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AERONAUTICAL LAW REVIEW—1937*

GEORGE B. LOGAN†

The year 1937 has seen, perhaps, some of our most interesting decisions, and, for the starting decision, I must go almost as far as the N.A.S.A.O. goes for its meetings—to the Commonwealth of Australia.

Rex v. Burgess¹

When our Air Commerce Act of 1926 was enacted by Congress, one of the interesting discussions was as to which portion of the Constitution Congress should look for its authority to enact this legislation. It was finally decided to base it on the commerce clause. As a result of this decision, as you all know, the power of Congress was not attempted to be extended over intrastate flying. With the exception of enacting air traffic rules applicable to all flying, Congress has made no effort to regulate flying within the several states—hence, the state laws, hence the state officials, and hence the N.A.S.A.O.

It has been pointed out by a good many writers, including a timid suggestion by this writer, in his even more timid book on aviation law, that Congress *could* have assumed jurisdiction over all flying, provided it had entered into a treaty concerning air navigation, or providing it had ratified the Paris Convention of 1919, which was signed by the United States.

Australia signed and ratified the Paris Convention of 1919 and the Australian Parliament, in 1920, enacted legislation to put into effect the duties and obligations of the Commonwealth under the treaty. Among other things enacted by the Federal Parliament of Australia, were air navigation regulations, which included the requirement of a license.

One Burgess was convicted for flying a plane without the license as required by the regulations. The plane was not engaged in interstate commerce.

The appeal raised the question as to whether or not the Parlia-

* Address presented at the Seventh Annual Convention of the National Association of State Aviation Officials, December 1-3, 1937.

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1. High Court of the Commonwealth of Australia, Nov. 10, 1936, 8 JOURNAL OF AIR LAW 125 (1937).

ment had power to legislate with respect to flying operations carried on exclusively within the limits of a state (New South Wales).

The Court found that the air navigation regulations included in the "Air Navigation Act of 1920" differed in a number of respects from the provisions of the Convention of 1919 and the annexes thereunder, particularly in the matter of registration, license, etc., and in some cases provisions in the Convention were omitted from the legislation. As to this particular regulation under which the defendant was convicted, the court held that it was not within the scope of the Paris Convention of 1919 and hence the Federal Parliament had no authority to enact it.

However, the majority of the court did agree that *within the scope* of the Convention of 1919, and *within the scope* of the annexes thereto, the power of Federal Parliament to enact legislation affecting aviation, whether interstate or intrastate, was unquestioned.

The implications of this decision are obvious, in that if the time ever comes when we find that a system of uniform regulations among our forty-eight states is impossible of achievement, it may be possible, by having a treaty, say with Canada, covering fully the subject of flying in all of its phases, and then to have federal legislation necessary to carry out our obligations under such a treaty which will give us uniform regulation throughout the country.

Westminster Bank, Ltd. v. Imperial Airways²

Another interesting case from abroad is one decided in England prior to our last meeting, but which had not come to my attention in time for my usually careful, painstaking and complete report.

As you all know, there has been maintained since the Paris Convention of 1919, a constant study of international air problems and there have been several subsequent treaties on various aspects of international air commerce, notably, the Warsaw Convention of October, 1929. This treaty was joined in, among others, by England. In order to put the treaty into effect, England, on July 12, 1932, enacted the "Carriage by Air Act," which provided that the provisions of the Warsaw Convention (fully set out in the Act) should have the force of law in the United Kingdom in relation to carriage by air.

2. King's Bench Division, June 29, 1936, 7 JOURNAL OF AIR LAW 617 (1936).

The Warsaw Convention provided a maximum limitation of liability for air freight and express of 250 French francs per kilogram of weight, *provided* that the contract of carriage or "Air Consignment Note" should particularly contain a statement that it was subject to the rules relating to liability established by the Warsaw Convention.

Bear in mind this was a provision limiting the common law rules of carrier liability and obviously was something to be strictly construed. To put it another way, the limitation on liability did not exist, unless the contract of carriage carried the proper "statement."

The Westminster Bank shipped three gold bars, consigned to Paris, and valued at \$45,000.00. The gold was stolen from the office of the Imperial Airways at Croydon Field and was never delivered. When suit was brought, the Imperial Airways contended that it was liable only for 250 francs per kilogram, while the Bank contended that the carrier was liable for the full value of the shipment. The "Contract of Carriage" or "Air Consignment Note" simply carried on it this language:

"Carriage by air. The general conditions of carriage of goods are applicable to both internal and international carriage. These conditions are based upon the Convention of Warsaw of October 12, 1929, insofar as concerns international carriage within the special meaning of said Convention."

