

CIVIL AVIATION

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Personal*

*aviation folder
PSF*

November 10, 1943

- ✓✓ 1. It shall be our policy to prohibit Germany, Japan, Italy, and all other enemy governments, from operating or maintaining either internal or external commercial airlines.
- ✓✓ 2. Consideration should be given to the creation of a corporation similar to the International Wagon Lit for operation in these areas.
3. American operation throughout the world should not be under a single monopolistic agency, but the world to be divided into zones - each operated by independent American Companies.
- ✓✓ 4. In general, we should favor ownership of internal commercial airlines by the nationals of those countries.
- ✓✓ 5. The right of transit for commercial airplanes, including the right to land at appropriate airports for refueling and repairs without the right to discharge or take on traffic, should be secured on a reciprocal basis.
- ✓✓ 6. Regulations on internal airlines should be under the exclusive control of each particular country and should not be subject to international agreement.
- ✓ 7. The general principles of government regulation, private ownership, and competition, as now expressed in existing statutes, will continue to be our policy in international operations.

CIVIL AVIATION - 2

- ✓
8. This government should support and take part in international conferences dealing with safety standards, traffic regulations, matters pertaining to subsidies, etc.
- ✓ ✓
9. Consideration should be given to the creation of a United Nations Airport Authority for the purpose of maintaining and operating certain airports presenting special international problems, such as those within enemy territory.

THE WHITE HOUSE
WASHINGTON

*File
Confidential*

December 27, 1943.

FILE 4E40:

The President asked me to telephone Adolf Berle and say he found his letter of Nov. 15th with his notes on the aviation conference and the President thinks it is all right. I have done this today.

G.G.T.

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DEPARTMENT OF STATE
WASHINGTON

November 15, 1943

MEMORANDUM FOR THE PRESIDENT

I have prepared a memorandum which is attached hereto setting forth to the best of my recollection the substance of your remarks on aviation policy at the meeting on Wednesday, November 10. I hope that the sense has been faithfully rendered.

ad
Adolf A. Berle, Jr.

Enclosure:

Memorandum of
Conversation.

DEPARTMENT OF STATE

Memorandum of Conversation

DATE: November 11, 1943

SUBJECT: Aviation Policy

PARTICIPANTS: The President; the Under Secretary of State; Mr. A. A. Berle, Jr., Assistant Secretary of State; Mr. Robert A. Lovett, Assistant Secretary of War for Air; Mr. L. Welch Pogue, Chairman, Civil Aeronautics Board; Mr. Harry Hopkins.

COPIES TO: S, U, IN, RA, EU, FE, PA/D, PA/LD, PA/H, NE, PA/M.

The President requested the five men above-named to meet him at 2:00 o'clock yesterday.

He stated that he had begun to discuss aviation policy with Prime Minister Churchill at Quebec and he expected to go on doing so at their coming meeting. He had considered the various problems of policy and wished to state the policy he wanted followed. Reading from a memorandum which he said he had himself prepared, though he took the points out of order, he gave us the following oral directives.

(1) Germany, Italy and Japan were not to be permitted to have any aviation industry or

any

any aviation lines, internal or external. This involved policing these countries.

Their external traffic would be handled by the lines of the other countries. Internal aviation could be handled by a company or companies to be formed by the United Nations. The participation of former enemy countries (Germany, Italy, and Japan) in aviation was to be limited to the maintenance of airfields, local servicing work, and detail of that kind.

As for flying, the President said that he did not want them to be in a position to "fly anything larger than one of these toy planes that you wind up with an elastic".

(2) As to aviation in other countries: The President felt that each country should have ownership and control of its own internal aviation services. He recognized there might be exceptions in backward countries unable to organize aviation themselves. But Brazil, which he took as an illustration, was quite competent to run its own internal aviation. He did not wish Americans to own or control their internal aviation; nor did he wish them to hire American

American or other foreign companies as managers of their internal aviation. He had no objection, indeed he hoped that they would hire American individuals, and of course he hoped they would buy American equipment. But he wanted the internal aviation to be the development of the country itself.

(3) Regarding the handling of American aviation, he stated that he had decided that American overseas aviation should not be handled by a single line. The scope of international aviation was too great to be trusted to any one company or pool. He said that certain companies -- to speak frankly, Pan American -- wanted all of the business, and he disagreed with Trippe. He was willing to agree that on their record, Pan American was entitled to the senior place, and perhaps the cream of the business; but he could not go along with the idea of their, or anyone's, having all of it. This meant a multi-company operation.

He said he still felt -- though he was open to argument on the subject -- that the plan he had outlined to Mr. Pogue and to myself two years ago, of various companies having "zones", still appealed to him; thus there might be a company for

the western side of South America, another company having the eastern side, one company having the North Atlantic; another, the Mediterranean; and so forth. In answer to a question of Bob Lovett's, he said that there might be a shift of equipment from one group to another as seasons required this. I said I thought Mr. Pogue's idea of competitive terminals by the competitors draining different fields of traffic probably could be harmonized with this general idea. The President said that he agreed that his idea would have to be applied flexibly.

