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EXCERPTS FROM THE CIVIL AERONAUTICS BOARD REPORT — "ADMINISTRATIVE SEPARATION OF SUBSIDY FROM TOTAL MAIL PAYMENTS TO UNITED STATES INTERNATIONAL, OVERSEAS AND TERRITORIAL AIR CARRIERS*

On September 28, 1951, the Board issued its report entitled "Administrative Separation of Subsidy from Total Mail Payments to Domestic Air Carriers." This report established an administrative separation of subsidy from total mail payments for all domestic air carriers, including the local service carriers.[1]

Since October 1, 1951, all mail rate cases processed for domestic air carriers have included a statement showing the amount of the mail pay which is for the carriage of mail and that amount which is found by the Board to be required as subsidy.

This report is the second stage of the program as outlined in the Chairman's letter of July 9, 1951 and establishes an administrative separation of subsidy from total mail payments to United States international, overseas and territorial air carriers certificated for the transportation of mail.

Purpose

The Civil Aeronautics Board has effected this administrative separation of service mail payments from subsidy for the United States international air carriers which are certificated for the transportation of mail in order to:

(1) Identify those amounts which are compensation to the air carriers for carrying the mail and provide the public with full information as to the subsidy cost to the United States Government of maintaining and developing the international air transport industry.

(2) Provide the President and the Congress with information which will permit a review of the amounts being spent for international subsidies.

(3) Provide information which will assist the Board in arriving at policy decisions affecting the development of the international air transport industry.

(4) Eliminate the uncertainty with respect to that portion of the Post Office Department deficit which is directly traceable to subsidies to the international air transport industry.

Comparison of Service Mail Pay and Subsidy

The administrative separation establishes the following division of total mail pay between service mail pay and subsidy for the fiscal years 1951, 1952 and 1953 for United States international air carriers:

International Air Carriers	1951*	1952*	1953*
Service mail pay	$ 17,005,000	$ 18,218,000	$ 19,329,000
Subsidy	40,111,000	44,513,000	45,997,000
Total mail pay	$ 57,116,000	$ 62,731,000	$ 65,326,000
Percentage of subsidy to total mail pay	70.2%	71.0%	70.4%

* The term "international" as used in this report includes all international, overseas and territorial operations of United States air carriers certificated for the carriage of mail, except operations between the United States and terminal points in Canada which were included in the report "Administrative Separation of Subsidy from Total Mail Payments to Domestic Air Carriers," dated September 28, 1951.

[1] For excerpts from this report see 18 Jrl. of Air L. & Com. 441 (1951).

The administrative separation of service mail pay and subsidy established for the domestic air carriers is shown below, together with industry totals for comparative purposes.

	1951*	1952*	1953*
*Domestic Air Carriers***			
Service mail pay	$ 27,369,000	$ 29,599,000	$ 31,786,000
Subsidy	34,565,000	27,786,000	24,134,000
Total mail pay	$ 61,934,000	$ 57,385,000	$ 55,920,000
Percentage of subsidy to total mail pay	55.81%	48.42%	43.16%
All Air Carriers			
Service mail pay	$ 44,374,000	$ 47,817,000	$ 51,115,000
Subsidy	74,676,000	72,299,000	70,131,000
Total mail pay	$119,050,000	$120,116,000	$121,246,000
Percentage of subsidy to total mail pay	62.7%	60.2%	57.8%

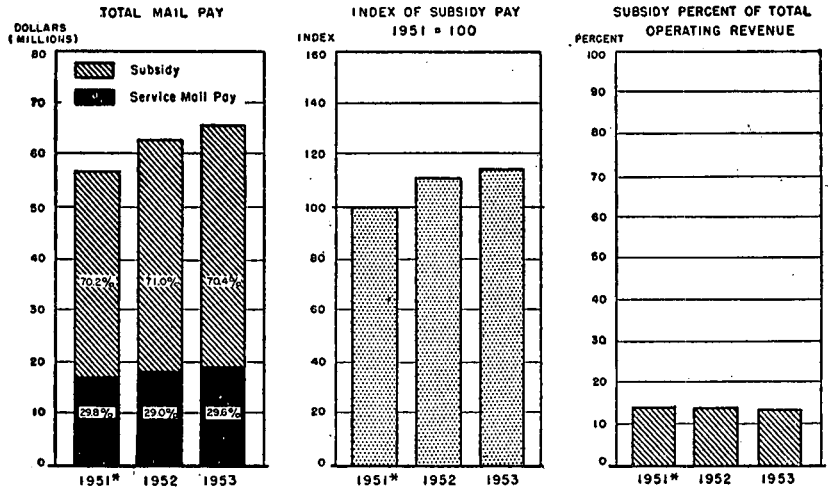
It will be noted that the percentage of subsidy to total mail payments is substantially greater for the international air carriers as a group than for the domestic air carriers.

* The amounts of mail pay are estimated for the fiscal years 1951 and 1952, since final rates have not been established for all carriers for these periods, as well as for the future fiscal year 1953.

** Mail pay shown for domestic air carriers is taken from page 3 of the Board's domestic subsidy separation report.

CHART I

TREND IN ESTIMATED SUBSIDY AND SERVICE MAIL PAY
FOR U.S. INTERNATIONAL, OVERSEAS, AND TERRITORIAL CARRIERS
FISCAL YEARS 1951, 1952, 1953



* Mail pay is estimated in 19 instances where final mail rates have not been issued.

SOURCE: Appendixes A, B, C.

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Chart I shows the comparative service mail pay and subsidy for United States international carriers for the fiscal years 1951 through 1953, the trends in total mail payments and the relationship of subsidy to total operating revenues.

