

1952

## Federal

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# FEDERAL

## PRESIDENT'S TEMPORARY AIRPORT COMMISSION\*

**T**HE President of the United States today sent the following letter to Lieut. General James H. Doolittle:

February 20, 1952

Dear Jim:

For some time now, I have been seriously concerned about airplane accidents, both commercial and military, that have occurred in the take-off and landing of aircraft, especially in heavily populated areas. I have been concerned about the loss of life and I have been concerned about the anxiety in some of our cities. I have decided to set up a temporary President's Airport Commission to look into the problem of airport location and use. I am delighted that you are willing to serve as chairman of the Commission, and I hereby appoint you as such. *Mr. Charles F. Horne*, the Administrator of Civil Aeronautics and *Dr. Jerome C. Hunsaker*, Head, Department of Aeronautical Engineering, Massachusetts Institute of Technology, will serve with you on the Commission.

The present location of many of our major airports was determined a number of years ago when the aviation industry was new and operations were relatively limited. Also, some of the locations reflected special military requirements. Since that time both civil and military air traffic have been growing rapidly, and simultaneously our cities have been continuously spreading out toward these airports.

Meanwhile, there has been great progress in the art of flying and in the development of supporting facilities. Striking advances have been made in aircraft and power plant development, in speed and service, in operational control of aircraft and in their ability to operate under a wide variety of weather conditions. A common system of navigation and landing aids for both civilian and military use, has been installed and is being maintained by the Federal Government on the Federal airways and at important airports. At the same time, the Nation's investment in both civil and military airports has undergone tremendous expansion.

Our present mobilization efforts have greatly speeded up the tempo of these activities, particularly in the design and production of aircraft and the construction of facilities for the military services.

In view of these developments, I feel that the Nation's policy on airport location and use should be restudied. We need a study that is both objective and realistic. That is what I want your Commission to do. In undertaking this survey, several major considerations should be kept in mind. On the one hand, provision must be made for the safety, welfare and peace of mind of the people living in close proximity to airports. On the other hand, recognition must be given both to the requirements of national defense and to the importance of a progressive and efficient aviation industry in our national economy.

In addition to these general considerations, I would like the Commission to take the following specific matters into account:

1. The Federal, State and local investment in existing civil and military airports and the factors affecting the utility of airports to adjacent communities.

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\* From official press release of February 20, 1952, No. 3162.

2. Actions by Federal, State and local authorities to lessen the hazards surrounding existing civil and military airports.
3. Assignment of newly-activated military units to existing airports, with particular regard for potential hazards to the communities involved.
4. Site selection for new civil and military airports and the factors affecting relocation of existing airports.
5. Joint civil and military use of existing or new airports.
6. Legislation and appropriations necessary to carrying out appropriate policy.

Because of the urgency of the problem, I hope you will be able to give me your final recommendations within ninety days. In your work, you will have the full cooperation of all the Executive agencies whose functions and interests relate to your assignment. And you will want, of course, to keep in close touch with other groups concerned about this problem, including the Committee of Congress, local authorities and the aviation industry.

Arrangements will be made to meet the expenses of your Commission out of the Emergency Fund for the President.

Sincerely yours,

HARRY S. TRUMAN

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#### MID-WINTER REPORT OF COMMITTEE ON AERONAUTICAL LAW OF THE AMERICAN BAR ASSOCIATION

**Y**OUR Committee on Aeronautical Law is considering the many legal questions arising out of current developments in this dynamic and constantly changing field of law. While the Committee has no resolutions upon policy matters to present to the House of Delegates at this time, the Committee has prepared a short summary of some of the subjects now under its active consideration.