(4) Regarding the possibility of Government participation in the lines, he said there remained open the question of ownership by the Government of an interest in the various lines contemplated under this policy. But he said he thought there was no need of such ownership under the proposed plan, except as the Government might have to own, initially, lines going to places in which the traffic could not support a company. This would be covered by his idea that the Government should run such lines until private enterprise was prepared to take over.

(5) The

(5) The President then spoke of subsidies.

He said in general he thought the traffic could be made to pay its own way except in connection with certain routes on which the traffic was not enough to make the line a paying proposition. Again using the illustration of the United States to South Africa, he said there would have to be a line to South Africa, but it probably would not be a paying proposition. He therefore wished that we would apply the same policy which he had worked out for shipping lines after the last war, namely: to have the United States Government use its planes and its men to run government lines -- but always on the understanding that if ever a private line was prepared to bid for the route, the Government would promptly retire from the business.

(6) As to air and landing rights, the President said that he wanted a very free interchange. That is, he wanted arrangements by which planes of one country could enter any other country for the purpose of discharging traffic of foreign origin, and accepting foreign bound traffic. Thus, if Canada wanted a line from Canada to Jamaica,

with

with stops in the United States at Buffalo and Miami, they should be able to discharge traffic of Canadian origin at Buffalo, and take on traffic at Buffalo for Jamaica; but they should not be allowed to carry from Buffalo to Miami.

He considered that each country would have a number -- in the United States a quite large number -- of airports available for such foreign traffic.

In addition to that, he thought planes should have general right of free transit and right of technical stop -- that is, the right to land at any field and get fuel and service, without, however, taking on or discharging traffic.

This, he pointed out, would dispose of any need for a United Nations authority to manage airfields.

The President said that there might, however, remain airfields in respect of which the traffic itself would not pay the cost of upkeep. Liberia, for instance, might have to maintain a field for the purpose of a line between the United States and South Africa; but there would not be business enough to make it a paying proposition. There,

there

there might have to be United Nations contributions, or arrangements might have to be made for the lines which used the field to pay a part of the cost.

(7) In answer to a question from Lovett, the President said that he thought there should be no general party or conference about aviation until the time was right to call a United Nations conference. Talks with Britain and other countries could be handled quietly as a part of the preparatory discussion.

(8) The President considered that there would have to be a United Nations conference on aviation and probably a United Nations organization to handle such matters as safety standards, signals, communication, weather reporting, and the incidental services which went with airports; and also to handle the problem of competitive subsidies or rates.

The impending return of Secretary Hull from the Moscow Conference was then announced, and we broke up.


A.A.B., Jr.

THE WHITE HOUSE
WASHINGTON

*Telephone
message*

February 18, 1944.

MEMORANDUM FOR THE PRESIDENT:

Do you want to send a memorandum or have me telephone to Chairman Pogue to tell him you agree with this suggestion about the Russians being represented at this air conference, and that you have sent a memorandum to that effect to Adolf Berle? At the same time, do you wish me to mention to Chairman Pogue that you have told him you want the Chinese in on it?

G.G.T.

JHR



CIVIL AERONAUTICS BOARD
WASHINGTON

OFFICE OF THE CHAIRMAN

FEB 16 1944

MEMORANDUM

TO: The President

FROM: L. Welch Pogue, Chairman

SUBJECT: Proposed discussions on international aviation

Last week I was present while Mr. Berle discussed with the Aviation Subcommittee (Senator Clark of Missouri, Chairman) of the Commerce Committee of the Senate the proposed discussions on international aviation with the British. Senator Bailey, Chairman of the Commerce Committee, said that the winning of the war is his prime concern and that he looks with deep misgivings upon the proposal to talk future commercial international aviation with the British alone when that course of conduct might lead the Russians to feel that the British and the Americans were getting together, dividing up the future commercial pie, and leaving the Russians out. He stated that in his opinion this might lead to misunderstanding, friction, and even the loss of an ally with the result that we might lose the European war. He went on to say that in any event we would be desperately in need of Russian cooperation in connection with the Japanese war and that he couldn't possibly be in favor of any action which would in any sense jeopardize our relations with the Russians. He did not indicate himself to be against informal discussions but was very clear that he thought they should not go on unless the Russians are invited to attend. Although he did not say so, I gathered from his attitude that he would be opposed to any informal talks or conferences unless the Russians actually do attend. I think that he has the same attitude toward the Chinese although that was not brought out so fully.

I call this to your attention because of the extreme importance of the matter and because I think you will want to know how strongly this particular Senator feels. The other Senators present were Meade, Caraway, Brewster, and Robertson. None of these Senators seemed to feel as strongly on the point as did Senator Bailey.

As you know, I felt, long before Senator Bailey spoke, that irreparable damage might be done if the Russians, in particular, are not made to feel that they are cordially invited to these first preliminary talks.

