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National Transportation Policy and Aviation

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NATIONAL TRANSPORTATION POLICY
AND AVIATION

FRED D. FAGG, JR.

I. INTRODUCTION.

With the enactment of the "Emergency Railroad Transportation Act, 1933,"1 Congress manifested a determination to formulate a new national transportation policy. While the language of the measure specifically indicated that the office of Federal Coordinator of Transportation was created "in order to safeguard and maintain an adequate national system of transportation,"2 it is not difficult to believe that the office was primarily created to develop such a national system. The activities of the Coordinator, since 1933, might at least lead to such a belief, and it must be remembered also that one of the purposes of the act is "to provide for the immediate study of . . . means of improving conditions surrounding transportation in all its forms and the preparation of plans therefor."3

Several legislative proposals, looking to the improvement of transportation, have been submitted by the Coordinator. Three of these became law during the first session of the 74th Congress, as follows: (1) The Motor Carrier Act, 1935, (2) Revision of Section 77 of the Bankruptcy Act, and (3) Amendments to the Interstate Commerce Act affecting ports and gateways, etc. While the Coordinator submitted no individual bill relating to air transportation, the 74th Congress did amend the Air Mail Act of 1934, in certain respects which will be developed later. During the year

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* Part of the material in this paper was presented in an address before the annual meeting of the National Aeronautic Association, Washington, D. C., January 6, 1936.

2. Section 2. Italics ours.
3. Section 4, par. (3). Italics ours.
1936, Congress will consider several additional legislative proposals submitted by the Federal Coordinator relating to regulation of water carriers, wharfingers, and the reorganization of the Interstate Commerce Commission.4

From the foregoing summary, it might appear that air transportation has no place in the determination of a national transportation policy. Such is by no means the case. During 1934-35, the Coordinator made no recommendations for aviation legislation because Congress, under the terms of the Air Mail Act of 1934, had created a special Federal Aviation Commission to undertake that very task.5 For certain reasons, some of which will be explained later, the basic legislative recommendations of the Federal Aviation Commission were shelved during 1935. They may, or may not, remain shelved.

Since the Coordinator proposes no bill relating to aviation it is pertinent to inquire whether or not we may assume that, for the future (or immediate future), the federal aviation policy (as a part of a national transportation policy) is committed to, and embodied within, the narrow limits of the Air Mail Act of 1934, as amended. However germane the inquiry, it is obvious that no definite answer can be given at the present moment. Therefore, we are forced to ask what persons or bodies may likely consider or challenge the existing governmental administration of air transport. It is not impossible that the Coordinator may introduce proposals

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4. The recommendations offered in the *Fourth Report of the Federal Coordinator of Transportation*, as of January, 1936, p. 84, are as follows:

1. Enact the legislation for the Federal regulation of water carriers as set forth in the bill now pending in the Senate (S. 1632, as reported by the Senate Committee on Interstate Commerce).

2. Enact the legislation for the Federal regulation of wharfingers which will be set forth in the bill soon to be presented.

3. In the event that recommendation (1) is followed, enact legislation for the reorganization of the Interstate Commerce Commission along the general lines set forth in S. 1635 and H. R. 5365 (74th Congress, 1st Session).

4. Enact legislation for the creation of a Coordinator of Transportation associated with the Interstate Commerce Commission along the general lines set forth in S. 1635 and H. R. 5365 (74th Congress, 1st Session).

5. Enact legislation providing for dismissal compensation for railroad employees displaced by coordination projects along the general lines set forth in S. 1630 and H. R. 5378 (74th Congress, 1st Session).

6. Enact legislation enabling the Commission to prescribe minimum as well as maximum joint rail-water rates, and to establish through railroad routes where deemed necessary in the public interest regardless of the "short-hauling" of any carrier, as set forth in S. 1636 and H. R. 5364 (74th Congress, 1st Session).

7. Enact legislation amending Section 4 of Part 1, Interstate Commerce Act, by eliminating the so-called "equi-distant" clause.

8. Enact legislation shortening the statutory periods of limitation with respect to reparation claims against railroads to 1 year in the case of overcharges (and undercharges) and to 90 days in the case of all other claims.

9. In view of the creation of the Federal Aviation Commission and the special study which it has given to these questions, the Coordinator has not undertaken to arrive at conclusions and make recommendations on his own account. *Third Report of the Federal Coordinator of Transportation*, as of January 28, 1935 (House Document No. 89, 74th Congress, 1st Session), p. 19. See full statement pp. 12-13.

looking to a change in administrative organization; there are also committees in the Senate and House whose powers are sufficiently broad to enable them to consider the relation of governmental agencies to air transportation and to develop a program for the future.\(^7\) The Senate Subcommittee on Aircraft Investigation has, in its hearings of February 10-15, indicated an interest in the larger aspects of the subject. It may decide to make recommendations on questions involving important administrative issues; so may the House committee.

Whatever may be the immediate proposals offered to Congress, there is reason to consider some of the fundamental matters which are certain to influence the determination of a federal transportation policy as it affects aviation. The present study assumes that the question of going beyond the 1934-35 air mail legislation will be raised again, and that, when such time comes, it will be desirable to have available all data that can reasonably assist in the formulation of a sound judgment. The method here adopted to that end will be a more or less chronological analysis of those elements which are believed appropriate to an intelligent inquiry.

II. THE GENERAL TRANSPORTATION BACKGROUND.

Before directing attention to the specific problems of air transportation, it may be helpful to orient ourselves by reference to previous national transportation experience. Let us, therefore, consider the American transportation policy as it emerges from the various periods and eras marked by technical advances and, perhaps more distinctly, by differing sources of motive power.

18th Century—Natural Power:

The 18th Century, and those preceding it, belong to the era of natural power used in transportation. Settlers in a new country are always forced to utilize its existing natural resources and, in the United States in the early days, water carriage was the most available.\(^8\) Road conditions were admittedly abominable and, while

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7. The Senate Subcommittee, authorized by S. R. 146 (74th Congress, 1st Session) is headed by Senator Copeland of New York. The House Committee is headed by Congressman Mead of New York.

8. "Historically, water transportation was cheapened long before we had cheap land transportation. Consequently, we find that commerce in a large sense developed first on the water. Great cities were located where there were advantages in water transportation. Considerable commerce has always been carried on, from the very earliest times, by means of caravans traveling over land, but the most of this kind of transportation was so great that the commerce which developed under these conditions was necessarily confined to articles of luxury which embodied large value in small bulk. . . . Water transportation developed first, of course, where it was safe; that is, on rivers or small bodies of inclosed water . . . The order of development of water trans-
the first turnpike was started between Philadelphia and Lancaster in 1794, the real efforts of the people were spent on the development of canals, which had started by 1780. By 1790, flatboats were operating on the Ohio and Mississippi Rivers with the upstream traffic amounting to about ten per cent of that moving downstream—due, of course, to lack of suitable power. While water transportation development was being augmented by canals, a few of the people were amused by the balloon ascent of a fellow named Blanchard at Philadelphia in 1793. Some of the populace, thus amused, might have thought: what a silly thing, this flying!

transportation has been described as, first, the potamic stage; second, the thalassic; and third, the oceanic. T. N. Carver, Principles of National Economy (1921 Ed.) pp. 306-7.

Professor Carver, incidentally, is the first author (known to the present writer) to hint at the method of analysis here undertaken—in terms of power. Carver has two brief sub-headings entitled “animal power” and “mechanical power” (pp. 308-9) but does not develop the idea further.

The classical statement of this historical development—set forth with considerable pessimism (in 1776) as to the possibilities of land transportation—is to be found in an out-of-the-way chapter in Adam Smith, The Wealth of Nations (Everyman’s Ed. Vol. 1, pp. 16-18) wherein he discusses the limitations of the division of labor as determined by the extent of the market, in the following language:

“As by means of water-carriage a more extensive market is opened to every sort of industry than what land-carriage alone can afford it, so it is upon the sea-coast, and along the banks of navigable rivers, that industry of every kind naturally begins to subdivide and improve itself, and it is frequently not till a long time after that those improvements extend themselves to the inland parts of the country. A broad-wheeled waggon, attended by two men, and drawn by eight horses, in about six weeks’ time carries and brings back between London and Edinburgh near four ton weight of goods. In about the same time a ship navigated by six or eight men, and sailing between the ports of London and Leith, frequently carries and brings back two hundred ton weight of goods. Six or eight men, therefore, by the help of water-carriage, can carry and bring back in the same time the same quantity of goods between London and Edinburgh, as fifty broad-wheeled waggons, attended by a hundred men, and drawn by four hundred horses. Upon two hundred tons of goods, therefore, carried by the cheapest land-carriage from London to Edinburgh, there must be charged the maintenance of a hundred men for three weeks, and both the maintenance, and, what is nearly equal to the maintenance, the wear and tear of four hundred horses as well as of fifty great waggons. Whereas, upon the same quantity of goods carried by water, there is to be charged only the maintenance of six or eight men, and the wear and tear of a ship of two hundred tons burden, together with the value of the superior risk, of the difference of the Insurance between land and water carriage. Were there no other communication between those two places, therefore, but by land-carriage, as no goods could be transported from the one to the other, except such whose price was very considerable in proportion to their weight, they could carry on but a small part of that commerce which at present subsists between them, and consequently could give but a small part of that encouragement which they at present mutually afford to each other’s industry. There could be little or no commerce of any kind between the distant parts of the world. What goods could bear the expense of land-carriage between London and Calcutta? Or if were any so precious as to be able to support the expense of what safety could be transported through the territories of so many barbarous nations? Those two cities, however, at present carry on a very considerable commerce with each other, and by mutually affording a market, give a good deal of encouragement to each other’s industry.

“Since such, therefore, are the advantages of water-carriage, it is natural that the first improvements of art and industry should be made where this convenience opens the whole world for a market to the produce of every sort of labour, and that they should always be much later in extending themselves into the inland parts of the country. The inland parts of the country can for a long time have no other market for the greater part of their goods—In those parts, which lies round about them, and separates them from the sea-coast, and the great navigable rivers. The extent of their market, therefore, must for a long time be in proportion to the riches and populousness of that country, and consequently their improvement must always be posterior to the improvement of that country. In our North American colonies the plantations have constantly followed either the sea-coast or the banks of the navigable rivers, and have scarce anywhere extended themselves to any considerable distance from both.”

9. Magoun and Hoigens, A History of Aircraft (1931 Ed.) p. 46. Blanchard was in the air for 46 minutes and landed in New Jersey "where a passport
19th Century—Steam Power:

The 19th Century brought with it the use of steam power for transport purposes and witnessed the development of a vast railway net-work of nearly 200,000 miles. However, before the real effect came to be felt, there were many false starts and the "fumbling process" was very evident. This century saw the great growth of governmental interest in transport media—as manifested by generous donations and, also, by abundant regulatory laws. Seemingly, the popular objective was to utilize steam power (already well harnessed by Watt in a stationary engine) on boats and on wagons running on the highways. No one dreamed of the railroad as we now know it. While Fulton was working on his steamboat, Evans in the United States and Trevithick in England were experimenting with steam-driven carriages. These latter vehicles were run upon the highways and, in the absence of obstructions and other handicaps of terrain, could make at least five miles per hour. Fulton's success with the steamboat in 1807 preceded the successful use of steam power for land transportation and made possible a real two-way river traffic (on the Mississippi) by 1817. With the completion of the Erie Canal in 1825, the future of steam-driven water craft seemed very bright.

Congress was quick to recognize the possibilities of steam-driven vehicles on the roads, and the national pike (the famous furnished by General Washington was his only assistance in coping with the townfolk who were ... at first inclined to be somewhat grudging in their welcome to a strange gentleman who descended from the skies in an uncanny apparatus, speaking an 'oulandish' tongue."

10. The following table, given in round numbers, illustrates the growth of the American railway mileage:

<table>
<thead>
<tr>
<th>Year</th>
<th>Mileage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1833</td>
<td>380</td>
</tr>
<tr>
<td>1840</td>
<td>2,800</td>
</tr>
<tr>
<td>1860</td>
<td>9,000</td>
</tr>
<tr>
<td>1860</td>
<td>31,000</td>
</tr>
<tr>
<td>1870</td>
<td>63,000</td>
</tr>
<tr>
<td>1880</td>
<td>82,000</td>
</tr>
<tr>
<td>1890</td>
<td>156,000</td>
</tr>
<tr>
<td>1900</td>
<td>193,000</td>
</tr>
</tbody>
</table>

11. "Yesterday, we proceeded on our journey with the engine; we carried ten tons of iron, five wagons, and seventy men. It is above nine miles which we performed in four hours and five minutes. We had to cut down some trees and remove some large rocks out of the road. The engine, while working went nearly five miles per hour." From the diary of Richard Trevithick, referring to a tram locomotive at the iron works of Pen-y-darran in February of 1804, cited in A. P. Usher, An Introduction to the Industrial History of England (1920 Ed.) p. 435.