Estimate of Future Increases

It is estimated that the level of subsidy support for the international operations of United States air carriers will tend to increase over the next several years for the following reasons:

1. Competition by foreign-flag air carriers is constantly increasing. For example, in the North Atlantic area the change in the percentage participation of United States-flag carriers in the total traffic has been as follows:

	Calendar Years		
Number of Passengers Carried	1949	1950	1951
Foreign-flag carriers	77,933	103,754	122,195
United States-flag carriers	162,779	175,021	164,608
Total	240,712	278,775	286,803
United States-flag carriers percentage of total	67.6%	62.8%	57.4%

2. Although there has been an increase in the total international operations of all United States-flag carriers, this increase has been accompanied generally by a proportionate increase in operating costs. This differs from the domestic air carrier industry where the increase in operating volume has been accompanied generally by a decline in unit operating costs.

3. The Territory of Alaska is almost completely dependent upon air transportation. In the fiscal year 1952 it is estimated that the air carriers operating within Alaska and between the United States and Alaska will require subsidy support in excess of five million dollars, or 11.4% of the total international subsidy requirements. This represents a substantial increase over the fiscal year 1951 and is due largely to the impact of inflation and the necessity for modernization of equipment and facilities.

   Despite this increased cost, however, air transportation is the most important and, in some areas, the only means of transportation within the Territory of Alaska. This Territory, with its strategic and economic importance to the United States, is a major beneficiary of the subsidy program. Without this subsidy support, air transportation within Alaska would virtually cease.

4. The Civil Aeronautics Act clearly sets forth three definite objectives to be fostered through mail payments to air carriers—the domestic and foreign commerce of the United States, the postal service, and the national defense. These national interests, including both the foreign commerce and the national defense of the United States, result in the operation of some routes for other than purely economic considerations.

   The need to meet the increasing impact of foreign competition requires the United States international carriers to replace their existing aircraft with those having the latest technological improvements. The aircraft and crews of the international carriers play a prominent part in current defense planning.

Despite the high subsidy requirements for international operations, the combined domestic and international air carrier payments for the fiscal year 1951 were slightly below the total air mail postal revenue. The addition of Post Office Department ground handling costs raises the total air mail expense above revenue. However, service air mail pay alone amounts to 35 percent of air postal revenue. Service air mail pay plus ground handling costs are equal to 81 percent of revenue.

COMPARISON OF DOMESTIC AND INTERNATIONAL AIR MAIL COST TO POST OFFICE WITH AIR MAIL POSTAL REVENUES FISCAL YEAR 1951

Service mail pay to domestic air carriers	$ 27,369,000
Service mail pay to international carriers	17,005,000
Total service mail pay	$ 44,374,000
Subsidy to domestic air carriers	$ 34,565,000
Subsidy to international air carriers	40,111,000
Total subsidy	$ 74,676,000
Total mail pay to United States air carriers	$119,050,000
Post Office ground handling costs applicable to air mail[2]	58,355,000
Total air mail cost to the Post Office	$177,405,000
Total air mail postal revenue[2]	$126,706,000
Service mail pay to United States air carriers as percent of air mail postal revenue	35.0%
Service mail pay and Post Office ground handling costs as percent of air mail postal revenue	81.1%

GROWTH IN OPERATIONS OF U. S. INTERNATIONAL, OVERSEAS AND TERRITORIAL CARRIERS 1938-1951*

	No. of Cities Authorized to be Served[3]	*No. of Aircraft*[4] *Two-Engine*	*Four-Engine*	*Revenue Passenger Miles*[5]
1938	95	45	9	56,822
1939	101	44	15	59,492
1940	114	48	17	90,956
1941	123	61	20	130,887
1942	128	57	17	210,152
1943	131	52	7	271,632
1944	132	54	8	283,481
1945	179	60	12	386,762
1946	221	68	56	735,492
1947	226	42	111	1,491,617
1948	234	43	119	1,935,709
1949	247	50	115	2,088,706
1950	250	42	145	2,145,057
1951	250	42	155	2,476,467

* Appendix E. Note: The above do not include data for War Contract services 1942-1945.

[2] Air mail postal revenue and ground handling costs as reported by Post Office Department include amounts for United States air mail transported by foreign-flag carriers.

[3] Unduplicated count of cities authorized as of December 31 of each year, excluding those authorized solely for service by intra-Alaska carriers.

[4] Aircraft assigned to service as of June 30 of each year, excluding aircraft of intra-Alaska carriers for which information was not available. Data partly estimated.

[5] Revenue passenger-miles in scheduled service, including intra-Alaska carriers 1948-1951, with 1948 partly estimated; earlier data not available.

Source: CAA and CAB records and Form 41 reports.

