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## REGULATORY LAWS FOR INTRASTATE AERONAUTICS

DENIS MULLIGAN\*

The message that I bring to this esteemed body from the Bureau of Air Commerce is one which has engaged the minds of everyone in the aeronautics art and industry; has tried the temper of most; has affected the purse of not a few, and has touched the hearts of all too many, since the airplane became a reality as a vehicle of transportation. Especially has it made demands upon the thought and effort of those who are responsible for the making of proper laws which will permit of the soundest growth and widest development of aviation in each of its aspects.

The first premise is obvious. This new instrumentality, because of its peculiar attributes, and because of the medium through which it moves, calls for a code of rules unlike any heretofore known or applied to other varieties of transportation. Its outstanding characteristic is that of being a rapid annihilator of space. Outstripping every other form of transport and travel in speed, subject to the endless vagaries of weather, it has small respect for borderlines between territorial subdivisions or nations. Such was manifest at the outset and there was early sensed what now is thoroughly appreciated, that if progress is not to be retarded in the institution which assembles us here in Convention, a uniformity of laws and satisfactory administration thereunder must be attained if our gains to date are to be consolidated and the future welfare assured.

The subject of uniform aeronautical regulatory law for the several states, effectively coordinated with the related national law, is not new. Individuals and groups have struggled long and strenuously with it but the advances made in the right direction have been discouragingly few and meager. That is not at all strange since legal history shows that the same slow and tortuous struggle has been encountered in every division of law where uniformity has been sought. Nor is easy success to be expected in the solution of this difficulty, primarily because of the organic set-up of our system of government wherein the rights and powers of the states and the central organization continually conflict.

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Similar legal concepts also enter with which it would not be fitting to burden you in this brief presentation.

The proposition stated is that the regulatory laws governing aeronautics should, as far as possible, be presently made uniform, and so applied, among the states so that then they might be made to agree and harmonize with the Federal laws and application.

For the reason that they bear directly upon this discussion I would like to give you the benefit of my experiences and reflections growing out of enforcement work conducted at the Washington office.

A godly portion of each day is taken up with items pertaining to accidents and with complaints made by the general public, either on the score of nuisance or because of the hazards created by aviators, arising almost always and entirely out of violations of the Air Commerce Regulations. The conclusion that I have reached and which I place before you for your mature deliberation and judgment is that the day is not far removed, if it has not already arrived, when not merely the desirability but the necessity for uniformity in air regulation, such as is proposed, will soon become, or now is imperative. Before proceeding to introduce and effectuate corrective measures, it should be noted that a very large percentage of these offenses and consequent accidents have their roots not in wilfulness, but by reason, in the absence of supervision, of ignorance of a good and accepted way in which to act.

It seems to me that the one-time darling of the American public is beginning to be looked upon as having grown too tall for much of the nonsense, imposition and tragedy that it is capable of and does perpetrate. If such is to be permitted to continue, our major objective will be lost. Airmindedness in the mass of men that must be produced before aviation is to become a substantial force in the economic and social scheme cannot be cultivated in the face of these conditions. They must be corrected. There can be no dispute on the point that the public safety and comfort must be protected against these violations of the peace and security of all the people if we are to obtain and maintain the public good will and patronage so vital to our existence not only in commercial operation but in private flying as well.

Adding to the injury wrought by so many of these unnecessary and preventable accidents is the heightened effect resulting from the practice of modern journalism which still stars aviation as a

sensation. The Press can aid and has aided us generously and materially but because of its sensitivity to public appeal, its expansive reach and rapidity of news circulation, our interests suffer when such accidents are reported without relative weights being ascribed to the facts and circumstances surrounding them. An offense against the public peace and safety, or an accident in one corner of the country, irrespective of the kind or quality of the craft, airman, or operation, adversely affects aeronautics throughout the whole country. In this latter connection it might be well for a moment to digress and say that in light of recent amendment to the Air Commerce Act, approved only last June, much of the evil of harrowing press releases covering aircraft deaths and disasters will be eliminated, for by virtue of that enactment, the Secretary of Commerce is now authorized to investigate, to hold public hearings thereon, and equally important for the purpose of bringing out the truth in aircraft accidents, to make public the probable cause thereof. A public so informed and aided in its reconstruction of the incident, with more authoritative and substantial stuff than the stories of impassioned eye witnesses, will, it is expected, be a more responsive one.