The dependence of any land vehicle upon a hard surfaced road is well illustrated by Professor Carver, in his remark that "The economy of the auto truck, however, depends upon the character of the roads. With the common dirt roads which formerly prevailed in the country it is doubtful if it could have been used economically even if it had been developed ... It is interesting to note how every advance in methods of land transportation seems to depend upon the quality of the road or track ... The acme of track-building is the railway, where the wheeled vehicle runs on steel rails ... Improvement in the manufacture of the steel rail has had to go hand in hand with the improvement of the locomotive engine." T. N. Carver, Principles of National Economy, pp. 309-10.
Cumberland Road) was started, in 1806, for this and other reasons as a federal project. The building of this important highway went on at a cost of some seven million dollars until 1822, when President Monroe vetoed an appropriation bill—supposedly on the theory that Congress lacked constitutional power to engage in such an enterprise. That veto sounded the death knell to highway development, and for eighty years (until the automobile made the need obvious) the highways of the country became the objects of state and local charity.

Due to lack of rolling mills and general technical skill in the iron and steel industry, the steam-driven vehicle, operating on the poorly constructed public highways, was doomed to failure. Any success it might have had (and there were then about a dozen companies operating steam passenger and freight carrying vehicles in England) was nullified by discriminatory taxation and unduly burdensome governmental regulations. However, the same steam-driven vehicle—when placed upon a prepared roadbed (such as rails)—proved to be an immediate success. Thus, Stephenson's engineering skill gave us the true railroad. The history of the railroad, its growth and triumph over water transportation by the decade of the sixties, is so familiar as to require no elaboration here. Suffice it to suggest how very different our transportation picture might have been today if hard-surfaced roads and internal combustion engines had been perfected by 1800!

During this century, steam power was being tried for aviation. In 1842, Henson's steam-driven monoplane was designed and, by 1889, Langley was attempting to adopt this form of power to his aerodrome.

The periodic surges of the American population toward ever-widening western frontiers accentuated the need for an adequate...
NATIONAL TRANSPORTATION POLICY

In this expansion era, the railroad proved itself the most flexible and promising transport agency. In turn, it was the recipient of individual and governmental bounty. Millions of dollars and millions of acres of land were made available to finance a railway network which completely gridironed the nation. Competition between rival forms of transport (water and rail) that had existed prior to the sixties soon became competition between rail carriers alone and, in the latter form, became most destructive. The evils inherited from early speculative days commanded governmental attention and action and brought about a federal control that has since continued and expanded to an extent which, to some at least, has become alarming.

20th Century—Gasoline Power:

The 20th Century, for our purposes, may be called the period of gasoline power, although obviously other forms of power continue to be used. The date of 1900 will not serve as an exact transition point for the automobile is credited to Daimler as early as 1887. However, by 1895, there were only four autos registered in the United States. The new century, bringing new technical skills and improved processes, ushered in a tremendous revival of interest and, from 8000 autos in 1900, we have gone to 26 million at the present writing. The sudden public demand for improved highways (arising, in part, from the pleasures of the private automobile) swept away the cobwebs of governmental inactivity and brought about the building of 3 million miles of highways—of which nearly a third are hard surfaced. Given concrete roads to parallel the steel rails, given the advantage of governmental maintenance of those roads, and given the gasoline-driven motor vehicle (considerably more flexible as an economic unit of transportation than the

16. "In 1868 the rates from Chicago to New York were $1.88 per hundred pounds, first class, and 82 cents fourth class; but in 1869 a 'rate war' carried the rates for a time to 25 cents a hundred for all classes." Johnson and Von Metre, Principles of Railroad Transportation, (1922 Ed.) p. 278. For a discussion of the economic factors involved in railroad competition, see Fairchild, Purtiss and Buck, Elementary Economics (1926 Ed. Vol. II) pp. 11-13. For a discussion of destructive rate wars that continued even after the establishment of the Interstate Commerce Commission, see W. Z. Ripley, Railroads: Rates and Regulation (1922 Ed.) Ch. 12, pp. 411-441. See also, Ida M. Tarbell, "Standard Oil Rebates" published in Ripley, Railway Problems (1913 Ed.) Ch. III, pp. 92-108.

17. The Interstate Commerce Commission was provided for by the legislation of 1887 (approved February 4th and in effect April 5th, 1887—24 Stat. L. 379) following the Windom Committee Report of 1874 and the Cullom Committee Report of 1886. The Commission membership in 1887 was composed of five commissioners with a staff of eleven employees. By successive stages that number has been increased to seven, nine, and now eleven commissioners. By 1899 the total of commission personnel stood at approximately two thousand, although it had reached a maximum of 2,274 in 1917, largely as a result of the extensive tasks imposed by the Valuation Act. In 1888 its expenditures were approximately $115,000; and in 1930 they had risen to $8,124,000. I. L. Sharfman, The Interstate Commerce Commission, (1935 Ed.) Vol. III-A, p. 90.
steam train), is it any wonder that the motor bus and truck business has mushroomed to threaten seriously the dominance of the railroads—whose peak of 260,000 miles of line was reached in 1930? Or less wonder that the 74th Congress decided to implement the regulatory powers of the Interstate Commerce Commission through the all-embracing provisions of the Motor Carrier Act of 1935?

Wartime emergency gave new growth to inland water, and foreign water, transportation. Likewise, it made possible a technical advance in aeronautical engineering that established a firm foundation for commercial aviation. As a result, new federal agencies of promotion and control have been organized for water and for air transportation.18

Having witnessed the rise of four distinct forms of transportation—whose growth has individually manifested itself by sudden spurts rather than by any orderly process—and having witnessed the results of uncurbed competitive forces, we have gradually shifted our thinking away from particular cases—of railroads, of motor buses, etc.—to the more significant and inclusive subject—that of the national transportation problem. National policy we have always had. In the past, however, it has been, in the main, distinctly negative in character. It would appear that, since the Emergency Railroad Transportation Act of 1933, we have been attempting to develop one that will soon be affirmative in character. In order to plan wisely for the future, we should know something of the past. Therefore, if we are interested in developing a sound federal policy for aviation (as part of a larger transportation policy) we must consider—at least briefly—its record to date.

III. The Air Transport Background.

No one can read the history of commercial air transport in the United States without realizing the tremendous debt which aviation owes to the Post Office Department and to a sprinkling of Congressional leaders whose vision and activities have made possible the splendid accomplishments of our scheduled airlines. Seven years after the epochal flight of the Wright Brothers, Congressman Sheppard introduced a bill to consider the cost of carrying mail by air.19 While Lincoln Beachey, Arch Hoxie, and other intrepid

19. Paul T. David, The Economics of Air Mail Transportation (The Brookings Institution, 1934 Ed.) p. 1. No one interested in the subject of air mail
pilots were demonstrating the mysteries of flight to an unbelieving populace, the Post Office Department was experimenting with the carriage of air mail between points on Long Island.

**Early Air Mail Developments:**

Shortly after the declaration of war in Europe, Post Office officials began to stress the military significance of aviation and pointed to the need for a large commercial fleet which could, in time of peace, carry the mail. For the fiscal year of 1918, Congress appropriated $100,000 for air mail transport, and the present service was officially opened on May 15, 1918. The original plan provided for the use of army pilots and military planes no longer needed in service. Certain difficulties arose, and the Post Office Department decided to buy its own ships and hire some of the civilian pilot instructors. With the armistice, came a horde of available army pilots, and questions of policy arose. Should the service be continued? Should army cooperation be invited? The Post Office decided against cooperative effort, but did decide to continue and expand the service. Army planes were purchased and specially stressed to meet commercial needs.

By September, 1920, a transcontinental air mail service had been established from New York to San Francisco, with feeder lines from Chicago to St. Louis and Minneapolis. The new postal administration, entering office in 1921, found the service unsatisfactory, and discontinued all but the transcontinental route. To fully utilize the saving of time afforded by air carriage, night operations were started in 1921 between Chicago and Cheyenne. It was not until 1924, however, that regular night service was instituted. During 1925, the lighted airway was pushed westward to Salt Lake; but, from then on, the Department of Commerce took over the construction and maintenance work under the authority of the Air Commerce Act of 1926.

**Air Mail Act of 1925:**

It is probable that neither Congress nor the Post Office Department intended government operation of air mail carriage as a permanent policy. But, whatever may have been the initial policy, we do know that legislative authority was provided, in the Air Mail Act of 1925.
Act of February 2, 1925,\textsuperscript{20} for the transportation of air mail by private persons as a result of contract. The approval of the Air Commerce Act of 1926,\textsuperscript{21} on May 20, 1926, assisted in the shift from government to private operation. By the terms of that act, the Aeronautics Branch of the Department of Commerce was charged with the duty of providing desirable air navigation aids.\textsuperscript{22} The private carriers thus knew that necessary airway aids would be furnished at government expense.

The three basic features of the Air Mail Act of 1925 were as follows: (1) Setting of air mail postal rates at not less than 10c for each ounce or fraction, (2) authorizing the Postmaster General to contract at a rate not to exceed 4/5 of the revenues derived from such air mail, and (3) authorizing the Postmaster General to make necessary rules and regulations. While this act was approved February 2, 1925, no advertisement for bids was issued until July 15, 1925, and the first service over a contract route was not started.

\textsuperscript{20} 43 Stat. L. 805. The provisions of the Act are as follows:


\textsuperscript{22} See the general promotional duties in Section 2. Section 5 provides for the transfer from the Post Office Department to the Department of Commerce, part of which reads as follows:

\textsuperscript{(a)} Transfer of airways, facilities, etc., by Postmaster General; expenditure of appropriation.-Whenever at any time the Postmaster General and the Secretary of Commerce by joint order so direct, the airways under the jurisdiction and control of the Postmaster General, together with all emergency landing fields and other air navigation facilities (except airports and terminal fields) used in connection therewith, shall be transferred to the jurisdiction and control of the Secretary of Commerce, and the established airports and terminal landing fields may be transferred to the jurisdiction and control of the municipalities concerned under arrangements subject to approval by the President. All unexpended balances of appropriations which are available for and which have been allotted for expenditure upon such airways, emergency landing fields, and other air navigation facilities, except airports and terminal landing fields, shall thereupon be available for expenditure under the direction of the Secretary of Commerce, in lieu of the Postmaster General, for the purposes for which such appropriations were made. No part of such unexpended balances of appropriations shall be used for the purchase or establishment of airports or terminal landing fields.

\textsuperscript{(b)} Establishment of civil airways and navigation facilities; publication of maps; no exclusive right to be granted.-The Secretary of Commerce is authorized to designate and establish civil airways and, within the limits of available appropriations hereafter made by the Congress, (1) to establish, operate, and maintain all necessary air navigation facilities, including all necessary airfields and airports; and (2) to chart such airways and arrange for publication of maps of such airways utilizing the facilities and assistance of existing agencies of the Government so far as practicable. The Secretary of Commerce shall grant no exclusive right for the use of any civil airway, airport, emergency landing field, or other air navigation facility under his jurisdiction.
until February 15, 1926—over a year after the approval of the act. Eight routes had been listed and all contracts were made on a basis of not to exceed 80% of the postal revenues. The contracts were made for four years—the full period permitted under the then existing laws. The idea behind the mail legislation was that the government should lose no money for the carriage of air mail. To determine the amount due each carrier, an actual count was made of all air mail postage.

The Amendment of 1926:

The cost of estimating the amount due each carrier by the foregoing process was too great and, as a result, the Air Mail Act was amended as of June 3, 1926. By the terms of the amendment, the Postmaster General was authorized to contract at fixed rates per pound—not exceeding $3.00 per pound for air mail for the first 1,000 miles and not over 30¢ for each additional 100 miles, and not exceeding 60¢ per pound for first class mail other than air mail for the first 1,000 miles, and not over 6¢ per pound for each additional 100 miles. Provision was made in the legislation for the amendment of existing air mail contracts, so steps were immediately taken to shift to a poundage basis.

On February 1, 1927, the air mail rates were revised so that the complex route and zone system was replaced by a simple blanket rate of 10¢ per half ounce, which rate applied between any two points in the United States. From this moment on, the air mail service was operated at a distinct monetary loss to the government. The contractors had lost money at the start; but, by the end of 1927, had reached a position to carry air mail indefinitely at the then current level of postal rates.