The King's Bench Division held that this did not fully apprise the shipper of the limitation of liability, and that the carrier was not relieved of liability in the absence of being fully warned that the liability was limited in accordance with the treaty, and held that the Imperial Airways was liable for the full value of the gold.

This is one of the few cases, and, as far as I know, the only case arising under the Warsaw Convention, and is simply a warning that any treaty, and for that matter any law, which abrogates or minimizes the liabilities established by common law, should be strictly complied with.

Hinman v. Pacific Air Transport Co.³

In my report of 1936, I called your attention to this decision by the United States Court of Appeals for the 9th Circuit (California), which had held that traversing airspace above lands is not of itself a trespass, thus making clear the rule which aviation

3. U. S. C. A., 9th Circuit, 8 JOURNAL OF AIR LAW 278 (1937).

interests have always contended for, but which had only been hinted at in *Smith v. New England Aircraft Company*, *Swetland v. Curtiss-Wright*, and *Thrasher v. Atlanta*.

An application was made to the U. S. Supreme Court for a writ of certiorari and this was denied by the Supreme Court on February 1, 1937; thus, presumably, at least, putting this question at rest for all time.

**Commonwealth ex rel. Schnader, Attorney-General v.
Von Bestecki⁴**

This case is interesting from two standpoints. It is another air trespass case, and though not a decision of a highest court, was prosecuted by our good friend, General William Schnader, formerly Attorney-General of Pennsylvania and now Chairman of the Aeronautical Law Committee of the American Bar Association, and who is working diligently to draft a uniform aviation code.

It seems that Mr. and Mrs. Von Bestecki, being annoyed by the passage of aircraft over their property from an adjoining airport, erected a tower 124 feet high on their property, and supporting it with numerous guy wires, directly in line with the principal run-way of the airport. The tower was invisible at night and the wires were invisible both by night and day. This tower blew down and the Von Besteckis erected another not quite so high, but more substantial, in the same spot. This one burned down. (History does not record how it caught fire. Personally, I am prone to suspect aviators on sight, and particularly when I can't see them.) Be that as it may, the Von Besteckis announced their intention of erecting a third tower. About that time, the Commonwealth of Pennsylvania took over the operation of this airport and General Schnader brought an injunction suit to restrain the building of the third tower, contending that it was a public nuisance.

The answer of the defendant (Mrs. Von Bestecki had died in the meantime, probably of nervous indignation) set up the fact that the occupants of the airport had continually committed a nuisance by flying through the airspace and that the tower had been set up for the purpose of abating the nuisance. The court held that this answer was proof conclusive that the towers had been erected for the sole purpose of interfering with flying, and that

⁴ Court of Common Pleas, Dauphin County, Pa., March 15, 1937, 9 JOURNAL OF AIR LAW 198 (1938).

the towers, as constructed, were public nuisances and enjoined the erection of the third tower. The court held that the defendants were not entitled to make the defense that flying constituted a *private* nuisance in a suit brought to abate a *public* nuisance.

On reading this case, one is left with the inquiry as to what would have happened if the tower had been erected for a legitimate purpose (say sight-seeing), and one is also left with the inquiry as to whether or not it is proper for a court to inquire into the inner-conscience of a man when he makes what would otherwise be a legitimate use of his own property. Of course, this case follows the Iowa case of *Tucker v. United Air Lines & Iowa City Airport* which held that the land owner could not put up posts nor grow trees adjoining an airport, but we are still wondering what the decision would have been if animus and deliberate intention to interfere with flying had not been so clearly present.

Sulzbacher v. Continental Casualty Co.⁵

Our old friend, the question of insurance for passengers in aircraft, came before the courts again in a decision handed down by the United States Court of Appeals in St. Louis. This particular case involved a policy which carried a provision for double indemnity in the event the policyholder lost his life while "a passenger in or on a public conveyance provided by a common carrier for passenger service." However, the policy also carried a provision that no double indemnity would be provided in the event of a death "while participating in aeronautics."

The deceased in this case met his death while riding in a plane not provided by a common carrier. The case was tried on the theory that the passenger was riding on a common carrier and on the further theory that if he was not, the (double) indemnity exclusion clause did not cover. On the facts, the court found that the plane was not a common carrier and, hence, plaintiff could not recover. However, plaintiff's counsel had apparently overlooked several decisions holding that a passenger is not "participating" in aeronautics and, hence, although not entitled to double indemnity, might have been entitled to the insurance named in the policy, if the case had been tried on that theory.