##### *Airports*

The recent disasters at Elizabeth, New Jersey, in connection with operations at the Newark Airport have emphasized the need for a comprehensive study of the location of terminal-type airports insofar as they affect the safety of persons and property in densely populated areas adjacent to them. Following the second crash of an aircraft into the City of Elizabeth on January 22, 1952, within a period of six weeks, the Senate Committee on Interstate and Foreign Commerce began an investigation to determine the cause of the accident and to analyze the operation, location and proposed expansion of the Newark Airport. The results of this investigation are embodied in Senate Report No. 1140 together with the Committee's recommendations of steps to be taken to avoid similar tragedies in the future. The Committee recognized that the advent of large four-engine transport aircraft which came into general use following the war intensified the aviation annoyance problem to persons living within the vicinity of major air terminals. It added that new Federal legislation has been proposed to increase aviation safety. The Committee recognized that the problem of aviation safety presents the greatest challenge to the aeronautical industry and requires the intent and constant attention of all concerned.

Following the third tragic accident at Elizabeth on February 11, 1952, President Truman on February 20, 1952, appointed Lieutenant General James H. Doolittle to head a special airport commission to study the prob-

lem of airport location and use. The Doolittle Commission has been asked to submit recommendations within ninety days.<sup>1</sup>

There is increased interest in the subject of the adoption of zoning regulations limiting the height of structures adjacent to airports to prevent the problems arising from low flying which is necessary to the taking off and landing of airplanes at airports. In many instances airports have been constructed far from the built-up areas of cities at a cost of millions of dollars only to have a concentration of buildings—attracted by the airport's operations—create hazards at the airports, thus destroying the investment in the airport. Examples are some announced plans for many storied hotels to house airport users. The legal problems incident to use of police power zoning to solve this problem are receiving the consideration of the Committee.

#### *Court Use of C.A.B. Accident Investigation Data*

Two appellate court decisions of the past year have contributed to the clarification of the meaning of Section 701(e) of the Civil Aeronautics Act which relates to the admissibility into evidence of Civil Aeronautics Board accident investigation reports. Section 701(e) provides that "No part of any report or reports of the Board or of the Authority relating to any accident, or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports."

In *Universal Airlines v. Eastern Airlines*, 188 F. (2d) 993, 1951 U.S. Av. R 20, decided February 23, 1951, the United States Court of Appeals for the District of Columbia rejected the contention of the Civil Aeronautics Board that the lower court should not have required one of the Board's inspectors to testify as an expert witness with respect to the aircraft accident investigated by him solely in his official capacity as an employee of the Board. This contention was made upon the basis of Section 701(e) and the Board's regulations precluding expert testimony by Board accident investigators in civil actions. The Court stated that "As a matter of comity, under circumstances such as those presented here, the trial court should ordinarily receive the deposition of the CAB investigator, rather than order his personal attendance." The Court further said "We may add that in any case where the CAB investigator is the sole source of evidence reasonably available to the parties, with regard to the precise position and condition of aircraft after a disaster, we deem it to be incumbent upon the Civil Aeronautics Authority to make his testimony available by deposition or in person; if the deposition is not forthcoming or is insufficient, the Court has power to order his personal attendance."

In *Lobel v. American Airlines*, 192 F. (2d) 217, 1951 U.S. Av. R 119, decided October 30, 1951, the United States Court of Appeals for the Second Circuit ruled that a CAB investigator's report of an accident which was offered as past recollection and in conjunction with the investigator's direct testimony in a deposition was properly admitted where the report contained only personal observations as to the condition of the aircraft after the accident and contained no opinions or conclusions as to the possible cause of the accident or the defendant's negligence.

#### *War Risk Insurance*

A new Title XIII was added to the Civil Aeronautics Act of 1938 by the adoption of Public Law 47, 82nd Congress, June 14, 1951. Title XIII authorizes the Secretary of Commerce to provide war risk insurance upon aircraft, cargoes, crew members and other persons carried in flights operated

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<sup>1</sup> For text of directive to the Commission, see p. 101, *supra*.

in whole or in part outside the continental limits of the United States. Section 1302(a) of Title XIII provides:

"The Secretary, with the approval of the President, and after such consultation with interested agencies of the Government as the President may require, may provide insurance and reinsurance against loss or damage arising out of war risks in the manner and to the extent provided in this title, whenever it is determined by the Secretary that such insurance adequate for the needs of the air commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States: *Provided*, That no insurance shall be issued under this title to cover war risks or persons or property engaged or transported exclusively in air commerce within the several States of the United States and the District of Columbia."