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24. 44 Stat. L. 692. The provisions of the amendment read as follows:

"That Section 4 of the Air Mail Act of February 2, 1925, is amended to read as follows:

"That the Postmaster General is authorized to contract with any individual, firm, or corporation for the transportation of air mail by aircraft between such points as he may designate, and to further contract for the transportation by aircraft of first-class mail other than air mail at fixed rates per pound, including equipment, under such rates, rules, and regulations as he may prescribe, not exceeding $3 per pound for air mail for the first one thousand miles not not to exceed 30 cents per pound additional for each additional one hundred miles or fractional part thereof for routes in excess of one thousand miles in length, and not exceeding 60 cents per pound for first-class mail other than air mail for the first one thousand miles, and not to exceed 6 cents per pound additional for each additional one hundred miles or fractional part thereof for routes in excess of one thousand miles in length. Existing contracts may be amended by the written consent of the contractor and the Postmaster General to provide for a fixed rate per pound, including equipment, said rate to be determined by multiplying the rate hereinabove provided by a fraction, the numerator of which is the per centum of revenues derived from air mail to which the contractor was previously entitled under the contract, and the denominator of which is eighty."
The Amendment of 1928:

The Air Mail Act was again amended, on May 17, 1928. In order to develop a volume of air mail, the postage rate was dropped to 5c per ounce or fraction thereof. Further, to anticipate the expiration of the contracts, it was provided that contractors who had operated satisfactorily for a period of two years could exchange their contracts for "air mail route certificates" for a period not to exceed ten years. These "route certificates" were not defined in the act, but were considered to be in the nature of a franchise allowing indefinite carriage at rates determined periodically by the process of negotiation. The Postmaster General was authorized to make regulations to meet postal needs and to cancel the certificates for failure to comply with the regulations. One of the results of this legislation was to increase the volume of mail carried (due in part to the 5c rate) and, also, to increase the payments made by the government. The service became less than 40% self-supporting.

The Watres Act of 1930:

The Watres Act of April 29, 1930, amending the Air Mail Act of February 2, 1925 (United States Code, title 39, section 463), as amended by the Act of June 3, 1926, is hereby amended to read as follows:

"Section 3. That the rates of postage on air mail shall not be less than 5 cents for each ounce or fraction thereof."

"Section 2. That after Section 5 of said Act (United States Code, title 39, section 465) a new section shall be added as follows:

"Section 6. That the Postmaster General may by negotiation with an air mail contractor who has satisfactorily operated under the authority of this Act for a period of two years or more, arrange, with the consent of the surety for the contractor and the continuation of the obligation of the surety during the existence or life of the certificate provided for hereinafter, for the surrender of the contract and the substitution therefor of an air mail route certificate, which shall be issued by the Postmaster General in the name of such air mail contractor, and which shall provide that the holder shall have the right of carriage of air mail over the route set out in the certificate so long as he complies with such rules, regulations, and orders as shall from time to time be issued by the Postmaster General for meeting the needs of the Postal Service and adjusting air mail operations to the advances in the art of flying: Provided, That such certificate shall be for a period not exceeding ten years from the beginning of carrying mail under the contract. Said certificate may be canceled at any time for willful neglect on the part of the holder to carry out such rules, regulations, or orders; notice of such intended cancellation to be given in writing by the Postmaster General and sixty days provided to the holder in which to answer such written notice of the Postmaster General. The rate of compensation to the holder of such an air mail route certificate shall be determined by periodical negotiation between the certificate holder and the Postmaster General, but shall never exceed the rate of compensation provided for in the original contract of the air mail route certificate holder."

25. 46 Stat. L. 259. The provisions of the amendment read as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the Air Mail Act of February 2, 1925, as amended by the Act of June 3, 1926 (44 Stat. 692, U. S. C., Supp. III, title 39, sec. 464), be amended to read as follows:

"Section 4. The Postmaster General is authorized to award contracts for the transportation of air mail by aircraft between such points
Act of 1925, provided the legal basis for far-reaching changes in the air mail service. While the mail contractors were presumably making a profit from their mail operations, most of them were losing money on their feeder lines and passenger business. They, therefore, were interested in having the government provide in some way for those losses and, as a result, were somewhat reluctant to exchange contracts for route certificates which might make possible a lower compensation. At this point, President Hoover suggested the possibility of establishing a scientific rate formula, and Postmaster General Brown is credited with the development of the new basis embodied in the Watres Act. The weight basis of payment was replaced by a space-mile basis under which the Postmaster General was authorized to contract for a certain space in an aircraft, operating at a certain time, and pay therefor irrespective of the actual mail volume. Since the amount paid bore no relation to the volume of mail carried, this formula permitted aid to both the strong and weak lines. The military value of the airplane was, of course, stressed fully.

Under the provisions of the Watres Act and the route certificates, the Postmaster General had very broad regulatory control over: (1) route location, (2) route consolidations and extensions, (3) contract bidding conditions, (4) service standards, (5) equipment and personnel, (6) accounts, and (7) compensation—including passenger losses. It is obvious that, while safety regulation remained in the hands of the Aeronautics Branch of the Department of Commerce, the equally important economic regulation was all centered in the hands of the Post Office Department.

A Request for Stability:

When, during the summer of 1931, it became apparent that the Postmaster General intended to enlarge the system by the extension
of existing lines rather than by opening the new routes to competitive bidding, a distinct protest was heard from the independents who had been building up an airline passenger business without benefit of mail contracts. During that same year, labor conditions had given rise to the Air Line Pilots Association. The air mail budget of 20 million for the fiscal year of 1932 was cut to 19 million for 1933. When it was realized that such action meant no further expansion, the various lobbying interests renewed their vigor in approaching Congress for aid. Severe competition and political and other uncertainties had thus crept into the industry. With the approach of route certificate expirations in April of 1936, the feeling became general that some stabilizing influence was the greatest need of the operators. The following testimony makes that feeling clear:

"We are not particularly interested in the money that we made last year, or the money that we may make this year. What we are interested in is establishing ourselves in this business not for the period of our present route certificates which expire in May, 1936, but for all time. We are puzzled as to what may be ahead of us after May, 1936 . . .

"It seems to me that what this business needs is a settling down. There never has been a time in this business when we could plan ahead more than a year with certainty of carrying those plans into effect. When a thing gets to be as big as this is, it is embarrassing and dangerous to be in a position where plans cannot be made and carried out deliberately over a reasonable length of time . . .

"We believe that when 1936 comes, there should be some provision made which will permit us to permanently operate over the lines that we are now operating over with rates that are reasonable, and that we should be permitted to establish ourselves just as the railroads have established themselves. 1936 is not very far in the future . . . We have great hopes that long before 1936 you will provide the legislative vehicle that will let us stay in this business . . . ."

The only hope for stability, as then envisaged, lay in the direction of placing the regulatory powers in the hands of a special commission or in the Interstate Commerce Commission and removing them from the long-time friend—the Post Office.

Air Mail Cancellation:

On February 9, 1934, came the startling cancellation order—effective February 19th. This pronouncement, by Postmaster
General Farley, came as a result of the disclosures of a special Senate investigating committee and of investigations conducted by himself. The main ground seems to have been dissatisfaction with the conference of operators in 1930, leading up to the awarding of the two transcontinental contracts without competitive bidding. By an executive order, dated February 9th, President Roosevelt directed the Secretary of War to furnish pilots and equipment necessary to carry the mail during the emergency. Thirty-four

Revised Statutes of the United States Act of June Eighteen Seventy-Two (Thirty-Nine United States Code Section Four Thirty-Two) and by virtue of the general powers of the Postmaster General it is Ordered that the following air mail contracts be and they are hereby annulled effective midnight February Nineteen, Nineteen Thirty-Four, quote routes, route certificates, and contracts held by you including contract air mail route number ............ stop. You are instructed to receive no mail for transportation hereafter that cannot reach its destination within the effective date of the order. JAMES A. FARLEY, Postmaster General."

32. David, op. cit., p. 295.

33. The President's order reads as follows: "Whereas by an order of the Postmaster General of the United States all domestic air-mail contracts for carrying the mails have been annulled; and

"Whereas the public interest requires that air-mail service continue to be afforded and the cancellation of said contracts has created an emergency in this respect;

"Now, Therefore, I, Franklin D. Roosevelt, President of the United States, under and by virtue of the authority in me vested, do hereby order and direct that the Postmaster General, Secretary of War and Secretary of Commerce, together with other officers of their respective departments, cooperate to the end that necessary air-mail service be afforded.

"It is further ordered and directed that the Secretary of War place at the disposal of the Postmaster General such airplanes, landing fields, pilots and other employees and equipment of the army of the United States needed or required for the transportation of mail, during the present emergency, by air over routes and schedules prescribed by the Postmaster General. FRANKLIN D. ROOSEVELT."

On March 27, 1934, Congress passed legislation authorizing this army mail carriage (48 Stat. L. 588) as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That during the period not to exceed one year after the date of passage of this Act the Secretary of War is authorized to place at the disposal of the Postmaster General such airplanes, landing fields, pilots, and other employees and equipment of the Army of the United States as may be needed or required for the transportation of mail during such period by air over routes and schedules prescribed by the Postmaster General: Provided, That this authority shall not be used unless and/or until such airplanes shall be fully equipped with the special equipment necessary by standard practice for safe night and day air-mail transport; and that pilots shall not be assigned to such airplanes unless and/or until fully and adequately trained in the use of such special equipment.

SECTION 2. The Postmaster General is authorized to transfer to the War Department such sums appropriated under the Act approved March 3, 1933, making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, for the Inland transportation of mail by air-craft, and for the incidental expenses thereof incurred from and after February 10, 1934, as may be required to pay the expenses of carrying the mails of the United States as provided in section 1 hereof, including replacement for all airplanes and equipment and other material damaged, destroyed, or expended thereby: Provided, That officers, warrant officers, and enlisted men of the Army on duty hereunder, while away from their permanent posts of duty, shall be paid the same per diem as is payable to civilian employees of the United States under the Subsistence Expense Act of 1926, as amended.

SECTION 3. The performance by military personnel of duty hereunder shall in no way disturb or change their military status under their respective commissions, warrants, or enlistments, in the Army, in any right, privilege, benefit, or responsibility, growing out of said military status.

Section 4. In case any officer (including warrant and Reserve officers) or enlisted man is injured or killed while performing duty hereunder the Administrator of Veterans’ Affairs is authorized and directed to pay to such officer or enlisted man, and/or his dependents, pension at the rate prescribed in part 1, Veterans’ Regulation Numbered 1 (a), and amendments thereeto: Provided, That in the event of injury of any such officer or enlisted man the degree of disability resulting therefrom shall be determined pursuant to the rating schedule.
private companies yielded the carriage of air mail to the army. The death of twelve military pilots between February 16-March 9 elicited a letter from the President on March 10, 1934, which ordered a cessation of air mail carriage by the Air Corps. Undoubtedly this action, coupled with a growing popular demand, encouraged Congress to provide legislation looking to the return of the service to private operators.

The Air Mail Act of 1934:

The Air Mail Act of June 12, 1934, was passed as expeditiously as possible and was accepted merely as a temporary measure—largely because it provided for the appointment of a special commission to carefully investigate all phases of aviation and recommend policies and legislation looking toward a more permanent administrative organization and control.

The basic features of the Air Mail Act of 1934, and its changes, have been summarized as follows:

Postal Rates. The rate of postage is reduced from 8 cents for the first ounce and 13 cents for each additional ounce to 6 cents for each ounce or fraction thereof.

Duration of Contracts. The term of contracts is radically changed from that in force under former legislation. The Act of 1930—repealed in this bill—provided that contracts once let could be extended for a total period of ten years.

Contracts under the new bill are to be awarded for "initial periods of not exceeding one year." After the initial period, if the contractor has performed satisfactorily, the contract shall be continued in effect for an indefinite period.

Public Utility Law—The Interstate Commerce Commission. The unlimited life of contracts principle, apparently borrowed from the indeterminate permits of public utility law, is in company with other features of public utility practice incorporated in the new bill, to-wit:

The Interstate Commerce Commission becomes an active participant in the administration of air law for the first time. Any contract continued after the initial period may be terminated by the Commission on sixty days' notice and hearing.
While competitive bidding is retained as an element in awarding contracts, the Interstate Commerce Commission is required to "fix fair and reasonable rates of compensation for each route "but not in excess of the rates provided for in this act." This mandate is a continuing one and requires a review of the rates of compensation at least annually. "In determining what may constitute an unreasonable profit the said Commission shall take into consideration all forms of gross income derived from the operation of airplanes over the route affected.