The plaintiff, on his motion for a new trial, cited the court to the case of *Gregory v. Mutual Life Insurance Co.*, decided in 1935 (included in my 1935 report), which held that a passenger

5. U. S. C. A., 8th Circuit, Feb. 18, 1937, 8 JOURNAL OF AIR LAW 277 (1937).

was not "participating in aeronautics." The trial court refused to grant the plaintiff a new trial, because this point had not been raised during the trial, but the Court of Appeals held that a new trial should be granted, and held clearly that the decision in the *Gregory* case was correct, namely, that a passenger was not "participating in aeronautics" and, hence, was not excluded from recovering.

Adele Christen v. New York Life Ins. Co.⁶
National Exchange Bank v. New York Life Ins. Co.⁷

The above two decisions, both with the New York Life Insurance Co. as defendant, and both decided by District Courts of U. S. are interesting, both from a legal as well as an historical background.

Mr. Christen carried seven policies in the New York Life Insurance Co. Two of these policies provided for double indemnity in the case of accidental death, providing, however, that this double indemnity should not apply if the deceased met his death "while *engaged* as a passenger or otherwise in aviation." The other five policies in the same connection used the words "while *participating* as a passenger or otherwise in aeronautics." Christen was a designer, had never been connected with aviation, and, in fact, had taken only one short trip in his lifetime in a plane, when he decided to go to Los Angeles. He took a night train from Chicago into Kansas City and arrived there in time to take passage on the T. W. A. plane, on which the best known passenger was Knute Rockne. This plane, as you know, crashed in Kansas on the morning of March 21, 1931.

In the other case, the passenger was Stanley W. Bayersdorf, who was killed in the T. W. A. crash in Pennsylvania in 1936. His policies in the New York Life Insurance Co. had precisely the same language as the ones in the *Christen* case.

It was practically conceded by counsel for plaintiffs in both cases that they were barred from recovery under those policies where the word "participating" was used, but they insisted that they were entitled to recover where the word "engaged" was used. It is true that there has been a difference in the holdings by the courts under these two phrases, though your writer deferentially suggests that he has never been able to see it with the naked eye.

The leading case holding that a passenger is not "participat-

6. U. S. Dist. Court, Northern District of Illinois, June 3, 1937; 8 JOURNAL OF AIR LAW 674 (1937).

7. U. S. District Court of Pennsylvania, July 1, 1937; 8 JOURNAL OF AIR LAW 674 (1937).

ing" is the case of *Gits v. New York Life Insurance Co.*⁸ But in the *Gits* case, the word "engage" was not followed by the words "as a passenger or otherwise." Therefore, both of the Federal Courts above refused to follow the *Gits* case, and held that the inclusion of these words "as a passenger or otherwise" made it too clear for doubt that the company intended to exclude passengers, whether they used the word "engage" or whether they used the word "participating." In this respect, these two courts followed *Goldsmith v. New York Life Ins. Co.*,⁹ and *Mayer v. New York Life Ins. Co.*¹⁰

I trust I may be pardoned for calling attention to the fact that the New York Life Ins. Co. seems to be furnishing most of the precedents for insurance-aviation law.

DiGiulio v. Rice, et al.¹¹

You have all heard me discuss, from time to time, whether or not a seaplane was a vessel, and whether or not it was a motorboat, particularly in the early case of *Crawford Bros. No. 2*. California this year supplies us with a very interesting case, and, incidentally, illustrates the crying need for a uniform state law or a general federal law applying to and covering the recordation or registration of chattel mortgages, conditional sales contracts, and other forms of securities on airplanes.

Mr. DiGiulio made a loan of \$1200.00 on an airplane and took a mortgage which he recorded in San Mateo County where the airplane and the owner then were. Later the owner and the airplane flitted over to San Francisco County and the owner again carefully recorded his chattel mortgage in that county. Still later, the owner flitted, oh, so easily, to Alameda County, and there a vigilant judgment creditor levied an execution on the plane and had it sold to satisfy the execution. The purchaser took good title, there being no chattel mortgage recorded in that county, and the holder of the mortgage lost his security.

Now it so happens that there was a statute in the State of California which provided that chattel mortgages covering "live-stock, vehicles (other than motor vehicles) or any other migratory chattels," could be and should be registered with the Secretary of State, in which event they would be good in any county. There

8. 32 Fed. (2d) 7.