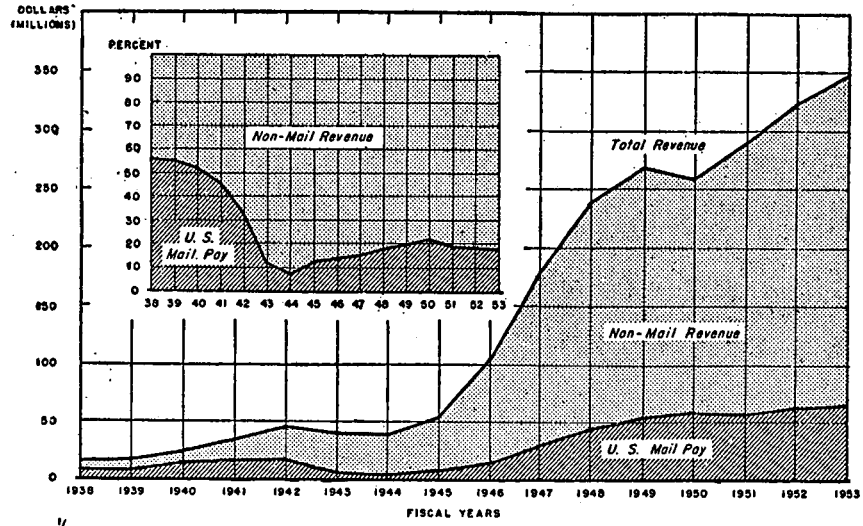
The growth in international operations of United States-flag carriers since the passage of the Civil Aeronautics Act has been substantial. The four-engine fleet devoted to international operations has increased from 9 aircraft in 1938 to 155 aircraft in 1951 and the cost to the carriers of the total fleet from $10,253,00 to $204,640,000. Capacity has increased from 63,824,000 available ton-miles in fiscal 1938 to 1,142,038,000 ton-miles in 1951; revenue passenger-miles from 56,822,000 to 2,476,467,000, and commercial revenue from $6,884,000 to $232,122,000.

The growth trends in stations authorized, numbers of aircraft and revenue passenger-miles are shown in the Appendix E for the period 1938 to 1951. The retarding effect of diversion of equipment to war use upon commercial operations during 1942-1945 is noticeable in contrast to the rapid growth which occurred in the subsequent period.

Chart II compares mail pay, including subsidy, with total revenues from the international operations of United States carriers from 1938 through

CHART II

RELATIONSHIP OF U S. MAIL PAY TO TOTAL OPERATING REVENUE
FOR U S. INTERNATIONAL, OVERSEAS AND TERRITORIAL CARRIERS[1/]
FISCAL YEARS 1938-1953



1/ Includes data for intra-Alaskan carriers 1948-1953; earlier data are not available.
SOURCE: Appendix D.

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1953. The chart shows a striking growth in revenues from international operations. This is particularly apparent between 1945 and 1947 when new or extended international routes were being activated. It is significant that the total mail payments increased since 1948 in proportion to the increase in mileage operated. However, due to a comparable growth in non-mail revenue, the percentage of mail pay to total revenue has remained relatively unchanged.

CARRIER GROUPS AND APPLICABLE SERVICE RATES

The administrative separation determined in this report establishes homogeneous international air carrier groups with applicable service rates for each group during the fiscal years 1951, 1952 and 1953 as shown below:

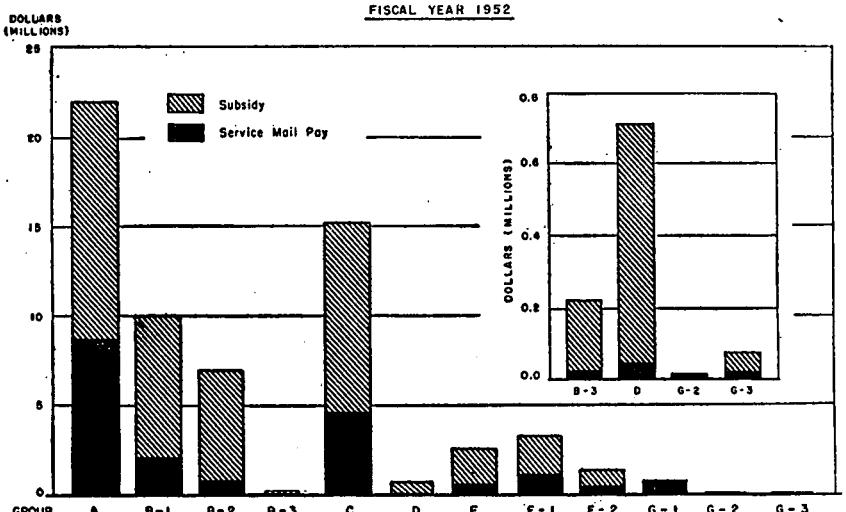
Group	Carrier	Service Rate per Mail Ton-Mile
A.	*Trans-Atlantic Operations*	$0.85
	Trans World Airlines Pan American World Airways—Atlantic	
B.	*Latin American Operations*	
	B-1	.59
	Pan American World Airways—Latin American	
	B-2	.88
	Braniff Airways Chicago and Southern Air Lines Pan American Grace Airways	
	B-3	1.38
	Caribbean Atlantic Airlines	
C.	*Trans-Pacific Operations*	.67
	Pan American World Airways—Pacific	
D.	*Hawaiian Operations*	.81
	Hawaiian Airlines Trans-Pacific Airlines	
E.	*States-Alaska Operations*[6]	.47
	Alaska Airlines Pacific Northern Airlines Pan American World Airways—Alaska	
F.	*Intra-Alaska Operations*	
	F-1	1.29
	Alaska Airlines Pacific Northern Airlines Northern Consolidated Airlines Wien Alaska Airlines	
	F-2	2.50
	Alaska Coastal Airlines Byers Airways Cordova Air Service Ellis Air Lines Reeve Aleutian Airways	
G.	*International "Stub-End" Operations of Domestic Air Carriers*	
	G-1	.45
	American Air Lines—to Mexico Eastern Air Lines—to Puerto Rico United Air Lines—to Hawaii	
	G-2	.53
	National Airlines—to Cuba	
	G-3	.75
	Colonial Airlines—to Bermuda	

[6] The States-Alaska operations of Alaska Airlines and Pacific Northern Airlines did not begin until fiscal year 1952.