Also if where he deems all bids excessive or if there is but one bid the Postmaster General may refer the matter to the Interstate Commerce Commission and then the Commission has jurisdiction to direct action in the premises.

Compensation Limits. Limitations of compensation to contractors contained in Section 3 (a) are:

1. 33⅓ cents per airplane mile for loads of mail not exceeding three hundred pounds.
2. Each contract shall provide a base compensation for transportation of three hundred pounds of mail or fraction thereof plus one-tenth of such base rate for each additional one hundred pounds or fraction thereof;
3. Computation of average mail load shall be made monthly for the purpose of determining said compensation; and
4. "In no case shall payment exceed forty cents per airplane mile."

Assignment. Contracts may only be assigned with the consent of the Postmaster General.

Extensions. The Postmaster General may extend a route not to exceed one hundred miles "and only one such extension shall be granted to any one person, and the rate of pay for such extension shall not be in excess of the contract rate on that route." The total air mail system, including extensions, shall not exceed 29,000 miles and air mail transportation shall not exceed an annual aggregate of 40,000,000 airplane miles.

Existing Contracts. Existing contracts may be confirmed by the Postmaster General and he is authorized to extend such contracts not exceeding nine months in the aggregate.

Application of Railway Mail Provisions. The administrative methods and procedure for adjustment of rates provisions for carriage of mail by railroads, incorporated in Section 523 to 568, inclusive, are made applicable to ascertainment of air mail rates.

The referred to provisions of the Postal Service Appropriation Act provide: for adjustment of compensation by the Postmaster General; fines imposed by the Postmaster General for failure or refusal to perform service; requirements that all railroad common carriers carry mail; determination of just and reasonable rates by the I. C. C.; statement by the Postmaster General to be filed with the I. C. C. showing a plan of service and stating what the Postmaster General believes to be reasonable compensation; hearings by the I. C. C.; classification for rate-making by the I. C. C.; orders by the Commission; re-examination; use of carriers by the Postmaster General for the return of empty mail sacks and other postal equipment; weighing mail; fine for refusal of carrier to carry mail; additional service and curtailment and
discontinuance of service; special contracts at higher rates; fines for failure to furnish equipment and deductions in compensation for reduction or infrequency of service.

Accounting—Rate Base. The Postmaster General may regulate the accounting practices of contractors and the Interstate Commerce Commission is given like powers.

In fixing and determining the fair and reasonable rates of compensation for air mail transportation, the Commission shall give consideration to the amount of air mail so carried, the facilities supplied by the carrier, and its revenue and profits from all sources, and from a consideration of these and other material elements, shall fix and establish rates for each route which, in connection with the rates fixed by it for all other routes, shall be designed to keep the aggregate cost of the transportation of air mail on and after July 1, 1938, within the limits of the anticipated postal revenue therefrom.

Unfair Practices. Section 7 prohibits, after December 31, 1934, air mail contractors holding interest in any other aviation enterprise except that contractors may own and operate landing fields and appurtenances. Conversely, other aviation enterprises are prohibited from holding any interest in air mail contracts. Contractors are prohibited from employing any person in a managerial capacity who has entered into any unlawful combination to prevent air mail bidding.

The Postmaster General, under this Section, is given power to require an affidavit of a contractor stating that said contractor will not combine to prevent air mail bidding or, if said contractor pays any officer more than $17,500 per annum, an affidavit so stating may be required.

Claims Against the United States. Where formerly existing contracts have been annulled, claims thereon are allowed to be prosecuted in the Court of Claims.

Stockholders of Bidders. All bidders must furnish the Postmaster General with a list of stockholders holding more than 5 per centum of the capital stock of said bidder, a financial statement and, in the case of a corporation, the original amount paid to the corporation for its stock. The Postmaster General may consider this information in determining the qualifications of the bidder.

Equipment. The Secretary of Commerce shall specify the speed, load capacity and safety features of equipment to be used on each air mail route.

Safety of Pilots. The Secretary of Commerce shall regulate the hours and retirement benefits of pilots and mechanics.

National Labor Board. All contracts shall be let on the condition that rates of compensation, working conditions and relations of all pilots, mechanics and laborers of contractors shall conform to the decisions of the National Labor Board—saving to such employees the right of collective bargaining.

Radio. The Federal Radio Commission shall give equal facilities to mail and passenger planes.

Penalties. Penalties are provided for interfering with competitive bidding and violation of the Act.
Aviation Commission. The President is authorized to appoint a com-
mision of five members (not more than three from any one party) "for the
purpose of making an immediate study and survey and to report to Congress
not later than February 1, 1935, its recommendations of a broad policy cover-
ing all phases of aviation and the relation of the United States thereto.
Members appointed who are not already in the service of the United States
shall receive compensation of not exceeding the rate of compensation of a
Senator or Representative in Congress."

A Secretary is provided for this commission at not to exceed $5,000
annual salary and $75,000 is appropriated for administrative purposes.

IV. SPECIAL AVIATION COMMISSION RECOMMENDATIONS.

Since the World War, there have been five principal official
reports on the condition of aeronautics, both civil and military, in
the United States, with conclusions of policy and recommendations
to the Congress. These reports are as follows:

(3) The Breckinridge Committee Report of 1935.

These reports are sufficiently summarized in the following
abstracts:

The Crowell Commission Report:

(American Aviation Mission, Chairman Benedict Crowell, Assistant Sec-
retary of War; Report of July 19, 1919, to the Secretary of War; consulted
in British Parliament Document Cmd, Air Ministry, October, 1919.)

This Commission was to visit Europe and report on Aviation as to (I)

I. Organization:

The Commission recommended

1. Concentration of all aviation activities—civilian, naval, military—
   into a single department, with a Cabinet officer at the head.
2. Schools to be established, preparing for a National Air Service.
3. Coordination with War and Navy Departments by
   (a) Keeping Supply and Training under Secretary for Air,
   (b) Transferring to Army or Navy Command the opera-
       tions of Air forces.

36. For the entire summary of reports contained in this section, the writer
    is indebted to Colonel John H. Wigmore who prepared it, in his capacity as
    Legal Counsel, for the use of the Senate Sub-Committee on Aircraft Investiga-
    tion. The writer clearly recognizes that the recommendations of some of these
    committees pertain very largely to matters other than civil aeronautics. He
    has included them, however, due to the fact that they will continue to serve in
    the formulation of a national air transportation policy.
II. Commercial Development:

1. Air Department to establish flying routes, publish maps, etc.

2. Air Department to establish airports, and to encourage their further establishment by local authorities; subject to uniform Federal control by law.

3. Air Department to equip all routes and ports with communication apparatus—as is done for marine shipping.

4. Air Department to establish meteorological service.

5. Air Department to provide research and training facilities and to encourage research by universities.

6. Air Department to encourage technical development (as in III below).

7. Air Department to negotiate for uniform international regulations, and to establish Federal regulations for safety in commercial air traffic and for promotion of commercial air traffic; air-commerce to be regulated only by Federal law as interstate commerce.

8. Insurance against air-risks to be encouraged.

9. Commercial aviation to be encouraged by payment for mail and express, by guarantees of volume of business, and by “Compensation for keeping their facilities available for use in time of war.”

III. Technical Development:

1. Air Department to have a Technical Division, to cover
   (a) Research and testing
   (b) Utilization of new improvements discovered in practice
   (c) Attention to needs of Army, Navy and Civil aviation
   (d) Development of all incidental apparatus (parachutes, munitions, etc.)
   (e) Extension of technical aid to inventors and designers
   (f) Encourage private designs for heavier-than-air, etc. and “avoid competition with the industry”
   (g) Encourage competitive design in all branches
   (h) Publish all technical data, and keep advised of technical progress abroad
   (i) Pay for independent design and experimentation
   (j) Inspect and test all experimentation, and issue certificates of air-worthiness
   (k) Cooperate closely with technical and industrial bodies

The Morrow Board Report:

President Coolidge, at the request of the Secretaries of War and of Navy, on September 12, 1925, appointed a Board of nine persons to report on “the best means of developing and applying aircraft in national defense.”
Mr. Dwight Morrow was chairman; the other members included Gen. Harbord, Admiral Fletcher, Howard Coffin, and William Durand (aeronautic experts). Hearings lasted 4 weeks, and 99 witnesses appeared. On November 30, 1925, the Board presented a printed 35-page report. (Sen. Doc. 18, 69th Congress, 1st Sess.) The report opens with a statement that the most contrary views were presented, both as to facts and as to policies. It then divides itself into two parts; I, General Policies, II, Specific Measures

I. General Policies:

1. The military and the civilian services "should remain distinctly separate." [This is just the opposite of the Crowell Board's view.] The reasons given for this view are convincingly stated.

2. Civilian use of aircraft should be promoted
   (a) By establishing a Bureau of Air Navigation, under an Assistant Secretary of Commerce
   (b) By lightening the burden resting on private capital in financing the development of aircraft, airways, and navigation facilities
   (c) By reducing air-travel hazards
   (d) By formulating basic air laws
   (e) By providing government inspection and licensing, with a view to safety
   (f) By developing insurance facilities.

3. The military air policy of the U. S. should regard aircraft "primarily as an agency of defense"; and in this connection
   (a) This country is not in serious danger of air attack from any potential enemy
   (b) There should not be a Department of National Defense, consolidating Army, Navy, and Air.
   (c) There should not be a separate Department of Air. (Reasons for this are persuasively stated.)

II. Specific Recommendations:

1. The Army.
   (a) The "Air Service" should become "Air Corps"
   (b) The Air Corps should be under an additional Assistant Secretary of War
   (c) The General Staff should have an Air Section
   (d) Two more brigadier generals should be appointed in the Air Corps
   (e) Rank in the Air Corps should be made commensurate with command in certain cases
   (f) Extra pay for flying in peace times should be regularized
   (g) Training for reserves, etc., should be provided
(h) More enlisted men as pilots should be used
(i) Special appropriations to provide for the newest types of equipment are needed for a period of years.

2. The Navy.
(a) An additional Assistant Secretary of the Navy should be appointed
(b) The scheme of promotion should be made fairer to air officers
(c) Flight pay should be improved
(d) Training for reserves should be enlarged
(e) Aviators should be represented in the offices of the Chief of Naval Operations and the Bureau of Navigation
(f) Command of flying activities should be given only to naval aviators
(g) Aviation duty and sea-duty should be better coordinated
(h) Special insignia and decorations should be provided
(i) Aeronautic design and construction should be given better recognition
(j) Use of enlisted men as pilots should be increased.

3. The Aircraft Industry. Because of the importance of aircraft to national defense, and of the necessity for immediate expansion of the air force in time of war, the industry should in time of peace be fostered by the following measures:
(a) Continuity of orders and standard of replacement
(b) Orders given only to well qualified companies
(c) Proprietary design-rights to be fully recognized
(d) Governmental competition to be eliminated
(e) Small orders for experimental designs at liberal prices to be regularly given
(f) Statutory requirement of competitive bidding to be modified for the purpose of (c)
(g) Governmental research and testing facilities to be liberally continued.

The Breckinridge Committee Report:

On April 3-4, 1933, the dirigible U. S. S. Akron crashed into the sea on the New Jersey coast, with total destruction of ship and company (except three survivors). A joint Committee of the two Houses of Congress, with 10 members, was appointed to investigate and report on Dirigible Disasters. The Committee between April 25 and June 6 held hearings, and heard 56 witnesses. A report was filed (not dated nor signed) printed as "Congress, 1st session, Committee Print: Airship Investigation. Report of Col. Henry
NATIONAL TRANSPORTATION POLICY

The report (excluding appendices, pp. 17-177) covers 16 pages and makes the following recommendations:

1. and 2. Cause of the crash was navigation into storm conditions.
3. and 4. Development of airships by the Navy should be continued.
5. Training and experiment should be continued. Command of airships should be given only to experienced officers. Specialization by officers in aircraft should not impede promotion.
6. Training-ship should be built, and two regular ships be maintained with the fleet.
7. The Weather Bureau should issue daily four general weather maps instead of two only.