9. 69 Fed. (2d) 273.

10. 74 Fed. (2d) 118.

11. Appellate Division, Supreme Court of San Francisco County, July 7, 1937; 8 JOURNAL OF AIR LAW 674 (1937).

was an additional charge of 75c for this, of which 50c was to be sent by the Recorder to the Secretary of State.

The careful gentleman who recorded his mortgage in two counties also carefully paid the 75c in each case, and the two recorders, both of them, failed to send the 50c to the Secretary of State and record the mortgage there. Consequently, Mr. DiGiulio brought suit against the two recorders for damages under their bond. The defendants made two defenses, first, that the words in the statute, "other than motor vehicles" excluded airplanes as well as automobiles from the act, and second, that airplanes were *not* included within the words "livestock, vehicles or migratory chattels."

The court held against the defendants on the first count, holding that an airplane was *not* a motor vehicle. The reasoning was that a motor vehicle was intended to operate on the ground and further that motor vehicles were excluded from this particular act because there were other means of protecting the holders of lien papers on automobiles and this was not true of airplanes. Hence, airplanes and motor vehicles did not belong in the same category. The court did, however, hold with the defendants on the second contention, holding that an airplane was not "livestock" or "vehicles" or "migratory chattels" and, hence, the duty did not devolve upon the recorders to send 50c to the Secretary of State. This ruling is probably sound, in view of the fact that the act was passed in 1925, when there were plenty of aircraft in California, and if the legislators had intended to include aircraft in this particular statute, it would have been very easy to say so instead of using such general language as "vehicles and migratory chattels." Doubtless, what the legislature had in mind was wagons, buggies, ice boxes, electric refrigerators, radios, phonographs, etc., and not airplanes.

Pearl E. Cohn v. United Air Lines¹²

Our old and time-worn friend, "res ipsa loquitur" appears again in this case. You will all recall that this is the vexing question as to whether or not a thing "speaks for itself." In other words, can you prove negligence in an airplane death case by merely proving that deceased was a passenger and the plane crashed. For the most part, the rule has been that the proving of these facts does not prove negligence and that more must be shown to entitle one to recover in such a case.

12. U. S. Dist. Court of the Dist. of Wyoming, February 8, 1937.

In this particular case, a new plane was being tested by the United Air Lines. It was being piloted by Marion Arnold who was accompanied by Cohn, who was a test pilot, not employed by United Air Lines, and by Yantis and Kaufmann, who were employed by United Air Lines. The plane crashed about five miles from the airport at Cheyenne and there was no evidence available as to the cause of the crash. The plaintiff filed a suit in which the bare allegation was made that the defendant was negligent and that this negligence caused the death of Cohn. The defendant filed a motion to require the plaintiff to make the petition more definite and certain and to set out the specific acts of negligence.

Counsel for plaintiff appeared in court and stated that no further or better statement could be made. The court overruled the motion, but suggested that counsel for defendant should file a motion to dismiss, in the nature of a demurrer. This was filed and the plaintiff then contended that the petition made out a good cause of action and sufficiently pleaded negligence because of the rule of "res ipsa loquitur."

The court sustained the motion to dismiss the petition, holding that "res ipsa loquitur" did not apply; that it was common knowledge that many plane accidents occurred which were unexplainable; that it was common knowledge that they could occur without negligence; and that until there was a further development of the art of flying and until flying reached a point of such mathematical certainty that an accident could only occur because of negligence, the doctrine would not apply. The court cited and approved the cases of *Herdon v. Gregory*¹³ and *Wilson v. Colonial Transport Co.*¹⁴

The court indicated in this cause a very sympathetic view of aviation and this paragraph appears worthy of quotation:

"It may be that in the not too distant future in the evolution and development of the wonderful and enchanting science of aviation, a sufficient fund of information and knowledge may be afforded to make a safe basis in compensating for injuries sustained, the application of the doctrine here invoked, but it seems to me quite clear that that time has not yet arrived. Man has made rapid strides within a very small cycle in his endeavor to become master of the air, of which the bird until recently has been exclusively king in his own right, but with the exceedingly large number of unexplained and inexplicable catastrophies it is evident that he has not yet become such master. It will not do to discourage the pioneer by making him assume undue hazards in a monetary way. In the meantime, it is quite evident that those who choose airways

13. 81 S. W. (2d) 849.

14. 180 N. E. 212.

for transportation must in many instances be held to have themselves assumed the risk."