Chart III shows the distribution of estimated service mail pay and subsidy amounts by carrier groups for the fiscal year 1952. The largest amounts of both mail pay and subsidy will be paid to the trans-Atlantic and trans-Pacific carriers, with substantial amounts of subsidy paid to the first two of the Latin American groups, the States-Alaska group and the first intra-Alaska group.

CHART III

COMPARATIVE SERVICE MAIL PAY AND SUBSIDY BY U. S. INTERNATIONAL CARRIER GROUPS
FISCAL YEAR 1952



SOURCE: Appendix B

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TECHNIQUES OF ADMINISTRATIVE SEPARATION — INTERNATIONAL AIR CARRIERS

The Civil Aeronautics Board believes that the most reasonable means of effecting separation of service mail pay from subsidy is to base this separation upon the cost of carrying the mail, including a fair return on the investment which is used in the mail service.

The Board believes that the techniques of separation should be basically the same for international air carriers as for the domestic air carriers, and that there is no sound basis in principle for differentiating in the manner of effecting separation.

It is recognized that carriers engaged in international air transportation are faced with many unusual problems which do not confront domestic air carriers. However, the combined impact of these unusual problems upon the operations of international carriers is reflected in their operating costs.

The main problem in establishing an administrative separation is to determine service rates which compensate the air carriers for carrying the mail, reimbursing them for the related costs including a fair return on the investment which is used in the mail service.

The steps followed in establishing the service rates for international air carriers were:

1. The carriers were grouped by geographic areas to allow for variations in political-economic conditions and operational differences.
2. The so-called "stub-end"[7] operations of domestic carriers were treated as extensions of the domestic system and, therefore, were assigned the same service rate as those systems.

[7] The "stub-ends" are the operations of American Airlines to Mexico; Colonial Airlines to Bermuda; Eastern Air Lines to Puerto Rico; National Airlines to Cuba; and United Air Lines to Hawaii. Transborder operations terminating in Canada were included in the domestic subsidy separation study.

3. Within geographic areas, carriers (except the intra-Alaskan carriers) were grouped on the basis of revenue ton-miles per station, following the same principles applied in the domestic separation report.
4. Due to the prevalence of flag-stop and "bush" operations, stations other than a few major points could not be clearly defined for intra-Alaskan carriers, and consequently these carriers were grouped by total revenue ton-miles rather than revenue ton-miles per station.
5. The cost per revenue ton-mile for each carrier was determined from its reports to the CAB (Form 41) after eliminating costs of non-mail functions (passenger service, traffic and sales, and advertising and publicity). Flight equipment depreciation allowances were based on standard rates and uniform amounts for each equipment type.
6. The average revenue ton-mile cost was computed for each group.
7. The cost per revenue ton-mile did not include return on investment, provision for income taxes or any of the special cost aspects of the mail service such as priority considerations. To allow for these elements, the service rate was derived for each group as follows:
   a. The percentage relationship of the average cost for each group to the average cost of 34.20 cents for the Big Four domestic carriers was computed.
   b. The service rate for each group was determined by applying the percentage relationship for each group to the 45-cent service rate established for the Big Four.[8]
   For example:
      (1) The cost of the Atlantic Division of Pan American for the fiscal year 1951, after eliminating exclusive passenger cost factors, was 68.09 cents per revenue ton-mile.
      (2) The corresponding costs for TWA were 60.37 cents per revenue ton-mile.
      (3) The average cost for both of these carriers, which constitute the trans-Atlantic group, was 64.23 cents per revenue ton-mile.
      (4) This average cost of 64.23 cents is 187.81 percent of the average cost of the Big Four group of 34.20 cents per revenue ton-mile.
      (5) This percentage multiplied by the 45-cent service rate established for the Big Four group produces 85 cents per mail ton-mile, which is the service rate established for the trans-Atlantic group.
8. In basing the service rate for international carriers on the ratio of their costs to the Big Four, the Board followed the procedure adopted for making the administrative separation of subsidy from total mail payments for domestic carriers.

   In the domestic separation report, it was pointed out that in deciding that the proper service rate for the Big Four carriers was 45

[8] In arriving at the 45-cent service rate in the Big Four mail rate proceeding, the Board included an 8 percent return on the investment devoted to the mail service, including an allowance for related Federal income taxes. In addition, freight and express were treated as by-products in order to recognize the priority nature of mail. It should be noted that the cost of 34.20 cents for the Big Four is an average operating cost for mail, passenger, express and freight traffic combined, and does not reflect the return element nor the treatment of freight and express as by-products.

cents a ton-mile, the Board, for the first time, applied the results of detailed cost studies. That report stated:

> "Since the preponderance of air carrier costs is common to all classes of traffic, the cost of carrying the mail will tend to parallel the cost of all traffic combined. Therefore, it is possible to determine a service rate for each individual carrier by applying the percentage relationship of its costs to the average cost of the Big Four to the $0.45 service rate of the Big Four."

As in the domestic report, the service rates for the international air carriers have been based on the average group cost to minimize deviations between the reported costs of carriers with comparable opportunity.

9. For the fiscal year 1951 the amount of service mail pay was computed for each carrier by multiplying the applicable group service rate by the reported mail ton-miles carried during the fiscal year 1951. The subsidy was computed by deducting the service mail pay from the total mail pay for each carrier.
10. For the fiscal years 1952 and 1953, the service mail pay was determined by multiplying the mail ton-miles forecast for each carrier for each year by the applicable service rate for the group in which the carrier falls; and the subsidy was computed by deducting the service mail pay from the total mail pay for each carrier.
11. The total mail payments for each carrier for each of the fiscal years 1951, 1952, and 1953 were computed on the basis of (a) the rates established in final orders of the Board wherever applicable, and (b) where no final rate was applicable, such payments have been estimated.

