of this Air Age. "The airplane is part of the modern environment of life," noted the United States Supreme Court in 1946.¹

Only last year, the highest Court first took official cognizance² of the unique character of air transportation:

"Of course, air transportation, water transportation, rail transportation, and motor transportation all have a kinship in that all are forms of transportation and their common features of public carriage for hire may be amenable to kindred regulations. But these resemblances must not blind us to the fact that legally, as well as literally, air commerce, whether at home or abroad, soared into a different realm than any that had gone before . . .

"A way of travel which quickly escapes the bounds of local regulative competence called for a more penetrating, uniform, and exclusive regulation by the nation than had been thought appropriate for the more easily controlled commerce of the past . . .

"However useful parallels with older forms of transit may be in adjudicating private rights, we see no reason why the efforts of the Congress to foster and regulate development of a revolutionary commerce that operates in three dimensions should be judicially circumscribed with analogies taken over from two-dimensions transit."³

Lawyers, executives, and public servants must meet this challenge if America is to remain a great world power. Winston Churchill recognized aviation as one of the significant forces of the Twentieth Century

¹ *United States v. Causby*, 328 U.S. 256 (1946). This case dealt with the invasion of private property by low flying aircraft. The Court said: "It is ancient doctrine that at common law ownership of the land extended to the periphery of the universe—*Cujus est solum ejus est usque ad coelum*. But that doctrine has no place in the modern world. The air is a public highway, as Congress had declared. Were that not true, every transcontinental flight would subject the operator to countless trespass suits. Common sense revolts at the idea."

² *Chicago & Southern Air Lines, Inc. v. Waterman Steamship Corp.*, 333 U.S. 103 (1948).

³ On April 18, 1949, the Supreme Court, in *TWA v. CAB*, 336 U.S. 601, came to grips with certain fundamentals of public utility rate-making in deciding TWA's petition for a "retroactive" air mail rate.

A majority of the Court rejected TWA's contention which it found would transform the 1938 Act into a "cost-plus system of regulation" and found the "apparent design of the Act" was to promote the "sound development of an air transportation system through competition" by the CAB setting uniform mail rates for classes of air carriers which would force them "to compete in securing revenue and in reducing or controlling costs."

The consistency of the CAB order of February 29, 1949, granting TWA mail rate increases for losses sustained by grounding of the Constellation aircraft in 1946 was questioned by the dissent.

in his address at Massachusetts Institute of Technology on March 31, 1949:

"We thought that with improving transportation nations would get to know each other better. We believed that as they got to know each other better they would like each other more and that national rivalries would fade in a growing international consciousness . . .

"Humanity was informed that it could make machines that would fly through the air . . . The conquest of the air and the perfection of the art of flying fulfilled the dream which for thousands of years has glittered in human imagination. Certainly it was a marvelous and romantic event.

"Whether the bestowal of this gift upon an immature civilization . . . was a blessing or a curse has yet to be proved. On the whole, I remain an optimist . . . This is a memorable milestone in the march of Man . . .

". . . Fanned by the crimson wings of war, the conquest of the air affected profoundly human affairs . . . The human biped was able to travel about far more quickly. This greatly reduced the size of his estate, while at the same time creating an even keener sense of its exploitable value."

Northwestern University early accepted the challenge of the impact of aviation upon the evolution of modern law and society, founding an Air Law Institute in 1929 and beginning publication of the *JOURNAL OF AIR LAW* in January, 1930, Dean John H. Wigmore wrote in the first issue:

"In the course of legal history, new economic and social activities have from time to time found the Law not prepared with developed rules to fit patly the new needs for definition of rights. And naturally so, for Law is based on Experience . . .

"Again, today, we are confronted with a new, and this time a vaster, field for the definition of legal rights—Rights in the Air. Again we are faced with the prospect of a long period of fumbling and error . . .

"The conditions for success, we believe, are, first, an early exchange of experiences. Such is the service which the Air Law Institute and the Air Law Journal aim to render, *viz.*, to furnish a clearinghouse for experiences."