State of Maryland to the use of Birkhead v. James S. Salmon, Baltimore Air Terminals, Inc.¹⁵

A construction of one of the provisions of the old uniform state law for aeronautics has been given by the Court of Appeals in Maryland. This same court also passed again upon the liability of the operators of airports for injuries to persons lawfully on the airport and for whom proper provision has not been made for safety.

In this case, an air circus was being conducted on the flying field of the Curtiss-Wright Airport near Baltimore. The event had been advertised in order to induce a large public attendance. The young Birkhead boy, accompanied by another boy, had ridden his bicycle to the airport and rode on to the airport and started across it on a well-defined road; no one having warned them, stopped them, or in any wise impeded their progress. While progressing across the airport, the Birkhead boy was struck by a landing airplane and instantly killed. Suit was brought against the pilot, against the owner, and against the lessee of the airport.

The plaintiff contended that the pilot (who doubtless could not see the boy) was nevertheless liable under the Uniform State Law for Aeronautics which had been adopted by Maryland in 1927 and under which the owner of aircraft was made "absolutely liable for damage to persons and property on the land or water beneath, etc."

The court, in construing this section and the preceding section on lawfulness of flight, held that it was quite clear that this applied only to such landings as involved a trespass, and that it did not apply to landings on airports and, hence, the pilot in this case was not liable under the Act and would be liable only in the event of personal negligence. The pilot who had been held liable in the original trial of the case was exonerated by the Court of Appeals.

The plaintiff had also contended that the owner and lessee of the airport were liable for failure to provide reasonable safeguards and for permitting the unrestricted use of the field by other aircraft during the program of the air circus. The trial court had dismissed this contention as to both of these defendants. The Court of Appeals, however, while dismissing as to the owner of the airport (upon showing that it had been entirely leased to the oper-

15. Nov. 19, 1936, 189 A. 265.

ator of the airport), nevertheless, held that the lessee owed the duty of making the property reasonably safe and of providing reasonable warnings and reversed the case for a new trial as to this latter defendant who was, in fact, operating the field.

This is the first time, to the writer's knowledge, that the absolute liability clause in the Uniform State Law has been construed and, in my opinion, seems to be correctly construed. The decision with respect to the lessee is in line with accepted principles, for we have always known that the operator of an airport would be liable for negligence just as the operator of a fair-grounds, or any other place to which the public is generally invited.

Boulineaux v. City of Knoxville¹⁶

Another case which needs to be only briefly mentioned, and which enunciates the same doctrine of liability of airport proprietors, was decided by the Supreme Court of Tennessee. In this case, however, the liability went further, because the city was held liable for its negligence in failing to properly *inspect the plane*, as well as for failure to have the field in proper condition.

Of course, this holding was due to a difference in facts. The City in this case was permitting a sight-seeing plane to be operated under an agreement which gave them a share of the profits resulting. Consequently, the City was held liable for failure to have the plane in proper condition. The Court, however, went out of its way to state that the City would not be liable for the unforeseen negligence of the pilot in the operation of the plane.

The writer humbly suggests that if the City is a partner in the enterprise, then the pilot should properly have been considered as an employee of the City as well as of the sight-seeing operator, and the City should have been held liable for the negligence of the pilot as well as for the unsafe condition of the plane.

Railway Labor Act and Air Carriers

It was not called to my attention in time for the last report to acquaint you with the fact that, by amendment, approved April 10, 1936, to the Railway Labor Act, passed June 21, 1934, common carriers by air are now subject to most of the provisions of the Railway Labor Act, and may in the future be made subject, upon practically a moment's notice, to the remaining provisions.

To understand what this means, I should first summarize for

16. 99 S. W. (2d) 557, 8 JOURNAL OF AIR LAW 278 (1937).

you the Railway Labor Act. The purpose of the Act is declared to be to avoid interruptions to commerce; to forbid interference with the right of organization of employees; to provide for prompt and orderly settlements of disputes concerning rates of pay, rules and working conditions; and to provide for the prompt and orderly settlement of disputes arising out of grievances or out of the application of contracts.

The duties imposed upon the railway carriers and upon the employees are to make and keep agreements to settle their disputes and to avoid interruption of service, and the Act provides that such disputes shall be settled, if possible, between the carriers and the employees, or their representatives. There is in the Act language similar to the Wagner National Labor Relations Act, which followed it in 1935, in that the carriers are forbidden to interfere with the right of organization or to induce its employees to join or not to join any organization.