The details of the computations referred to in items 9-11 above are set forth in Appendices A, B, and C.

Future Program for Subsidy Separation — International and Domestic

With the completion of this report, the Board has accomplished its initial objective of providing administrative separation of service mail payments from subsidy for the United States domestic and international air carriers certificated to carry mail.

The Board will initiate a project[9] on July 1, 1952 for the purpose of developing a refinement of the bases used in establishing the separation of mail pay from subsidy for the domestic carriers. Emphasis will be given to the development of a multi-element service rate which will permit the payment of uniform rates but which will recognize the differences in operating costs due to variance in ton-miles per station or other factors. The Post Office Department and the air carriers will be invited to participate in this project which is scheduled for completion by June 30, 1953.

In all international mail rate cases processed following the release of this report, that portion of the payment which is for the service of carrying the mail and that portion which is subsidy will be appropriately identified. This has been done in the domestic mail rate cases since October, 1951.

By October 1, 1952 the Board will issue revised estimates of the total mail and subsidy for the fiscal years 1951, 1952, 1953 and 1954 for each domestic and international air carrier.

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[9] This project will, of course, be geared to such legislation pertaining to the administrative separation of subsidy and service mail pay as may be enacted.

REPORT OF THE STANDING COMMITTEE ON AERONAUTICAL LAW OF THE AMERICAN BAR ASSOCIATION

Presented to the House of Delegates at the ABA Convention in San Francisco, California, September, 1952

YOUR Committee on Aeronautical Law herewith presents its report for 1951-52, in which it summarizes some of the more important subjects under its consideration.

NEW AND PENDING LEGISLATION

Crimes in Aircraft Over the High Seas

Public Law 514, signed by the President on July 12, 1952, amends Section 7, Title 18 of the United States Code by the addition of a new provision the purpose of which is to confer Federal jurisdiction to prosecute certain common-law crimes of violence committed on an American airplane in flight over the high seas or over waters within the admiralty and maritime jurisdiction of the United States.

The necessity for the new law arose from the decision of the United States District Court for the Eastern District of New York in *United States v. Cordova,* 89 F. Supp. 298, decided March 17, 1950. An American owned airplane left San Juan, Puerto Rico for New York on August 2, 1948, carrying a number of Puerto Ricans, among them Cordova and Santano. It appears that a number of the passengers had brought on board bottles of rum and drinking began in the plane. When it was over the high seas en route to New York an argument began between Cordova and Santano. They proceeded to the rear of the plane to fight, followed by a number of would-be spectators. The plane thus became tail-heavy and began to climb. Learning of the events taking place in the rear of the plane, the pilot went back to stop the fight. For his efforts he was attacked by Cordova, who was later indicted. Cordova was later set free after the trial court had granted a motion for arrest of judgment of conviction for the reason that federal jurisdiction did not exist over Cordova's acts committed on an aircraft over the high seas. The court concluded that an aircraft is not a "vessel" within the meaning of that term as used respecting Federal crimes on vessels.

The passage of Public Law 514 thus assures jurisdiction in the Federal Courts to deal in the future with such crimes committed on board American aircraft over the high seas and outside the jurisdiction of any state.

AIR MAIL SUBSIDY

S. 436, to provide for the separation of subsidy payment from mail service payments to air carriers was ordered reported out by the House Committee on Interstate and Foreign Commerce on June 24, 1952. The bill passed the Senate on September 19, 1951. The House Committee's report was filed on July 2, 1952 and no further action has been taken by the House. Pending the passage of the legislation the Civil Aeronautics Board has provided for an administrative separation of service mail payments from subsidy payments in mail rate cases processed after October 1, 1951. The administrative separation will be adjusted to conform to the legislation ultimately enacted.

REGULATION OF TICKET AGENTS

Public Law 538, approved by the President on July 14, 1952, amends the Civil Aeronautics Act so as to give the Civil Aeronautics Board power to order ticket agents selling air transportation to cease and desist from engaging in deceptive and unfair methods of competition.

FINANCIAL RESPONSIBILITY FOR AIRCRAFT

Your Committee is being kept informed of the work and progress of the National Association of State Aviation Officials in the preparation of a Model Act concerning financial responsibility for injury by aircraft. working draft of a Model Act was completed in May, 1952, and after it has been circularized among interested parties it is hoped that a final draft can be submitted to the Commissioners on Uniform State Laws in September, 1952. Meanwhile a bill (H.R. 7270) has been introduced in the House of Representatives which would amend the Civil Aeronautics Act so as to provide for assurance as to financial responsibility of aircraft owners. No action has as yet been taken on H.R. 7270.

AIRPORTS

The series of tragic airplane crashes into the City of Elizabeth, New Jersey, in late 1951 and early 1952 dramatized the problems inherent in the location of large airports adjacent to densely populated areas. On February 20, 1952, following the Elizabeth accidents, President Truman established an Airport Commission headed by Lieutenant General James H. Doolittle to examine the problem of airport location and use. Specifically, the President directed that in undertaking the survey the Commission should consider provisions for the safety, welfare and peace of mind of persons living in close proximity to airports while at the same time giving recognition to the requirements of national defense and to the importance of a progressive and efficient aviation industry in the national economy. The Commission was requested to make its final recommendations within ninety days.