I wish to proceed a step further and particularize. These violations and consequent accidents predominate in intrastate flying. That fact stands out starkly. The record sustains us. In reviewing the statistics, carefully collected and compiled by the Bureau, the following appears: In the calendar years of 1932 and 1933, there were almost one hundred and fifty million miles flown in general, or what has heretofore been called miscellaneous flying. In scheduled operations during those years, over one hundred five and a half million miles were flown. The ratio of general flying to scheduled flying, therefore, indicates that there was about one and four-tenths as much general flying as there was in airline operation. That is the only set of figures in our study in which general flying appears to advantage over scheduled flying for there were 390 total fatal accidents in general flying and only 26 in scheduled flying; in short, there were 15 fatal accidents in general flying to one in scheduled flying. The next comparison is most revealing. In general flying, there was one fatal accident to every million and a half miles flown. In scheduled operation, there were nearly nineteen million miles flown per fatal accident, in short, the relative safety of flight in these two categories was as twelve to one. Additional figures can be cited in support of

the same contention, that intrastate flying, because by far the greater part of general flying is intrastate, principally around the airport, is the great offender and should be better regulated.

Before leaving the record, you no doubt will be interested and concerned to learn of the loss of life tabulations for the same period. In those two years in general flying, 321 pilots were killed whereas only 23 deaths occurred to pilots on regularly scheduled runs. The ratio there is as fourteen to one. So, too, with passenger fatalities. 262 passengers were killed in general flying to 33 in scheduled operation, producing a ratio of eight to one. The moral from these figures is thus plainly to be drawn.

Sustaining the conviction that the danger described is real and not fancied, jeopardizing our immediate prospects and menacing more gravely our future hopes, is a state of affairs which should be forcibly brought to your attention. It may be only a passing trend but even if temporary in application it carries a decided threat. I refer to the attitude taken and the enunciation made by the American Law Institute in its Restatement of the Law of Torts. The American Law Institute, if I correctly understand its purpose and function is to do for America what Justinian did for Rome about sixteen centuries ago. It is attempting to set down what it believes the American law is. Already it has produced a monumental work on contracts. Eminent men are occupied in this richly endowed and gigantic undertaking. Today the reputation and influence of this body are considerable. They may assume very great proportions.

In the Restatement of Torts there appears a rule which to many of us forebodes evil and promises unjustifiable hardship to aviation as an industry and as a pastime. That rule is one that imposes responsibility for damage caused by the fall of aircraft upon persons or property on the ground beneath. It is expressed in sections 1001, 1002 and 1038 of the Restatement. The effect of these sections is to impose liability without fault in aircraft claim cases. In other words you have in this contemplation the doctrine of dangerous instrumentality. The Institute has taken judicial cognizance as a fact that aircraft are dangerous instruments within the meaning of the cases that cut off from the defendant the right to prove freedom from negligence, and that the accident was due to an act of God or *vis majeure*.

Without wishing to enter upon a disputation of this legal proposition it can be surmised that policy and not established law has dictated this restatement for what is a dangerous instrument is

essentially a comparative question. It is also to be noted that no case or other legal authority that aircraft are dangerous instruments in the sense that denies them the usual defenses in tort actions has been cited in the Institute's notes or comments. The decisions have been otherwise. So much for this academic principle of synthetic law. It is important in many other respects but we'll leave it for further study and action by the lawyers. Why I have introduced it before the general assemblage is to better establish in the minds of all the necessity for a present system of regulation which will reduce and help to prevent aircraft casualties and pilot offenses against the public peace and safety.

If the basis taken for the rule adopted by the American Law Institute was policy and not law then is it not likely to suppose that behind the policy there was some animus against the airplane? Such animus on the part of a group so influential should cause you to take action at once if that animus is not to spread and poison other groups and classes. The job cut out for you is man-sized and will test your mettle and resources, for the American Law Institute in stating that the airplane is a dangerous instrumentality was backed up and ardently supported by the national real estate interests and property owners.