The Baker Committee Report:

On April 17, after the Postmaster General's cancellation of the airmail contracts and the Army Air Corps had been carrying the mail in the winter of 1933-34, with consequences that led to public discussion, the Secretary of War appointed a Committee to report on "the operation of the Army Air Corps and the adequacy and efficiency of its technical flying equipment and training for the performance of its mission in peace and in war." Former Secretary of War Newton D. Baker was chairman, and there were six civilian members and five military members. The Committee was directed to include in its report a "study of the proper relationship between Army aviation and Civil aviation." After taking the testimony of 105 witnesses with a record of 4,283 pages and after visiting the various aviation centers and receiving 536 communications from Air Corps officers, the Committee filed its report on July 18, 1934.

Its conclusions and recommendations were as follows:

1. Relatively to foreign countries; in general aviation, the U. S. A. leads; in commercial aviation it is superior; in naval aviation it is stronger; in military aviation it needs more financial support.

2. The military policy is and should be limited to national defense. The present organization is sound, but lacks adequate financial support.

3. The aviation industry is essential to national defense.
   (a) Hence it should be encouraged by an annual program of procurement for Army and Navy, by a more liberal policy of design competitions and orders for experimental types.
   (b) The Government should not compete with private industry.
   (c) Purchase by design competition and by negotiation should be allowed by law, and not merely purchase by open competitive bids.
4. The Air Corps should remain in the Army, under an Assistant Secretary of War for Air.
5. Within the Air Corps should be a Headquarters Combat Force. Combat and Procurement should each have a chief.
6. Air Corps Interior Organization and Strength should be changed in numerous details as to personnel, training, promotion, etc.
7. The armament, equipment, munitions, etc., of the Air Corps are deficient, due to lack of appropriations. "Practically all of the matters presented calling for remedial action are traceable to lack of funds."
8. Civil aviation being essential in preparation for national defense,
(a) Airways, air navigation facilities, and ground facilities should be developed.
(b) Commercial pilots should be encouraged to join the Army Reserve.
(c) Army pilots should be trained to use the national airways.
(d) By liaison, the Army Air Corps should be kept in touch with latest commercial transport equipment and methods, which are always the most advanced, and should adopt them.
(e) Cargo and transport planes should be converted or developed from commercial types.

The Federal Aviation Commission:

By the Air Mail Act of June 12, 1934, the President was authorized to appoint a Commission to report on "a broad policy covering all phases of aviation and the relation of the U. S. thereto." The Chairman was Clark Howell of Atlanta, with four associates (three of whom were experts in various phases of aviation); the Secretary was a member of the Bureau of Air Commerce; and the Commission retained two legal advisers versed in aviation law. The Committee spent two months in a 13,000-mile travel tour of the U. S. A., the Chairman visited four European countries; from September to November some 200 witnesses were heard, with a record of 4500 pages. Its report of 254 pages was transmitted to Congress on January 31, 1935.

The recommendations were divided under twelve heads, as follows:§

I. Air Transport.
II. Miscellaneous Civil Aviation.
III. Airports.
IV. National Defense Organization.

I. Air Transport:

1. It should be the policy of the United States to maintain a position of world leadership in air transport, and to lend such air as may be necessary to insure that the most modern and efficient equipment and methods shall be applied on American domestic and foreign air lines.

2. There should be no legal limitation upon the growth of air transport.

3. The carriage of mail should be put on a commercial basis, with payments to lines within the amount received by the Post Office. Whatever additional sums are for the time being necessary to maintain and develop adequate transport services should be allocated specifically to that purpose by the government.

4. There should be a close and continuous governmental control of the financial aid having to be given to air lines. Certificates of convenience and necessity should be issued under proper safeguards and specifications. Provisions should be made to specify a minimum quality of service and a minimum frequency of schedule on air lines. Rates of fare should be subject to governmental approval, and the financial structure of air lines should be supervised and their general conformity with the letter and spirit of the law watched over by appropriate governmental agencies. For these purposes we suggest the creation of a nonpartisan commission, described in detail in another section of our report.

5. All regular domestic scheduled transport operations should require a certificate of convenience and necessity, to be issued by the commission hereinafter proposed. Such certificates should not be cancelled except for good cause without equitable compensation to the holder.

6. Direct Federal aid should not as a matter of course be extended to all air lines having certificates of convenience and necessity, but only to such air lines as are deserving of such aid in the public interest.

7. Every air line operating on December 1, 1934, should be considered to have a presumptive right to the receipt of a certificate of convenience and necessity.
The development of new airways and the provision of navigation facilities thereon should be a responsibility of the Department of Commerce, subject to commission approval.

It should be the general policy to preserve competition in the interest of improved service and technological development, while avoiding uneconomical paralleling of routes or duplication of facilities.

The Post Office Department should be free to use any service that exists, without being limited by specific contracts.

The rates to be paid by the Post Office Department to air lines carrying mail should be fixed by the commission hereinafter proposed.

The direct financial aid given to air lines should be under the constant control of the commission, and subject at all times to revision as technical improvement, changes in operating conditions, or the needs of the particular territory served may require. The formulas under which aid is extended should be such as to encourage good management and technical progress, and to stimulate rapid evolution towards complete self-support and independence of direct governmental aid.

The control of a multiplicity of air lines through holding companies should be prohibited. The ownership of stock in air lines by corporations engaged in other activities, or the interlocking of diverse aeronautical interests, should be strictly controlled by the commission hereinafter proposed. Nothing should be permitted which would in any way reduce the effectiveness of any competition, the preservation of which could serve the public interest, or which would interfere with the exercise of the government's regulatory functions. Subject to these paramount considerations, the door should be left open as far as possible for a free flow of investment capital into air transportation in the interest of a strengthening of its structure and an improvement of its facilities.

Air Lines should be made eligible, as railroads now are, for loans from the Reconstruction Finance Corporation upon suitable security.

In connection with the placing of the carriage of air mail upon a strictly commercial basis, involving no net financial burden upon the Post Office Department, there should be authorization for experiments with special classes of lightweight air mail matter carried at a low rate, in the interest of an increase of the total volume of air mail and the gross receipts of the service.

It should be a duty of the commission hereinafter proposed to require periodic financial and operating reports from all air
lines, to examine into their status at suitable intervals, and to make public record of such reports.

(17) It should be the policy of the commission herein proposed to subscribe to the principles contained in Section 7 (a) of the National Industrial Recovery Act, and to foster adherence thereto, in all branches and activities of air transport; and to use its influence to bring together employers and the duly chosen representatives of their own choosing of the several crafts and callings with a view to agreeing upon a method of procedure to be followed in the handling and adjustment of all questions involving wages, hours, and conditions of employment.

(18) The control, in the interest of public safety, of the minimum standards of equipment and the operating methods and organizations and ground facilities of civil aeronautics should continue approximately as at present, but under the jurisdiction of the commission hereinafter proposed.

(19) There should be no attempt to require the inclusion of military features in the design or equipment of transport airplanes.

(20) Air transport in American territories and possessions should be developed, and in particular there should be an increase of air transport service and ground facilities available for air navigation in Alaska.

(21) The national policy of stimulating air transport should extend to the promotion of American-flag air lines connecting the United States with our territories overseas and serving our major trade routes to foreign countries. The time has now come when air transport can be regarded on a world-wide basis, and in particular when the early inauguration of regular trans-oceanic services by aircraft can be foreseen.

(22) The Secretary of Commerce should study ways and means to foster American air lines to foreign countries and recommend to the Congress, from time to time, legislation governing the extension of financial aid. Consideration should be given to the nature of similar aid given the merchant marine, with a view to developing a coordinated policy.

(23) The policy of making available for the carriage of mail all American air lines rendering regular service, and of payment by the Post Office Department to the air lines only for service rendered, should be extended to future arrangements for foreign air lines. The rates of payment to the air lines for the carriage of mail should be fixed by the commission hereinafter proposed, and such additional aid as may be necessary to build up and maintain a proper service under the American flag outside of the boundaries of the United States should be allocated by the commission.

(24) No change should henceforth be made in the existing foreign
air-mail contracts except with the approval of the commission hereinafter proposed.

(25) The governmental administration of foreign air transport should as far as possible be kept similar to that of the domestic air line system, but with such modifications as may be clearly necessitated by a fundamentally different political, legal and operating status. The status of American air transport in foreign fields competing with foreign-owned air lines should in general not be one of competition between American lines, but of carefully-controlled regional monopoly. The general powers of the commission hereinafter proposed in connection with foreign air transport should be essentially similar to those which it enjoys in the domestic field, and the commission should have the additional power of stipulation for fixed periods certain minimum and maximum conditions of service and of governmental aid in the interest of stability of the undertaking and of encouragement of large investment in ground facilities.

(26) The policy of the United States should be to support and assist American air lines in their relations with foreign governments and with foreign competitors. It should be considered as in the public interest to regulate and control foreign air lines entering the United States with the purpose of securing for American air lines equality of opportunity in foreign countries.

(27) It should be provided by legislation that American air lines outside the continental United States should have the same opportunity now given by the Shipping Act to American steamship lines to enter into trade and traffic agreements with their competitors. Such agreements should be subject to approval by the commission hereinafter proposed.

(28) The existing regulations for customs clearance, immigration, and public health clearance should undergo early revision and the greatest possible measure of simplification to meet the special problems of aircraft operation in international service.

(29) As a measure of immediate emergency, the present Air Mail Act (Public 308, 73rd Congress) should be amended so as to empower the Interstate Commerce Commission to revise existing air mail rates either upward or downward as the facts may warrant, and subject to such revision existing contracts should continue in force until such date as the commission hereinafter proposed, in the exercise of its full powers and duties, may prescribe.

(30) As a measure of immediate emergency, the provisions of the present Air Mail Act (Public 308, 73rd Congress) regarding the designation of primary and secondary routes, and the prohibition of an air line from holding more than one primary and two secondary route contracts, should be
amended so as to postpone their effective date to January 1, 1936.

XII. Air Commerce Commission:

(102) There should be created an air commerce commission, its members appointed by the President by and with the consent of the Senate for long terms. The commission so created should have broad supervisory and regulatory powers over civil aeronautics and particularly over domestic and foreign air transport. It should have all powers necessary to the attainment of its general supervisory and regulatory purposes, including the power to hold hearings and conduct investigations upon any subject pertaining to civil aeronautics. It should be subject to merger by executive order at any time with any other body of a similar nature having similar functions.

V. LEGISLATIVE PROPOSALS IN 1935.

Federal Coordinator of Transportation:

Late in January, 1935, the Third Report of the Federal Coordinator of Transportation was transmitted to Congress. The section pertaining to air carriers reads as follows:

"In his Second Report, the Coordinator traced the development of commercial air transportation and discussed the organization and condition of the industry, and the character and extent of existing Federal and State regulation. This conclusion was reached:

The need for added Federal regulation of air lines is sufficient to warrant definite recommendations in the form of a bill of proposed legislation at this time. Owing, however, to the fact that Congress has under consideration and doubtless shortly will enact measures intended to meet immediately urgent conditions, which measures may materially change the present set-up and the problems of the industry, it is deemed to be the sounder course to postpone for a time the formulation of specific legislative proposals. Developments in the ensuing months can be observed and their bearing on a program of permanent legislation determined. It is well, however, to record at this time the carefully considered belief that regulation, when undertaken, should be placed in the hands of the Interstate Commerce Commission. This agency could perform the work expertly and at small added cost. The addition of this function would represent a logical rounding out of the program of regulation of the several agencies of transportation which is recommended elsewhere in this report.

"The essentials of such a program were indicated to be 'the administration of payments for the carriage of the mail, the administration of any subsidies which Congress may authorize in the future, and control of entrance into the industry and of extensions of lines.' Control of accounting, capitalization, and mergers or acquisitions was also referred to as likely to be necessary to secure effective results. Control of passenger and express rates was not considered necessary, at least for the time being.

"As was anticipated, much has happened since these views were ex-
pressed. The Air Mail Act, 1934, authorizes the Postmaster General to award, on the basis of competitive bidding and subject to certain minimum rates of compensation, contracts for the transportation of air mail, and to extend, for a period not exceeding 9 months, the short-term emergency contracts let under competitive bidding. The Interstate Commerce Commission is given certain duties in the fixing and determination of fair and reasonable rates of compensation for the transportation of air mail, and it has created a Bureau of Air Mail to aid in the performance of these duties.

“The Air Mail Act also provided for the appointment of a Commission, known as the Federal Aviation Commission, to study the situation and report its recommendations 'of a broad policy covering all phases of aviation, and the relations of the United States hereto.' The creation of this Commission emphasizes the broad scope of the problems created by the rise of transportation by airplane. Regulation of commercial air transport as an economic enterprise is only one of these problems. Military aviation, the need for further promotion of safety, and the determination of proper relations between the manufacturers and the operators of airplane equipment are some of the other large questions which fall within the scope of the inquiry.