While most people perhaps do not consider the problems of airport location and use to be primarily legal, nevertheless many important legal questions are encountered in this field. This fact is demonstrated throughout the Final Report of the President's Airport Commission. The Report, entitled "The Airport and Its Neighbors" was transmitted to the President on May 16, 1952. One section has been devoted to the legal aspects of the airport problem, including the rights of the landowner as against those of the airport operator, the authority of the various states over airports, the scope of Federal authority over airports, the zoning of the approaches to airports, the compensation of landowners for and the regulation of the use of airspace. (ED. NOTE: See Pogue & Bell, "The Legal Framework of Airport Operations" at p. 253 of this issue.)

The Report appears to call for greater Federal activity in the field of airport regulation. The power of the Federal government to zone areas around existing airports not Federally owned is asserted to the exclusion of local regulation by the states. A distinction is made, however, between zoning for the purpose of controlling the height of structures in the area surrounding an airport and zoning so to prevent such areas from developing into residential areas. It is reasoned that since the regulation of the height of surrounding structures is directed toward the safety of aircraft, it is properly a field for Federal control, whereas, since horizontal zoning of adjacent areas is primarily for the protection of persons residing near

airports, it is not as clearly connected with the regulation of interstate commerce and so would seem to fall more appropriately within the field of the state police power. There is not in existence at this time any Federal legislation authorizing the Federal Government to zone, horizontally or vertically, areas adjacent to airports. It does exert its influence in this field, however, by requiring that cities receiving Federal assistance under the Federal Airport Act of 1946 insure that their airport approaches will be free from obstructions. Also, Federal regulations require notice to the Civil Aeronautics Administration of the construction of structures of specified heights within fifteen thousand feet of the nearest boundary of an airport located along, or within twenty miles of a civil airway.[1]

The Commission reports that many municipal airports which were started less than twenty years ago in open country have been progressively surrounded by residential and industrial areas. The nearness of such areas to airport approaches is, of course, the controlling factor in the entire problem. The Airport Commission recommends that the dominant runways of new airport projects should be protected by cleared extensions at each end at least one-half mile in length and one thousand feet wide, these extensions to be completely free from housing and any other form of obstructions and to be considered an integral part of the airport. It is further recommended that a fan-shaped zone, beyond the half-mile extension described above, at least two miles long and six thousand feet wide at its outer limits should be established at new airports by zoning law, air easement or land purchase at each end of dominant runways. In the fan-shaped area the height of buildings and the use of land would be controlled to eliminate the erection of places of public assembly, churches, schools, hospitals, etc. and residences would be restricted to more distant locations within the area.

These fan-shaped zoned areas would be kept to a minimum number under the Commission's recommendation that new airports should adopt a single or parallel runway design. It has been customary to construct multi-directional runways at large airports to allow for wind conditions favorable to take offs and landings. The Commission is of the opinion that too much emphasis has been placed upon statistics of prevailing winds and as a result large sums are still being spent unnecessarily for multiple intersecting runway airports. It beieves that current and future advances in cross-wind landing gear make the dominant runway concept practicable and further, that its acceptance would be an incentive to more rapid development of adequate cross-wind landing gear. It urges that the development of the single or parallel runway pattern will reduce the hazard around airports by limiting approaches and departures to two relatively narrow zones.

Other recommendations of the Airport Commission which, in addition to those touching upon zoning problems, interest your committee and should interest lawyers generally, include the following: (1) The authority of the Federal, state or municipal governments with respect to the regulation of the use of airspace should be clarified to avoid conflicting regulation and laws.[2] (2) The limits of the navigable airspace for glide path or take-off

[1] Par. 625, Regulations of the Administrator of Civil Aeronautics.

[2] The need for such clarification was evidenced recently by the decision of the United States District Court for the Eastern District of New York in *All-American Airways v. Village of Cedarhurst.* On July 1, 1952, that Court ruled an airline entitled to a preliminary injunction against enforcement by the Village of Cedarhurst, N. Y., of its ordinance prohibiting flight of aircraft over the Village at altitudes less than one thousand feet. The Village is near an international airport. The Court considered the ordinance in conflict with the Civil Aeronautics Act and regulations promulgated thereunder authorizing flights over the Village at altitudes less than one thousand feet. This problem is wide-

patterns at airports should be defined. (3) The Civil Aeronautics Act should be amended to require certification of airports necessary for interstate commerce and to specify the terms and conditions under which airports so certified shall be operated. Certificates should be revoked if minimum standards for safety are not maintained. Closing or abandonment of an airport should be ordered or allowed only if clearly in the public interest. (4) Authorization of matching funds for Federal aid to airports should be implemented by adequate appropriations. Highest priority in the application of Federal aid should be given to runways and their protective extensions incorporated into the airport to bring major municipal airports up to standards recommended in the Airport Commission's Report.

"The Airport and Its Neighbors" reveals a thorough exploration of the airport problem by the President's Airport Commission. No doubt much good will develop from its recommendations. It is recommended to all lawyers who take an interest in aviation and its legal problems. The Report may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington 25, D. C., for 70 cents.

CIVIL AERONAUTICS BOARD
Revised Rules of Procedure

Effective April 28, 1952, the Civil Aeronautics Board prescribed revised rules of practice in its economic proceedings. The revision is directed toward removing the necessity for case by case determinations of many procedural issues by establishing separate rules of practice for different types of economic proceedings. Subpart A of the new rules sets forth those rules which are of general applicability to economic proceedings; Subpart B contains rules applicable to economic enforcement proceedings; Subpart C contains rules applicable to mail rate proceedings; Subpart D contains rules applicable to exemption proceedings under Section 416 of the Civil Aeronautics Act; Subpart E contains rules applicable to proceedings with respect to rates, fares and charges and Subpart F contains rules applicable to proceedings for leave to conduct charter trips or special services. Where a conflict exists between the rules of general applicability to economic proceedings and the special rules applicable to specific types of cases the special rule will prevail.