Let me make my object plain. I am making a plea for wise and even-handed supervision of intrastate flying. The Air Commerce Bureau feels that the time has arrived when the separate states should actively begin to assume their rightful and necessary obligation to regulate this branch of flying. When that day comes, which our faith prompts us to believe will come, when air travel and transport are as commonplace as surface travel and transport, then it is my humble opinion that you will as States have to assert yourselves in the manner now deemed advisable. For strictly speaking unless the theory of its existence and action is altered the Federal agency cannot reach out and embrace, even at this time, all civil flying. Before it can impose itself there must in general be interstate or foreign air commerce, and if not there has to be a previous submission to its jurisdiction through its voluntary licensing provisions covering aircraft and airmen. And there are other good and sufficient reasons why the Federal Government should not have entire and exclusive power to control. Economic and practical objections stand in the way of such an idea. Local administration properly coordinated and exerted has in most endeavors proved the more successful.

I trust that I have not impressed you as an alarmist. Before closing I wish to restate, as a private and unofficial opinion, that because of the lesson of experience drawn from the statistics quoted to you; because of the impending threat described a few moments ago; and because wisdom seems to indicate that general flying has advanced far enough along the road to require it, that this matter of intrastate regulation calls for your best thought and action. If the record is not to be improved, gentlemen, and if such impending threat is not to be eradicated by a changed behavior, then we are in a dying business, to be exterminated, or at least stunted, before it has fairly emerged from its growing pains.

Before concluding I would choose to leave with you what we think is a constructive recommendation. It seems a fair statement to make that a reasonable law, properly administered, should be the starting point toward accomplishment of the end sought.

It is the Bureau's belief that as closely and as promptly as it can possibly be obtained, uniformity of regulation in rule and practice between the Federal Government and the States is the way to achieve it.

To do this we feel that the States themselves should first make uniform their rule and practice if they are to be satisfactorily harmonized with the Federal law and regulation. This appears to be self evident and equally evident is the fact that no other body could effectuate that result as aptly as you could.

In order to be helpful a study of the problem was made in the Washington Office. I won't go into it at any length because Professor Fagg, I have been informed, has done the same thing. I am sure his report in this record is more comprehensive and enlightening, so I shall defer to him. It was found however that among other drafts formulated by various associations the Bureau had about five years ago proposed a uniform Federal licensing law which has not been greeted by popular acceptance. The reason is not hard to discover but it did possess one commendable feature. It was simple and was aimed at only one target, uniform licensing in that instance. That idea I commend to your attention. Aeronautics is plagued with paper law. It has received more attention from legal handlers than other pursuits many times older. Like everything else, law that has been tried and tested is superior to that which has no more background other than the paper on which it is written.

Our efforts are represented in a draft which it was decided

to turn over to your legal committee directly for their consideration, for it is better that a code to be presented to the states on this subject come from within your body. Such a code has been prepared and if you see fit to adopt it you can be assured of our utmost assistance in whatever field or direction you wish our aid. A word on our own draft—Because of certain objections to the former code proposed by the old Aeronautics Branch, principally because it was not in accord with that provision of certain state constitutions which prohibit the incorporation of a law by reference, we varied this latest draft from the old one and provided for a State Aeronautics Administration which would, whether in commission form or simply in the person of an individual director, make such regulations as are necessary and authorized by the act, which regulation shall conform to and coincide with, so far as possible, the provisions of the Air Commerce Act of 1926 as now and hereafter amended by the Congress of the United States and the pertinent Air Commerce Regulations issued from time to time pursuant thereto. On this point, it is the opinion of Colonel Cone, Assistant Director in charge of regulations, that the preferable choice for this administrative post of the states would be a Deputy Commissioner of Highways for in that position the individual so intrusted with the Aviation concern of the state could employ surplus material and personnel of the Highways Commission in airport construction and maintenance.

To specify further would not be appropriate. Even that specification may not be entirely in order. It is your baby; and since you sired it your parental rights and privileges should be respected. We are eager to congratulate the father and earnestly hope that this offspring will grow to full stature. A Uniform State Aeronautical Regulatory Act for the states such as you are contemplating will contribute, we believe, very materially to a sound foundation for a flourishing future in aviation.