“The field of organized, commercial air transport is, however, a distinctive one and in it lie problems which permit of segregated treatment. In view of the creation of the Federal Aviation Commission and the special study which it has given to these questions, the Coordinator has not undertaken to arrive at conclusions and make recommendations on his own account. In the reorganization of the Interstate Commerce Commission hereinafter proposed, however, place is provided for the regulation of commercial air carriers, if it should be decided to assign this duty to the Commission.”

Federal Aviation Commission:

A few days thereafter, on January 31, 1935, the Report of the Federal Aviation Commission was transmitted to Congress. The report, it will be remembered, included 102 recommendations covering all phases of aviation. The entire civil aeronautics program of the commission (except for emergency problems of primary routes and increased rates of pay) was embodied in the provisions of the commission bill, introduced on the same day by Mr. Lea of California and known as H. R. 5174.

The objectives of the bill, briefly stated, were as follows:

(1) To create an independent administrative agency which should have broad supervisory and regulatory powers over

(a) domestic and foreign air transport (including control of competition, service, air mail pay, other rates, and the awarding of subsidies), and

(b) other phases of civil aeronautics (including all the activities now carried on by the Air Regulation Division of the Bureau of Air Commerce);

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(2) To provide for the transfer or merger of such agency, by Executive Order, to or with any other administrative agency established to control all forms of transportation—when and if such transfer should be deemed desirable (but supposedly not until the immediately pressing problems of aviation had been met and the industry had come nearer to position of economic maturity);

(3) To amend the Air Commerce Act of 1926 so as to modernize its provisions (in keeping with current practices and desires of the Bureau of Air Commerce); and

(4) To codify into one act the essential provisions relative to civil aeronautics and to repeal any conflicting laws.

The bill consisted, therefore, of three sorts of provisions: (1) new provisions describing the organization and authority of the proposed commission—which provisions were taken over or adapted from the standard provisions of the Interstate Commerce Act and Communications Act, (2) new provisions representing the practices of the present Bureau of Air Commerce for which no sufficiently express authority was given in the 1926 Act (or 1934 amendments), but which require legislative expression, and (3) provisions reproducing the language of the 1926 Act, all of which (so far as not obsolete) were included.39

It will be noticed that, in answer to an almost unanimous recommendation on the part of aviation experts who testified before it, the commission proposed the setting up of an independent administrative body to control all phases of aeronautics—with the expectation that, eventually, such body might be merged into a larger and more comprehensive transportation board (such as an enlarged I.C.C.).

Relative to this fundamental commission proposal, the President, in his letter of transmittal, said:

"The Commission further recommends the creation of a temporary Air Commerce Commission. In this recommendation I am unable to concur. I believe that we should avoid the multiplication of separate regulatory agencies in the field of transportation. Therefore in the interim before a permanent consolidated agency is created or designated over transportation as a whole, a division of the Interstate Commerce Commission can well serve the needs of air transportation. In the granting of powers and duties by the Congress orderly government calls for the administration of executive functions by those administrative departments or agencies which have functioned satisfactorily in the past and, on the other hand, calls for the vesting of judicial functions in agencies already accustomed to such powers. It is

this principle that should be followed in all of the various aspects of transportation legislation."

With this expression of views, the matter rested. The Federal Aviation Commission disbanded, its report was filed for reference, and the Lea Bill remained in committee.

The McCarran Proposals:

On January 21, 1935, Senator McCarran, who had closely followed the work of the Federal Aviation Commission, introduced a bill (S. 1332) to provide for the promotion and control of all phases of civil aeronautics under the direction of a "Civil Aeronautics Commission." Fully aware of the strong demand for an independent regulatory body, he made adequate provision therefor in his bill.

Following the presentation of their report, the members of the Federal Aviation Commission returned to their homes—as no provision had been made for their continuance as a body after February first. On the other hand, Senator McCarran immediately sought to amend his bill to meet more clearly the suggestions of policy enunciated by President Roosevelt in the above-mentioned letter of transmittal. Accordingly, he introduced S. 3027 May 13 (calendar day, June 10), 1935. After further study and consideration of S. 3027, he proposed an amendment May 13 (calendar day, July 10), 1935. Hearings were held by the Senate Subcommittee of the Committee on Interstate Commerce and certain amendments were proposed and adopted by the committee. The bill was reintroduced and became S. 3420 July 29 (calendar day, August 15) 1935.

The basic feature of the revised McCarran proposal was to place all regulatory authority in the Interstate Commerce Commission. It not only included air carriers but airport operators as well, and was so drafted as to become Part IV of the Interstate Commerce Act under the title, The "Air Transport Act of 1935."

It is not the writer's purpose to review all of the testimony presented at the Senate Subcommittee hearings of July 29th, July 30th, July 31st, and August 6th. Instead, he desires only to indicate the fundamental differences of opinion that had developed by mid-summer. Since no final action was taken on S. 3420 by the 74th Congress, the subject matter of these debates is still of consequence. To understand the issues, we must remember that the air mail operators were entirely dissatisfied with the Air Mail
Act of 1934, and that the Amendment (H. R. 6511) was not approved until August 14, 1935, after these hearings were concluded.

Senator McCarran's compromise with desire and practicality, at the opening of the hearings, is manifested by the following statement:

"The Committee will recall that during the Seventy-third Congress I introduced a bill passed upon the same subject. At that time I believed and I still believe that, which is my individual belief, it would have been better to have an independent commission to deal with air transportation. However, the President has taken the view that it should come under the Interstate Commerce Commission, and while we may not agree entirely, perhaps it would be best to try that out . . ."40

The Senator relied not only on the word of the President as of January 31st, but also upon a later message of June 7th wherein the President recommended the extension of the Emergency Railroad Transportation Act and discussed aviation as follows:

"I have already recommended to the Congress my views with regard to the relations that should exist between the Federal Government and air carriers. Legislation has been introduced for the purpose of carrying out these recommendations. I am in general accord with the substance of this legislation although I still maintain, as I indicated in my message on that subject, that a separate commission need not be established to effectuate the purposes of such legislation. Air transportation should be brought into a proper relation to other forms of transportation by subjecting it to regulation by the same agency."

"It is my hope that the Interstate Commerce Commission may, with the addition of the new duties that I have indicated, ultimately become a Federal Transportation Commission with comprehensive powers. It has been my intention to recommend this strongly to this session of the Congress, but the time remaining seems to preclude the discussions necessary for such changes. Such a reorganization should not be delayed, however, beyond the second session of the Seventy-Fourth Congress."41

Testimony favorable to the McCarran proposal, as revised, was quickly introduced into the record. A letter from Mr. McManamy, Chairman of the Legislative Committee of the Interstate Commerce Commission, written July 26, 1935, was introduced—part of which reads as follows:

"Subject to the above corrections it is believed that the amended bill will promote the orderly and safe development of air transportation with due regard to the interests of the Government, the public, and the operators."42

40. Hearings before a Subcommittee of the Committee on Interstate Commerce of the United States Senate (74th Congress, 1st Session) on S. 3027, p. 22. Italics ours.
41. Hearings, p. 22. Italics ours.
42. Hearings, p. 15.
In an earlier letter of July 19th, Mr. McManamy had set forth the general position of the Interstate Commerce Commission in a more comprehensive statement, part of which is here repeated:

"Domestic air transport had its origin in a desire of the Federal Government to create a superior means of handling the mails and the development of the service is the direct outgrowth of pioneering efforts on the part of the Government itself in originating night-flying and ground aids to navigation which made possible the first transcontinental air-mail route in this country.

"When the Government had accomplished its original purposes of demonstrating the practicability of commercial flying, it turned over the air-mail transportation to private contractors. As a further means of perfecting the service, the Government later encouraged these contractors to provide passenger and express transportation with the expectation that eventually the cost to the Government of transporting the mails could be reduced to a nominal figure. Incidentally, it was thought the establishment of a network of air lines staffed with experienced personnel would serve as an adjunct to national defense.

"Under this policy, the services of these contractors have gradually expanded until now they have in fact acquired the status of carriers, rather than primarily that of mere contractors for air mail. They now transport passengers and express under published tariff rates, have entered into interline agreements, both between themselves and with other forms of transport, have established consolidated ticket offices, and, in one instance, three railroads are actively participating in the development of air transportation service for passenger and express.

"Today, practically all domestic transport service is rendered by mail contractors."

"Although there has been a transition in the nature of the services rendered by air carriers, their services are still controlled by contract. The Air Mail Act of 1934 provides some degree of regulatory control over the services and charges, not only for mail, but indirectly to some extent over passenger and express traffic as well. There is thus the anomaly of carrier services being performed, and regulated to a certain extent, under contract. The pending amendments to the Air Mail Act of 1934 would amplify somewhat the present form of regulation, but would not change the method under which the service is being conducted, and would perpetuate the contract basis of mail payments.

"There is no doubt that mail compensation still has an important bearing upon air transportation in this country, and that nevertheless many of the carriers are still operating at deficits. Neither of these facts, of course, alters their status as carriers, but the fact that their operations are authorized and conducted largely—in some cases, entirely—with reference to the mail service, precludes full application of the principles usually attending regulation of carrier services. At present the service is regulated solely with regard to the dispatch of the mail, rather than the public convenience and necessity. Termini of, intermediate stops on, and the frequency of schedules over the routes are decided largely with reference to the desire for mail service, and not with relation to natural traffic flows. Mail loads bear no relation to passenger or express loads, notwithstanding the inflexible limits of the
maximum load capacity of airplanes, with the result that in some instances there is serious interference with the development of passenger and express business. The present method of conducting the service makes difficult the task of administering what little regulation thereof as a carrier is provided in the present law. The situation cannot be otherwise so long as mail transportation constitutes the predominating and controlling motive and influence of the service.

"Considering the large sums of money and extensive time and effort which the Government has already contributed to the development and safe operation of air transportation, together with the encouragement it has given private enterprise to enter the field of carrier service by air, it would seem logical that if further development of the service is desired, such development should be carried forward under such regulation as it would eventually receive and which at the same time would give adequate consideration to all phases of the business, instead of exclusively to one. Development in this manner would be more orderly and more in harmony with that of other forms of transportation.

"Assuming that it is the intention to give recognition to the carrier status of the air-transport industry, the amendment seems well designed and suited to meet its objectives, except that minor corrections should be made . . . ." 42

On August 6th, the Federal Coordinator of Transportation, Mr. Eastman, appeared before the Senate Subcommittee and testified as follows:

"I have the view that it is desirable one commission should control all forms of transportation rather than that the subject should be divided up among a number of special commissions, because I think we have got to consider transportation more and more from the general standpoint, with the view of securing a transportation system made up of all those parts which will operate together in the most efficient way, with all transportation agencies interlocking and interrelated to a very considerable extent. I think that is more true of the other forms of transportation perhaps than it is of air transportation. Nevertheless, I think there is an interrelation between air transportation and the other forms of transportation.

"From that point of view I am in favor of legislation which will provide for supervision of this subject by the Interstate Commerce Commission, and I think the Commission can handle it." 43

Senator McCarran introduced a letter from Chairman Clark Howell (of the Federal Aviation Commission) written on February 25, 1935, in which Mr. Howell stated:

"Permit me, however, to take this opportunity to put myself on record as being in favor of complete regulation of all forms of transportation by the Federal Interstate Commerce Commission—water, air, highway, and railroad." 44

42. Hearings, pp. 15-17. Italics ours.
44. Hearings, p. 114. Italics ours.
The Senator claimed that 87.59% of the witnesses who appeared at the hearing, testified in favor of his bill.\textsuperscript{46} Mr. Edward G. Hamilton, representing the Air Line Pilots Association, said:

"We have always been in favor of the regulation of our industry by the Interstate Commerce Commission . . . .\textsuperscript{47}

Mr. Edward V. Rickenbacker, General Manager of Eastern Air Lines and Vice-President of North American Aviation, said:

"In principle the bill is very sound.\textsuperscript{48}

Mr. Jack Frye, President of Transcontinental & Western Air, Inc., said:

"We believe that placing the business under this jurisdiction of the Interstate Commerce Commission is a sound thing, if done soundly.\textsuperscript{49}

Mr. C. R. Smith, President of American Airlines, Inc., stated:

"I think that this bill fulfills one of the objects for which we are all working. I think it is constructive and can be made into very good permanent legislation."