The term "war risks" includes, to such extent as the Secretary may determine, all or any part of those risks which are described in "free of capture and seizure" clauses, or analogous clauses. Upon disagreement as to the loss insured suit may be maintained against the United States in the United States District Court for the District of Columbia or in the district court for the district in which the claimant resides.

#### *Pilot Physical Fitness—Adequacy of Statute and Regulations*

The determinations of the Civil Aeronautics Board that approximately 70% of all aircraft accidents are due to the human element, pilot error, has created much interest in whether existing statutory provisions on physical fitness of pilots and the regulations based thereon are adequate. It is said that there is an increasing number of airline pilots in whom the aging process is not compensated for by experience and that student and private pilots, as a class, have a higher accident toll but are given the least consideration medically. Also, there are pending provisions to relax or eliminate altogether the physical standards for classes of civilian pilots.

The Civil Aeronautics Act of 1938 provides, in Section 602(b) for "periodic or special examinations" and "tests for physical fitness" of all pilots of aircraft. There are some who say that the situation just described comes about because the regulations to implement this language are woefully weak and inadequate and require drastic revision. These are serious problems of great importance to air safety and your Committee is giving extensive consideration to them.

#### *Air Mail Subsidy*

S. 436, to provide for the separation of subsidy payments from mail service payments to air carriers was passed by the Senate on September 19, 1951, and is now before the House Committee on Interstate and Foreign Commerce which is currently holding hearings on it.

In the meantime the Civil Aeronautics Board on October 1, 1951, announced that it would provide an administrative separation of service mail payments from subsidy payments in all mail rate cases for domestic air carriers processed after October 1, 1951.<sup>2</sup> The Board said it would identify that portion of the mail payment which is for the actual service of carrying the mail and that additional portion which is subsidy. The Board also announced that it would release a report not later than June 30, 1952, setting forth an administrative separation of such payments for United States air carriers engaged in international, overseas and territorial operations.

The Board's special report on its new separation policy separated service mail pay from subsidy mail pay on the basis of figures for the year 1951, which showed that of the total domestic mail pay of \$61,934,000, \$27,369,000

<sup>2</sup> For full report, see 18 J. Air L. & Com. 441 (1951).

was service pay and \$34,565,000 was subsidy. It was estimated that for the fiscal years 1952 and 1953, the total amount of domestic mail payments would be approximately \$57,000,000 and \$56,000,000 respectively. The subsidy is expected to decline from \$34,565,000 for 1951 to \$24,134,000 for 1953, a drop of 30.2 per cent. The Board pointed out that its program of administrative separation both for domestic and international carriers will be adjusted to conform to such legislation as the Congress may enact.

#### *Air Coach Service*

In a policy statement issued on December 6, 1951, the Civil Aeronautics Board indicated that it plans to encourage the proposals of certificated domestic air carriers to increase the scope of high density coach operations. The Board gave as its opinion that "coach operations to date have conclusively demonstrated their economic soundness and that the certificated domestic carriers should promptly and substantially expand their coach services using aircraft with high passenger-carrying capacity (high density coach)." The Board recognized that "the maximum development of civil aviation in the United States, as contemplated under the Civil Aeronautics Act, will not be realized until such time as air travel is placed within the economic reach of the great majority of the traveling public. High density coach service, offers a sound means of accomplishing this objective, improving the economic stability of the certificated domestic carriers and reducing the dependency of these carriers upon Federal subsidy."