PROPOSED RULES FOR AIR CARRIER INSURANCE REQUIREMENTS

On April 30, 1952, the Civil Aeronautics Board gave notice that consideration is being given to the adoption of regulations prescribing insurance requirements for air carriers and foreign air carriers. The Board announced that for some time it has been considering proposing regulations to require air carriers to maintain certain minimum insurance coverage for their operations as a protection to the public and to the carriers themselves against the effects of excessive losses from accidents. The financial ability of most carriers to meet such liability was recognized. The Board indicated, however, that there are a number of carriers not so situated and that even with respect to those carriers able to meet such losses, some might thereby be placed in situations which could seriously impair

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spread as a number of municipalities have similar ordinances prescribing minimum altitudes of flight. Furthermore, it has been brought to the very doorstep of Congress by the protest of the nearby City of Alexandria, Virginia over alleged airline violations of its minimum altitude ordinance arising out of flights into and out of the adjacent Washington National Airport. Alexandria's ordinance also prohibits crossing over the City at altitudes of less than one thousand feet.

the quality and safety of their services. For these reasons the Board considers it desirable to require a certain minimum insurance coverage.

Questionnaires were sent to over two thousand air carriers respecting present insurance practices in the industry and upon responses thereto and the Board's independent studies the proposed regulations are based. The proposed schedule of minimum coverages provides, for aircraft having a maximum certified take-off weight over 12,500 pounds, as follows: (1) passenger liability (a) per person, $25,000; (b) per accident, $25,000 times the number of passenger seats in the aircraft. (2) Public bodily injury liability (a) per person, $25,000; (b) per accident, $250,000. (3) Property damage, per accident $25,000. For aircraft under 12,500 pounds lower minimums have been proposed except as to passenger liability and public bodily injury liability per person, the minimums for which are the same as for the larger aircraft. The distinction based upon aircraft weight is based upon the probability that an accident involving a lighter aircraft will generally do less damage to persons and property on the ground than an accident involving heavier aircraft. The proposed rules contain provisions for certification by the insuring companies that the required coverage is in effect for the air carrier in question.

The Board has called for comments from interested persons, following consideration of which its final decision is to be announced. As of the time of the preparation of this report the time for the filing of comments (July 15, 1952) has passed and final action on the insurance requirements may be forthcoming in the near future.

New Air Carrier Classification of "Air Taxi Operators" Created-Helicopter Exception

The increasing importance of the air taxi in the air transportation industry was given recognition by the action of the Civil Aeronautics Board in creating a new classification of air carriers known as "air taxi operators." The classification became effective February 20, 1952. It applies to air carriers which do not hold a certificate of public convenience and necessity under the Civil Aeronautics Act, do not employ such terms as "airline," "airways," or indicate by name, in connection with the services they offer, that they are an airline, and do not use aircraft having a maximum certificated take-off weight of more than 12,500 pounds. The new air taxi operations are exempt from various economic requirements of the Civil Aeronautics Act, including the holding of a certificate of public convenience and necessity as a prerequisite to engaging in air transportation. No limitations as to the regularity and frequency of flights between any two points are imposed upon the air taxi operations, except as to operations in the territories and possessions of the United States. They are prohibited, however, from offering their services between any two points between which scheduled helicopter passenger service is provided by the holder of a certificate of public convenience and necessity authorizing such service. Attention is invited to "The Airport and Its Neighbors," the report of the President's Airport Commission discussed above with respect to the future of helicopter service and the Commission's recommendation that helicopter developments for intra-airport shuttle services and for short-haul use should be encouraged.

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 those 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.

More recently, on March 21, 1952, in its investigation of air services by large irregular carriers, the Board denied a petition requesting that it issue a declaratory order as to its legal authority to grant an exemption from Section 401 of the Civil Aeronautics Act to those who have completed a certificate proceeding for the type of service for which exemption is to be granted and as to other issues. Without reaching the question as to whether the Board lacked jurisdiction to issue them, the Board determined that the requested declaratory orders should not be issued.

The courts also continue to have before them the problems of the large irregular carriers. In *Civil Aeronautics Board, et al. v. American Air Transport, Inc., et al.*, the United States Court of Appeals for the District of Columbia Circuit, on June 13, 1952, certified to the United States Supreme Court a question concerning the validity of a Board order which placed a limit upon the number of flights which large irregular carriers can operate. The question certified to the highest court is as follows: "Where operating authority is granted by a regulatory agency and a private company operating thereunder acquires property and business in so doing, is a new regulation of the agency which in fact substantially injures or in large part destroys such property interests of business (1) void as to that licensee unless an adjudicatory hearing is held, because it is on its face an amendment of his license; or (2) valid if adopted by a rule-making procedure, provided the new regulation merely defines the terms of the old in ways not shown to be arbitrary or capricious; or (3) does its validity as to that license depend upon a finding of fact that it does or does not in fact

vary the terms of the license; or (4) does its validity depend upon some other condition?"

In requesting the instructions of the Supreme Court upon this question, the Court of Appeals stated that it is of far-reaching and fundamental importance in the field of administrative law.