"We very badly need some relief legislation and I think that perhaps this job could be divided into two parts, if you will permit my suggestion. First, the passage of relief legislation, and second, the passage of a bill which we hope will be permanent for many years.\textsuperscript{50}

Mr. William J. Denning, representing Braniff Airways, Wyoming Air Service, Hanford Air Lines, and Varney Air Transport Co., stated:

"This bill seems to be very constructive, and with some additions. . . . I think it would be an ideal bill.\textsuperscript{51}

Mr. Karl H. Mueller, representing Bowen Airlines, Inc., said:

"I may say that the principles of this bill are the very things that we have been looking for during that entire period of time. . . . We are for the bill whole-heartedly.\textsuperscript{52}

Except for the suggestion of President C. R. Smith, on July 30th, that there were two distinct jobs to recognize (relief legislation and permanent legislation) there seemed to be no break in the

\textsuperscript{46} Hearings, p. 112.
\textsuperscript{47} Hearings, p. 24.
\textsuperscript{48} Hearings, p. 27.
\textsuperscript{49} Hearings, p. 31.
\textsuperscript{50} Hearings, p. 47. Italics ours.
\textsuperscript{51} Hearings, p. 61.
\textsuperscript{52} Hearings, p. 76.
favorable testimony until the hearings on July 31st, when Mr. Carleton Putnam, President of Chicago & Southern Air Lines, Inc., suggested an amendment to provide for greater security to the operators. That suggestion is an important one to note, for within a few days it came to dominate the situation at the hearings. Mr. Putnam said:

"We feel that our security is a vital matter in all plans starting even from today in the matter of future development and financing, and that any delays which would result from making applications, holding hearings, and all that would be seriously detrimental to our position as small companies, because our entrenchment along our routes is not as complete, and there is a general psychology here of uncertainty and insecurity which I think should be terminated as rapidly as possible."

Three very interesting letters are attached to the record of July 31st. The first from Postmaster General Farley, is dated July 11, 1935, and reads, in part, as follows:

"This Department has consistently maintained the position that the air-transport industry was not sufficiently well established to warrant its being regulated in the same manner as railroads have been regulated.

"Air transport lines now depend on their air-mail contracts with the Government for their support, and the Post Office Department has supervision and control over the schedules of these lines. These schedules are fixed by the Department after a most careful survey of the mail service and also the traveling public. The Department is of the opinion that this control should not be taken away from it so long as the planes are used for the transportation of mail.

"The rates of the air-mail carriers are now being fixed by the Interstate Commerce Commission under the Air Mail Act of 1934, and the powers of the Commission are greatly broadened by the bills now pending in the House and in the Senate. These bills both contain provisions allowing the Interstate Commerce Commission to raise, as well as lower, rates from time to time to meet the needs of the air transport lines for efficient operation and maintenance and reasonable expansion in the service. Therefore, the bill would add nothing new of any value in this respect.

"For the reasons stated, the Department does not at this time favor the enactment of the bill."

The other two letters supplement the testimony of Mr. C. R. Smith and Mr. Carleton Putnam. Whatever doubts (as to the security of the airlines) may have existed previously, it is clear that they had assumed considerable proportions by the time these letters were written. A possible choice between frying pan and fire was resolved in favor of the former. Said Mr. Smith:

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54. Hearings, pp. 89-90. Italics ours.
"A detailed study of the provisions of S. 3027 would indicate that the passage of this measure would serve to end the existing system of air-mail contracts between the carriers and the Post Office Department. *Just what the carriers could expect in lieu of these contracts is not clear to us.*"

"We entered into contracts with the Post Office Department for the carriage of air mail which have resulted in enormous operating losses. These contracts were entered into because we were forced to stay in this business by our stockholders over a period of years. We believed that if we operated with efficiency and accomplished our job of transporting air mail, passengers, and express to the satisfaction of our customers and of the United States Government that *we could reasonably expect a continuation of our contracts at a rate which would permit us to break even* and later earn a reasonable return on our investment. *The assurance that this could be expected has been our incentive to stay in this business*, even though our continued operation has resulted in monthly operating losses ranging from $50,000 or $250,000 a month.

"We fear that the passage of S. 3027 in its present form would effect air-mail contract cancellation by legislation. *We feel that we have no assurance that we would be given rights, franchises, or permits under the operation of S. 3027 to offset the loss we would suffer by reason of cancellation of air-mail contracts by this legislation.*

"The air-transport industry has experienced a period of discouraging uncertainty during the past 15 months. It has been impossible for us to chart the course of our business or to make plans for the future with any certainty of realization.

"We must have new capital in our company before another year in order to provide replacement flying equipment for some of our routes. *Legislation is now pending in both houses of the Congress which would permit the adjustment of rates for the carriage of air mail to those rates already recommended by the Interstate Commerce Commission. We believe that the passage of that legislation will go far toward stabilizing the business and that its passage would permit the air transport companies to obtain needed additional capital.*

"We have no objection to reasonable regulation by the Interstate Commerce Commission, but *we do believe that legislation which would cancel existing air-mail contracts would create confusion and uncertainty in the industry and would retard the constructive development of the business for a long period of time.*"55

Mr. Putnam supported this viewpoint, as follows:

"After attending the hearings on this bill, giving it further study and conferring with various Government officials upon its clauses, *Chicago & Southern Air Lines feels unable to lend the measure its support unless full agreement with the Post Office Department has been reached.*"

"Secondly, my company believes that a bill which does away with the contract basis for fixing mail rates and turns control over to the Interstate Commerce Commission in such wide and sweeping terms should have the most careful scrutiny of the Department in whose hands all the legal and

55. *Hearings*, pp. 91-92. Italics ours.
other details of the air mail system have from the beginning rested. Every small independent company is dependent for its future financing and general security upon the air. No bill which leaves these matters in uncertainty or fails to meet the legal requirements of the Post Office Department in the specification of details, and which at the same time completely wipes out the existing system including all present contracts, can be regarded as anything but dangerous from the viewpoint of the new lines."

"We vigorously urge the immediate passage of H. R. 6511 as a preliminary to a more thorough consideration of permanent legislation." 56

There is much sense in the recommendations of these airline officials. When they testified before the Federal Aviation Commission, the hostility of the Post Office Department to any administrative change was not known and not seriously anticipated. It was now a recognized fact, and the airlines saw little reason to engage in any further argument as to administrative policy. To them, their own security was quite naturally of prime importance. As Mr. Smith had said, the problem was divided into two parts: (1) immediate, and (2) permanent, legislative proposals. If, therefore, the Post Office Department (for whatever reason) offered a reasonable amendment to the Air Mail Act of 1934 (in the form of H. R. 6511), it might be more expedient to accept its benefit for the immediate future and let the Interstate Commerce Commission and the Post Office Department argue the matter of permanent policy, without participation by the air mail operators. If these operators were not to gain all they wanted as to permanent control, at least they would conserve what they then had. The shift of front, on the part of some of the operators, seems to have been recognized by Post Office officials before Senator McCarran was aware of his loss of support. 57

There is no need to detail the testimony of the Post Office representatives who appeared at the hearings for they merely relied upon the splendid record of the Department in the past and stated that “until the government subsidy to air transport has ceased, it will not be proper” to put civil air transportation under

56. Hearings, pp. 93. Italics ours.
57. Mr. Branch. Let me say that I have had Mr. Smith, President of the American Airlines, to come to see me, and that he indicated he did not agree with this bill. And I think I could name half a dozen more of them.
Senator McCarran. Well, I will say that Mr. C. R. Smith, President of the American Airlines, Inc., appeared here before this subcommittee, and that he represents one of 87.5 per cent of those who testified for and on behalf of this bill.
Mr. Branch. Have you Mr. Smith’s letter that he wrote your committee a few days ago?
Senator McCarran. I have not the letter. It may be in the possession of the subcommittee.
Mr. Branch. It might be interesting to read that letter. I think perhaps you will find he does not agree with you like you think he does. (Hearings, p. 112. Italics ours.)
the Interstate Commerce Commission. The "Memorandum to the Solicitor," prepared by Mr. Cisler on August 1st, summarizes the position of the Department as to the McCarran bill in a very able way:

"It is understood that among the things urged as the reason for the passage of this bill is the fact that air transportation is now designed primarily for mail rather than for passengers. It is true that the growth of the industry has been based on the transportation of mail. It is equally true, however, that in developing the present air mail system the Post Office Department has recognized the necessity for the encouragement of passenger business. The results prove that passenger business has been encouraged. For the last 4 consecutive months, passenger records have successively broken all existing records for passenger miles traveled.

"It has been charged that the Post Office Department arbitrarily makes schedules without regard to passenger business. This is not true. Insofar as possible, we approve schedules submitted by the carriers, which schedules are primarily designed from a passenger carrying standpoint. Necessarily we must provide some time for the distribution of mail and no matter what agency makes the schedules, if mail is to be carried such provision must be made if the system is to be worth while from a mail standpoint. Chaotic conditions and inexcusable delays to mail would result if schedules were prepared without giving due regard to the handling of the mail.

"That this can be done with due regard to passenger traffic is proven by the fast schedules which are now in effect. It is necessary, however, in preparing such schedules that persons familiar with postal problems approve them. It is believed that no agency of the Government is in a better position to prepare and approve schedules which would be most advantageous to the Government than is the Post Office Department. As has been stated, the Department insofar as possible approves schedules advantageous for passenger travel. The connections which we insist upon for mail are also good for passengers. It must be remembered that in the few instances where we insist on advantageous schedules and connections for mail that even if there is some slight inconvenience for passengers the Air Mail Service is of primary importance, for, after all, the mail service is for the millions of people who comprise the population of this country, and it is the mail service that has paid the bills for the comparatively small number of people who travel on the air lines. With another agency of the Government making schedules, it might be necessary for the Post Office Department to discontinue the use of certain trips or routes which would be of no value because of the poor schedules and connections. We have examples in our railroad schedules today where we have found that it was of advantage to the public to discontinue the railroad service in favor of the star route truck service which offered better schedules. I am attaching copy of Postal Bulletin showing a few sample schedules. A complete set of schedules is available if necessary.

"It has been argued that many of the routes established by the Post Office

58. See the forceful statements of Harilee Branch, Second Assistant Postmaster General; Karl A. Crowley, Solicitor, Post Office Department; and S. A. Cisler, General Superintendent Division of Air and Railway Mail Service, Post Office Department. Hearings, pp. 198-127.
Department could be eliminated and that the money that is spent on some of
the smaller routes should be concentrated to develop large trunk lines. The
Post Office Department feels that justice demands that every part of the
country share the Air Mail Service, and the system has been laid out with
that in mind. The development of the Service is further ample proof that a
sound system has been built. A route that is a good mail route is likewise
a good passenger route, considering the potential traffic. In organizing the
routes, the Post Office Department has followed certain natural trade courses,
providing for a fast flow of mail between the larger centers of population,
with a few feeder routes to give service to those States which are justly
entitled to some share of the Air Mail Service. Certain technical problems
present themselves in establishing a route. The agency which is charged with
the duty of prescribing air-mail routes must have some knowledge of postal
problems which will be encountered. For instance, it must be kept in mind
that in the event of cancelation mails must be trained, and it is necessary that
an air-mail route be established along certain points which will allow the
most advantageous training of the mail. It is obvious, however, that what
would be advantageous in expediting the mail would also be advantageous in
expediting a passenger. No other agency of the Government understands the
problems of mail handling as does the Post Office Department.

"I am attaching hereto tables which show that mail is constantly in-
creasing under the present system. October 1934 broke the existing records;
December broke that record; March again broke the record, when, for the
first time in history, the poundage dispatched over various routes was over a
million pounds; and successively since March, April, May, and June dispatches
have been over one million pounds. As mail has increased, express is also
increasing. The same is true of passenger travel. In March of this year the
revenues were three times the revenues of any previous March. Passenger
miles in March, April, May, and June have successively broken all previous
records by a substantial margin. Practically every major route in the country
within the past year has placed into service improved passenger equipment.
Within the last year the Bureau of Air Commerce has cooperated with the
Post Office Department in every way by providing airways with the most
modern facilities. With such a state of improvement in mail, passengers, and
express business and improvements in airways, airports, airplanes, and safety
instruments, it would appear that the present plan of organization should be
continued; that is, that the Post Office Department will prescribe the routes
and schedules; the Bureau of Air Commerce supervise the airways, planes,
and safety features; and the Interstate Commerce Commission prescribe the
rates."59

A long and carefully prepared letter from Secretary of Com-
merce Daniel C. Roper evidenced a willingness to consider innova-
tions, but urged the Senate subcommittee to proceed with the utmost
cautions:

"Might we suggest, therefore, that your committee consider very care-
fully all of the elements involved in effecting an immediate transfer of avia-

tion control to the Interstate Commerce Commission, or any other body without extensive aviation background, which is not completely set up at this time to administer the affairs of the air transportation industry. While we see no objection to transferring to the Interstate Commerce Commission matters of a judicial or a quasi-judicial nature, pertaining to air transport, we believe that a further study by your committee will reveal certain aspects of administrative problems not now evident and will serve to more clearly define those administrative features which have already presented themselves. We therefore suggest a most careful and thorough study of these factors before proceeding with such comprehensive legislation as is proposed in S. 3027.60

The revised McCarran bill was favorably reported to the Senate by its interstate commerce committee and passage of the bill at the first session of the 74th Congress was urged. Congress did not so act during that first session.