Recognition in 1939 of the intimate relationship between economic and social forces and Law resulted in a change of name to the present *JOURNAL OF AIR LAW AND COMMERCE*, with the School of Commerce participating. Gradually acquiring increased stature, the *JOURNAL* grew with American civil aviation as aircraft dissolved time and surface obstacles, extended and quickened our industrial activities, our markets, recreational areas, affected urban planning and our daily lives in hundreds of ways. The *JOURNAL*'s pages reflect that remarkable development. Exigencies of war compelled suspension of publication, but after a four year hiatus Volume 14 Number 1 appeared in January of 1947. The *JOURNAL OF AIR LAW AND COMMERCE* is now published as a 128 page quarterly with the aid of several devoted voluntary depart-

mental editors — in less than three years it has earned full recognition both for scholarship and practicality from leaders in industry, government, law, economics, and university research. It features:

Leading Articles—definitive analytical studies of current problems;

Editorials—on timely subjects;

Quarterly Reviews of Regulatory Activities:

International—digest of ICAO and IATA work, significant documents;

Federal—documents of national importance, summary of activities of administrative agencies;

State and Local—NASAO proceedings, legislation and regulation;

Judicial and Regulatory Decisions—student notes on selected decisions of courts and administrative tribunals;

Book Reviews—new books of economic and legal significance to aviation;

Bibliography—list of current important aviation literature.

Recognized experts in government and industry all over the world have contributed to the current stature of the JOURNAL, and their continued contributions and cooperation are earnestly sought. Leading articles in the post-war issues of the JOURNAL comprise the finest compilation extant of authoritative and readable studies on current questions before commercial carriers, government officials, manufacturers, and airport operators.

In addition, Northwestern Law School offers a seminar in Transportation Law, organized by the Editor of the JOURNAL, a course focussed on the volatile route, rate, subsidy and operating problems of modern air transport and a comparison with government regulation in surface shipping. As part of the JOURNAL research and teaching program, an unexcelled library of books, periodicals and documents is being acquired. Considerable foreign material has been secured. The Law School has been designated as one of the university depositories for all publications and documents of the International Civil Aviation Organization. Northwestern Law School now possesses one of the most complete non-technical aviation libraries in the midwest. Its aviation program is coordinated with that of the Commerce School, which offers a number of directly related courses. Together the Schools offer valuable facilities for individual student and graduate research and publication.

Northwestern's Chicago campus is a logical center for such legal and economic research. Chicago is a great transportation hub and its municipal airport is one of the busiest commercial fields in the country. While most aviation regulation originates with the CAB and CAA in Washington, it has been found advantageous to maintain a vantage point in touch with, but not under the dominance of, government agencies.

Since the JOURNAL was launched some 15 years ago, Northwestern University has won international recognition as an academic focal point of aviation law research in the United States. It has given graduate stu-

dents the special training which has enabled them to make contributions to both government and industry. It has helped and encouraged other institutions to initiate similar projects in air transportation.

The JOURNAL's enthusiastic acclaim by all segments of aviation indicates the need for such a scholarly and independent English language publication of legal and economic studies on this rapidly growing transport medium. Yet, there are some signs that the JOURNAL has progressed almost as far as it is likely to go under the *ad hoc* financing by general funds of the University, arrangements which have prevailed since exhaustion of the original grants drastically reduced the activities of the Air Law Institute in the mid-thirties. Some more stable and comprehensive program would be desirable if Northwestern University is to continue to make substantial contributions to United States air law and transport policy.

The Argentine government is developing its National Institute of Air Law, and a distinguished group of private citizens in Paris has been guiding the French Institute of Air Transport in a large non-profit research program. It may well be that the time has come for airline and aircraft industry executives, lawyers, university staff, public servants, and other Americans interested in continuing our leadership in the airways to consider the many benefits of an Aviation Law and Research Foundation and the possibilities of instituting a similar long range program for studies and publications on aviation law and economics in the United States.

EDWARD C. SWEENEY