At about the same time the Board announced that its policy with respect to irregular carriers would be to preserve the status quo as to such carriers pending the completion of its long-range investigation of them. In response to a letter from Senator Sparkman, Chairman of the Senate Select Committee on Small Business, the Board said on December 7, 1951, that while the operating authority of the irregular carriers will not now be increased they have the opportunity for further growth to the extent that they may be able to obtain additional equipment or obtain greater utilization of existing equipment. The Board also promised appropriate enforcement action against irregular carriers, during the period of its investigation, should any of them operate in excess of their authority.

One month previous, on November 7, 1951, the Board, in the *Transcontinental Coach-Type Service* case, announced its policy that the existing certificated carriers are fully capable of providing the scheduled regular and frequent air coach services needed between these points which they are already serving and that the certificated carriers have the necessary resources and facilities to insure the future growth and development of such low-fare services. The Board denied requests of certain irregular carriers for authorization to engage in unlimited air coach operations on a transcontinental basis.

#### *Warsaw Convention*

The Warsaw Convention which limits the liability of air carriers in international air transportation, under certain conditions, continues to receive the active attention of your Committee.

An opinion of the New York Supreme Court, Special Term, New York County, in *Salamon v. KLM*, decided September 28, 1951, 1951 U.S.Av. R 378, reveals an interesting interpretation of the Warsaw Convention somewhat at variance with what might fairly be said to be the generally accepted one. Suit was brought to recover damages for the death of a passenger alleged to have been caused by the manner in which the defendant operated the aircraft on a flight from the Netherlands to New York. On a motion attacking the sufficiency of the complaint, the Court ruled that "it seems

clear from the foregoing provisions (of the Warsaw Convention) that the convention, contrary to the position taken by the defendant, created a cause of action for injury or death of a passenger on a flight covered by the convention. . . ." This interpretation of the convention is clearly opposed to that announced in *Wyman and Baretlett v. Pan American Airways, Inc.*, 181 Misc. 963, 43 N.Y.S. (2d) 420, affirmed without opinion, 267 App. Div. 947, 59 N.E. (2d) 785; *cert. den.* 324 U.S. 882, where the court stated, "No new substantive rights were created by the Warsaw Convention and all the rules there laid down are well within the framework of the existing legal rights and remedies." Although the Warsaw Convention was held applicable the Court stated in the *Pan American* case that "the right to any recovery thus must depend on some statute."

Should the decision in the *Salamon* case be followed in the future the effect would be that in Warsaw Convention cases the claimant would not, as in a wrongful death action, be required to show the existence of an independent statute creating a right of action. In this connection it is to be noted that, unlike the Lord Campbell's Acts, the Warsaw Convention does not prescribe the person who shall bring the action nor those for whose benefit it is to be brought.

Proposals for revision of the Warsaw Convention reported upon in previous reports of this Committee are being followed by your Committee. Members of your Committee have received from the A.C.C. two documents reporting on the results of the 8th Session of the I.C.A.O. Legal Committee, at which the Warsaw Convention was the main item on the agenda. The documents include the Report of the U.S. Delegation to the 8th Session of the Legal Committee<sup>3</sup> and a Report by Major K. M. Beaumont. Your Committee will continue to study these and related documents and report upon them in detail in the Committee's report to the Annual Convention to be held in San Francisco in September.

#### *State Jurisdiction*

Interesting legal questions of the effect of the jurisdiction of the states over intra-state operations of inter-state air carriers were raised in the case of *United Air Lines v. Public Utilities Commission of California* and the case of *Western Air Lines v. Public Utilities Commission of California*. The California Courts held that the California Public Utilities Commission has jurisdiction over the rates charged by United Air Lines and Western Air Lines for air transportation between Los Angeles and San Francisco. The Supreme Court of the United States on January 7, 1952, dismissed the appeal on the ground that no Federal question was involved. (342 U.S. 908).

Respectfully submitted by the

#### *Aeronautical Law Committee*

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<sup>3</sup> See, p. 70, *supra*.