VI. AIR MAIL LAW—AS AMENDED IN 1935.

On February 21, 1935, a second amendment of Section 15 of the Air Mail Act was approved so as to extend the primary route prohibition date to April 1, 1936.61 This was enacted to relieve from a difficult situation until a more permanent system could be developed.

However, the situation was by no means satisfactory to the operators and, when new legislative proposals were made to take the matter out of the hands of the Post Office (such as the McCarran bill), department officials became increasingly interested in patching up the 1934 act in order to relieve the immediate tension and perhaps forestall any permanent legislation removing control from the Post Office. Approval followed close on the heels of the Senate Subcommittee hearings referred to and, on August 14, 1935, several important changes were effected.62

The important changes are as follows:

1. Contracts—could now be awarded for initial periods of three years (instead of for one year).63

2. Route extensions—could be made on condition that all extensions in effect at one time on any route should not exceed 250 miles and payments be not in excess of the rate per mile fixed for the service thus extended.64 (Former extensions limited to 100 miles).

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60. Hearings, p. 127. Italics ours.
61. Public No. 12 (74th Congress, 1st Session).
63. Sec. 3 (a).
64. Sec. 3 (b).
(3) **Primary routes**—the basis of selection was considerably broadened and the coastal routes could be regarded as other than primary routes.65

(4) **Aggregate mileage**—raised to 32,000 miles (instead of 29,000 for route mileage, and total airplane-miles paid for raised to 45 million (from 40 million)). New regulatory powers over schedules and pay bases added.66

(5) **Rate review**—by I. C. C. now restricted to determination of fair and reasonable rates of compensation *within the limitations of this Act* [presumably 3 (a)]. Commission authority to cover not only each route but also *over each section thereof covered by a separate contract*.67

(6) **Examination of airline records**—annually by I. C. C. to be assured that no unreasonable profit is being derived. This section very materially enlarged to increase the scope of the I. C. C. audit.68

(7) **Continuation of contracts**—terms of continuation changed slightly to differentiate between dates of letting of contracts and to restrict slightly the authority of the I. C. C.69

(8) **Basis of rate determination**—enlarged by adding new directions to I. C. C. as to the disregarding of airline losses resulting from non-mail schedules. The burden of establishing the insufficiency of compensation placed on the carrier.70

(9) **Report of free transportation**—new paragraph added to provide for furnishing data as to passes granted.71

(10) **Salary limit**—of $17,500 stated to refer to total compensation—from whatever source derived.72

(11) **Auditing of Accounts**—section altered to increase power of Post Office over the keeping of books by the contractors.73

(12) **Labor conditions**—to be governed by decisions of the National Labor Board, or its successor in authority.74

(13) **Restriction as to contract awards**—this section has been completely rewritten and enlarged. No person holding one primary route contract may receive another, although he may receive contracts for not more than 3 other routes. Parallel routes may not be merged or be entered into common control agreements. Off-line competition, other than that maintained on and prior to July 1, 1935, prohibited. I. C. C. authorized to consider unfair practices of air-mail contractors.75

Congressman Mead, chairman of the House committee on Post Office and Post Roads, made the following statement by way of explaining the essential features of the amendments of 1935:

"The prime purpose of this bill is to amend existing law so as to enable the Interstate Commerce Commission to increase, as well as decrease, the
rate of payment for the carriers of air mail. Under existing law the Interstate Commerce Commission may revise rates, but in no case in excess of the bid rate. Under this bill the Interstate Commerce Commission may revise rates in excess of the bid rates but not in excess of the basic rates contained in the law. The basic rates contained in the law permit a maximum rate of not to exceed 33 1/3 cents per mile for loads not in excess of 300 pounds.

"In practical application this will permit the Interstate Commerce Commission to disregard the bids submitted over a year ago by the contractors and give them a fair and reasonable rate, but not in excess of 33 1/3 cents per mile. This was the prime reason for the legislation. After it left the House there was a demand that we liberalize certain features of the bill, particularly the feature with respect to off-line flying, and the House conferees agreed to a liberalization of that feature of the bill so that off-line flying will now be permitted to such a degree as was in operation prior to June 30 last, and the Interstate Commerce Commission will not only have authority to pass on off-line flying such as was in existence prior to June 30 last, but they will also have authority to consider increasing off-line flying as well as restricting or eliminating it.

"So the bill, as it comes back to the House, is more liberal from this standpoint than it was when it left the House. In a word, it permits the Interstate Commerce Commission to exercise more control over air mail, to increase rates within certain limitations, and to make such other adjustments and regulations as the bill provides."

VII. SAFETY INVESTIGATIONS, 1935-36.

Prior to the Senate Subcommittee hearings on the McCarran bill and prior to the passage of the amendments of the Air Mail Act, an airline disaster in Missouri prompted the introduction of a Senate Resolution on May 13, 1935, which may have far-reaching effect and which reads as follows:

"Whereas an airline owned by Transcontinental Western Air, Incorporated, while engaged in interstate air commerce was wrecked near Macon, in the State of Missouri, on the 6th day of May, 1935, resulting in the death of five persons, among whom was an honored member of this body, Honorable Bronson M. Cutting; and

"Whereas it is imperative that life and property transported through interstate air commerce should be accorded the greatest degree of safety obtainable through the use of every reasonable safeguard; and

"Whereas it is essential, in order to protect life and property in transportation through the air, that a thorough and searching inquiry should be made into the causes of the wreck referred to and into the efforts, if any, for the prevention of accidents of like character, and the safeguards, if any, provided both by the companies engaged in interstate air commerce and the precautions and safeguards, if any, required by governmental agencies; and

"Whereas such investigation and the knowledge to be derived therefrom are necessary to enable the Congress to adopt legislation for the protection of life and property by air transportation: Therefore be it
“Resolved, That the Committee on Commerce, or a subcommittee thereof, be, and it is hereby, authorized and directed to investigate fully and thoroughly the said wreck of the airplane owned by Transcontinental Western Air, Incorporated, which occurred on the 6th day of May, 1935, near Macon, in the State of Missouri, and any other accidents or ‘wrecks of airplanes engaged in interstate air commerce in which lives have been lost; and to investigate fully and thoroughly interstate air commerce, the precautions and safeguards provided therein, both by those engaged in such interstate air transportation and by officials or departments of the United States Government; and to investigate fully and thoroughly the activities of those entrusted by the Government with the protection of property and life by air transportation, and the degree, adequacy, and efficiency of supervision by any agency of Government including inspection and frequency thereof, and to take testimony in all aspects in relation to any of the matters herein indicated and in relation to any subject related thereto: Be it further

“Resolved, That the said Committee on Commerce, or the subcommittee thereof appointed for the purpose, shall determine what legislation, if any, shall be adopted in the interest of safety of life and property transported in interstate air commerce, and what legislation, if any, shall be adopted to prevent accidents in the air and to provide appropriate safeguards for their prevention: And be it further

“Resolved, That for the purposes of this resolution, such committee, or any duly authorized subcommittee thereof, is authorized to hold hearings, sit, and act at such times and places during the sessions or recesses of the Senate during the Seventy-fourth and succeeding Congresses, until a final report is submitted; to employ such counsel, experts, clerical, stenographic, and other assistance, and to require, by subpoena or otherwise, the attendance of witnesses, the production of books, papers, and documents, to administer oaths, take testimony, and make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words. The expenses of such committee not to exceed the sum of $10,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman.”

Shortly after the middle of August, Chairman Mead, of the House committee on post office and post roads, proposed an investigation of air mail transport operations with respect to safety and with respect to the method or methods adopted by the Commission in fixing rates of compensation for transportation of mail by air.

These committees are now at work and, while some hearings have been held, it is entirely too early to attempt any opinion as to the nature of their final recommendations. The excellent work done by these, and other, Congressional committees would indicate the desirability of having standing committees on civil aviation in both

76. S. R. 146 (74th Congress, 1st Session).
77. H. R. 324 (74th Congress, 1st Session).
houses of Congress. The gains made possible by experience could thus be preserved.

VIII. SUMMARY AND CONCLUSION.

The complete transportation story is, of course, too long to tell within the compass of a single article. The present attempt, therefore, has been directed only to a sketch of those essential elements which have (or might have) received weight in the formulation of a national air transportation policy.

The writer has not thought it desirable to review again the lengthy arguments, so ably advanced by the Federal Aviation Commission, in favor of an independent air commerce commission. If we obtain an enlargement of the present Interstate Commerce Commission, along the lines proposed by the Coordinator, and if aviation interests are properly provided for under such an expansion by commissioners experienced in air transport problems, then perhaps a separate aviation body will not be necessary or practicable. If the plans of the Coordinator fail to receive consideration within a reasonable period, then all the arguments set forth by the Federal Aviation Commission may be presented with even greater forcefulness. Some day it will be realized that the report of that commission represents a storehouse of valuable aviation information, and, when that time comes, it will be removed from the Congressional shelf and put to its intended use.

Confining our attention now only to the transport side of aviation (and leaving the tremendous fields of non-scheduled transport and private flying completely untouched), the summary may be presented briefly perhaps as follows:

The Expert Recommendations:

1st Federal Aviation Commission Representative: "Aviation, like the merchant marine, has outgrown the Post Office." 78

2nd Federal Aviation Commission Representative: "Permit me, however, to take this opportunity to put myself on record as being in favor of the complete regulation of all forms of transportation by the Federal Interstate Commerce Commission." 79

Senate Subcommittee Expert: "From a governmental point of view, every bureau in the Government has its fingers in the aviation pie." 80

Air Line Pilot: "We believe that this important regulation (safety)

80. Carl Dolan. Hearings, p. 79.
should be turned over to the Interstate Commerce Commission"\(^8^1\) (and so taken away from the Department of Commerce).

**Air Line Executive:** "We believe that placing this business under the jurisdiction of the Interstate Commerce Commission is a sound thing..."\(^8^2\)

### The Conflict of Authority:

**The President:** "Air transportation should be brought into a proper relation to other forms of transportation by subjecting it to regulation by the same agency... Such a reorganization should not be delayed, however, beyond the second session of the Seventy-fourth Congress."\(^8^3\)

**I. C. C. Representative:** "I am in favor of legislation which will provide for supervision of this subject by the Interstate Commerce Commission, and I think the Commission can handle it."\(^8^4\)

**Post Office Department:** "The Department is of the opinion that this control should not be taken away from it..."\(^8^5\)

**Department of Commerce:** "We suggest a more careful and thorough study... before proceeding with such comprehensive legislation. ... Aviation is in such a formative state and its problems are so complex, and changing with great rapidity, that I am sure... further... effort will be productive of highly gratifying results."\(^8^6\)

### The Dilemma:

**Air Line Executive:** "We feel that our security is a vital matter in all plans."\(^8^7\)

There remain at least three choices: (1) Assume that the present federal aviation policy is sound and so let it alone; (2) Assume that the present governmental control is basically unsound and seek to effect a change at once; or (3) Assume the present policy unsound—yet seek change only after careful study and, possibly, under more favorable meteorological conditions.

One thing seems certain: He who advocates an immediate change in federal aviation policy and organization should be prepared to battle valiantly for a cause he believes sound, or he should, before engaging in the fray, heed that ancient admonition—not arising from, but perhaps pertinent to, aviation: *Don't upset the applecart!*

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\(^8^1\) Edward G. Hamilton. Hearings, p. 25.

\(^8^2\) Jack Frye, President of Transcontinental & Western Air. Hearings, p. 31.


\(^8^4\) Mr. Eastman. Hearings, p. 107.


\(^8^6\) Letter from Secretary of Commerce Roper, August 6, 1935. Hearings, pp. 127-130.

\(^8^7\) Carleton Putnam, President of Chicago and Southern Air Lines, Inc. Hearings, p. 57.