AVIATION ACCIDENT LIABILITY DECISIONS

Two aviation liability cases which reflect the times we live in were decided recently. In *United States v. Gaidys*, 194 F. (2d) 762, involving a claim for property damage resulting from the crash ofa jet plane, the claim being brought under the Federal Tort Claims Act, the U. S. Court of Appeals for the Tenth Circuit held the doctrine of *res ipsa loquitur* inapplicable. The court was of the opinion that the accident in question might have occurred without negligence in the maintenance or operation of the jet plane. The question of the applicability of the *res ipsa loquitur* doctrine to a new and different type aircraft such as a jet plane, and the Court's reaction thereto, suggests the decisions of an earlier day when the now traditional form of propeller-driven aircraft were relatively new and held to be without the scope of the doctrine on the ground that accidents could occur without negligence.

In *United States v. Reynolds*, 192 F. (2d) 987, an Air Force B-29 bomber carried several civilian observers on a flight which was to test secret electronics equipment. The plane crashed, killing three of the civilian observers who were employees of companies engaged in the research and development of the equipment being tested. In the action under the Federal Tort Claims Act brought to recover damages for their deaths the Government refused to respond to an order of the lower court to produce the official Air Force investigation report on the accident which would have given the Court the opportunity to examine the documents and determine which were privileged. In the face of the Government's refusal, the issue of negligence was taken as established in favor of the plaintiffs and a trial permitted on the issue of damages. The Court of Appeals for the Third Circuit upheld the action of the District Court and the United States Supreme Court has granted *certiorari*.

AIR CARRIER TARIFF LIABILITY RULES

Six of the country's major air carriers have eliminated from their airline tariffs on file with the Civil Aeronautics Board restrictions on the time within which a passenger must file notice of claim and bring an action for personal injuries or death. American Airlines, Braniff Airways, Capital Airlines, Colonial Airlines, Delta Air Lines and National Airlines have agreed to remove from their tariffs rules requiring that notice of claims against the carrier for personal injuries and death must be made within ninety days of the accident and suit instituted within one year. In the future these carriers and their claimants will be governed by applicable litigation in the past.

As recently as April 17, 1952, the United States District Court for the District of Columbia held, in *Shortley et al. v. Northwest Airlines*, 3 Avi. 17, 923, that the provision in the carrier's tariff requiring notice of claim within ninety days and institution of suit within one year did not as a matter of law preclude a passenger from maintaining a personal injury suit against the carrier where the passenger had not filed notice of claim within ninety days and had not instituted suit within one year of the events giving rise to the claim. The Court emphasized that neither the Civil Aero-

nautics Act nor the regulations of the Civil Aeronautics Board requires an air carrier to insert in its tariff a provision respecting limitations upon notice of claims or institution of suits.[3]

COURT USE OF C.A.B. ACCIDENT INVESTIGATION DATA

Two recent appellate court decisions 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, decided February 23, 1941, 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 appearance."

In *Lobel v. American Airlines*, 192 F. (2d) 217, 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.

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, 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

[3] For other cases relating to such tariff limitations, see *Wilhelmy v. Northwest Airlines*, 86 F. Supp. 562, *Indemnity Ins. Co. of North America v. Pan American Airways, Inc.*, 58 F. Supp. 338, *Sheldon v. Pan American Airways, Inc.*, 74 N.Y.S. (2d) 578, a'd, 74 N.Y.S. (2d) 267, and *Glenn v. Compania Cubana de Aviacion*, D.C. S.O. Fla., 1952, 3 Avi. 17836, mentioned elsewhere in this report.

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 Bartlett 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 in this action 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.

In *Glenn v. Compania Cubana de Aviacion*, D.C., S.D., Fla., 1952, 3 Avi. 17836, involving the collision of an American airplane and a Cuban airplane during a flight from Florida to Cuba, it was held that the Cuban air carrier was entitled to the benefit of the liability limitations imposed by the Warsaw Convention even though Cuba was not a party to that Convention. The convention limits the liability of an air carrier to its passengers to the sum of $8,291.87 in the event of injury or death sustained by a passenger in international transportation. By definition international transportation includes a flight in which the point of origin and the point of destination are in countries which are contracting parties to the Convention and a flight in which the point of origin and the point of destination are in the same contracting country.

ROME CONVENTION

The proposed Rome Convention relates to the liability of aircraft operators for injury or damage to third persons or property on the surface. It is designed to apply only to those cases where damage is caused on the surface of one contracting state by an aircraft which is registered in another contracting state. A final draft of this proposed convention was completed by the Legal Committee of the International Civil Aviation Organization in January, 1951. An international conference is being held in Rome in September, 1952, for the purpose of determining the final form of the convention and opening it for signatures.

The proposed convention adopts the principle of absolute liability of the operator of an aircraft causing damage to third persons or property on the ground. It sets a limit on the extent of liability of the operator, depending upon the weight of the aircraft, with the maximum all-inclusive limitation with regard to the heaviest aircraft being approximately $670,000, and the liability limit in any particular case is dependent upon the weight of the aircraft involved. Recovery for death or personal injury of an individual is limited by the draft convention to a maximum of approximately $20,000. The person on the ground who is damaged by an aircraft or objects falling from it is limited to bring suit in the courts of the place

where the damage occurred unless all the claimants and the persons liable under the convention agree to some other forum. Contracting states would be required to enforce foreign judgments under the convention by granting execution thereon, subject to certain safeguards and protections.

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. The President's Airport Commission report in "The Airport and Its Neighbors," that in the next decade "airlines will have to give serious consideration to the proper utilization of older pilots." The Commission feels that the system for physical examination of airline pilots should be stiffened in the future because of the pilot age problem. Student and private pilots, as a class, while reported to have a higher accident toll, 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.

Respectfully submitted by the

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