Queerly enough, and contrary to the Wagner Act, the Railway Labor Act forbids a closed shop agreement and forbids the "check off" of union dues, and forbids the carrier to assist in any manner in the collection of union dues.

A National Board of Adjustment is set up by the Act, consisting of thirty-six members, eighteen of whom are selected by the carriers and eighteen by labor organizations. This Board of thirty-six is divided into four divisions having jurisdiction over disputes of the different groups of employees of the railroads. These thirty-six men are paid by their respective groups, that is, by the railways and by the unions.

In addition, a National Mediation Board is appointed by the Federal Government and paid by the Federal Government, consisting of three members. The function of the Mediation Board is to act as mediator, if requested; to offer its services in a labor emergency; and to appoint an arbitrator in the event the National Adjustment Board or any of its divisions fails to reach an agreement.

My information is that the National Adjustment Board and its divisions always fail to reach an agreement. The railway men uniformly take the position of the railway and the union men take the side of the employees. The result has been in actual practice that the arbitrator appointed by the National Mediation Board is one who actually makes the decision. The power of the National Mediation Board can, therefore, scarcely be minimized. Whether the results have been good or bad since 1934 depends upon which

side of the table you are sitting. The railways complain bitterly that the arbitrators have been uniformly prejudiced in favor of labor. Labor insists that they have gotten nothing better than a square deal. So much for the background so as to understand the meaning of the amendment with reference to air carriers of April 10, 1936.

By this amendment, all of the provisions of the Railway Labor Act were made applicable to air carriers, except Section 3. Section 3 was that portion of the Railway Labor Act which provides for the National Board of Adjustment of thirty-six men. In other words, the Railway Labor Act, with respect to right of self-organization of employees, the duty to negotiate and make agreements if possible, the forbidding of closed shop contracts, the forbidding of check-offs, etc., are now applicable to the relation between air carriers and their employees.

In addition to this, the National Mediation Board may at any time "when in the judgment of the National Mediation Board it shall be necessary" direct the air carriers, and the labor organizations representing the employees, to select and designate four persons to constitute the "National Air Transport Adjustment Board." Two of these members are to be selected by the air carriers and two by the labor organizations of the employees within 30 days after the date of the order promulgated by the National Mediation Board. Thereafter, the National Air Transport Adjustment Board shall have jurisdiction of disputes between the air carriers and their employees and upon failure to reach an agreement, the arbitrator will be appointed by the National Mediation Board as above mentioned.

The only difference between the adjustment board set up for the railroads and the adjustment board which might be set up for the air carriers is that the latter board is smaller and there are no special divisions created for separate employments.

Information as to the reasons for this legislation is very meager. The hearings before a sub-committee of the Committee of Interstate Commerce of the Senate disclose the fact that there were no witnesses appearing for the air carriers. Those who testified before the committee were Edward G. Hamilton, representing the Air Line Pilots' Association, Geo. A. Cook, Secretary of the National Mediation Board, Timothy Shea, Asst. Pres. of the Brotherhood of Firemen and Locomotive Engine Men, H. S. Haddock, Pres. of American Radio Telegraphists' Association, David Kaplan, Research Director of the International Association of Machin-

ists, S. P. Meadows, Legislative Representative of the American Federation of Labor, and O. S. Beyer, Director of the Section of Labor Relations, Federal Co-ordinator of Transportation.

The only objection which seemed to have been voiced was a letter addressed to the committee by Paul Goldsborough, President, Aeronautical Radio, Inc. Mr. Goldsborough's objection was put upon the grounds that it simply subjected the air carriers to an additional form of government regulation, adding the National Board of Mediation to the Department of Commerce, the Post Office Department, Federal Communications Commission, Interstate Commerce Commission, and other departments which now exercise a large measure of regulation. This objection was sound. It seems, though, that a more economic ground for objection lies in the fact of the still crying need for development both from the standpoint of scientific construction of airplanes and in the necessary scientific training of the skilled personnel which must operate these planes.

The effect of the Act, of course, is to give to organized union labor the same additional strength which has been given to the unions by the Wagner Act. Whether the result of the control of air line employees by union labor will be greater efficiency and greater technical skill is open to serious question. To one who has had much experience with union labor, the question seems to be answered in the negative.

I commend this legislation to your study and earnest consideration. Up to the present time, as far as I am able to learn, it has had very little effect, due to the fact that air line employees in general have not been thoroughly organized, the organization being limited largely to pilots and co-pilots. When the organization of air employees is extended to mechanics and other service employees, to radio operators and dispatching officials, there may be a very substantial change.