L. Welch Pogue
L. Welch Pogue

RECORDED
EX-114 (Rev. 10-10-30)
CAB letter, 11-9-72
SJR JAN 19 1973

ADMINISTRATIVE
CIVIL AERONAUTICS BOARD



THE WHITE HOUSE
WASHINGTON
February 16, 1944

MEMORANDUM FOR Miss Grace Tully
FROM Jonathan Daniels *JD*

This is the memorandum about
which I just spoke to you on the phone.

(2539)

Ans

*Aviation folder
3-44*

THE WHITE HOUSE
WASHINGTON

February 14, 1944.

MEMORANDUM FOR

HON. A. A. BERLE, JR.

I think this is a good way of going about the first Air Conference but it must be made clear that this is wholly preliminary to a United Nations' Air Conference to be held later in the year. Most certainly I would have someone here from the Soviets.

Before you actually announce this I think you had better talk it over with Bennett Clark, who is Chairman of the Sub-Committee, and is much interested.

F. D. R.

Transmitting carbon of memorandum and enclosure which the President received from Hon. A. A. Berle, Jr., 2/12/44, in re British and Canadian Talks on Civil Aviation. Original papers retained for our files.

DEPARTMENT OF STATE
WASHINGTON

February 12, 1944

MEMORANDUM FOR THE PRESIDENT:

British and Canadian Talks on Civil Aviation

Secretary Hull suggested to you a "team" to discuss air matters with Britain and Canada--Soviets, too, if they want to join. Discussions to start in March, looking towards the air understandings you outlined, and to a United Nations air conference later this year.

As spokesman, Secretary Hull wants Joe Grew, or Atherton as alternative. Supporting him would be Welch Pogue, Bob Lovett, and myself; Senators and Congressmen, chosen from Senate Committees on Foreign Relations and Commerce; House Committees on Foreign Affairs and on Interstate and Foreign Commerce. Also technical men from C.A.B., State, War, Navy; Damon of American Airlines, and Evan Young of Pan American. These could be used as needed.

If you could okay or make alternative suggestions, we will start the team warming up. Attached, draft agenda.

Enclosures:

Adolf
Adolf A. Berle, Jr.

Draft agenda.

PROPOSED AGENDA OF SUBJECTS RELATING TO
INTERNATIONAL CIVIL AVIATION

I. Air Navigation and Air Transport

1. The right of transit and technical stop (stop for non-traffic reasons) for civil aircraft, subject to needed regulation for security.
2. The right of commercial air entry.
3. Granting of international operating rights on a non-exclusive basis.
4. Application of cabotage to air traffic.
5. Control of rates and competitive practices.
6. Curtailment of subsidies and exchange of subsidy data.
7. Uniform operating and safety standards.
8. Standardization or coordination of air navigation aids and communications facilities.

II. Airports and Facilities

1. Designation of commercial airports of entry.
2. Use of airports and facilities on a non-discriminatory basis.
3. Airports and facilities in isolated areas.

III. International Collaboration

1. Establishment of an international civil aviation commission, and definition of its functions.
2. Preparations and agenda for a United Nations conference.

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filed 3/13/44

O.K.

And let the Soviets know.
F.D.R.

PSF Aviation folder 3-44

DEPARTMENT OF STATE
WASHINGTON

March 11, 1944.

MEMORANDUM FOR THE PRESIDENT

AVIATION CONVERSATIONS

After various preliminaries, the British now have come fairly close to our projected method. They suggest a quiet trip by Berle to London, stopping in Canada en route. Discussions to be for the purpose of exchanging views but without making commitments. It is considered probable they would not object to our keeping the Soviets informed, and discussing with them at about the same time either in London or Washington, equally without commitment.

If you approve, I contemplate authorizing Berle and either Pogue or Warner of C.A.B. to go to London as quietly as the newspapers will let them, in about ten days, to hold such discussions, exchange views, make no commitments, and report back. Could you let me have your views?

CH

*PST
Aviation*

**ANALYSIS OF PERTINENT FEATURES OF CIVIL AVIATION
BILL H. R. 3420 (KNOWN AS THE LEA BILL)**

Summary of principal provisions of Bill

1. It changes the name of the Civil Aeronautics Board to the Civil Aeronautics Commission and makes it an independent agency of the Government. It provides for the independent exercise by the Administrator of Civil Aeronautics of the functions vested in him, except that he is to act subject to the approval of the Commission, or in accordance with rules and regulations of the Commission, in the exercise of certain of his more important functions.
2. It restores independent accident investigation to be conducted by a Director of Air Safety to be appointed by the President, by and with the advice and consent of the Senate.
3. It calls for an investigation and report by the Civil Aeronautics Commission with respect to the developments in air commerce and air navigation which may be anticipated during the post-war period, and such report is to include suggested plans for meeting such post-war developments.
4. It proposes an investigation and report by the Postmaster General and also by the Civil Aeronautics Commission as to the feasibility of carrying all classes of mail by air when delivery would thereby be speeded.
5. It extends Federal jurisdiction over air commerce, and further defines Federal jurisdiction over air navigation.
6. It provides for a broad program of aviation training and education.
7. It proposes a long range program under the direction of the Administrator of Civil Aeronautics for the development of air-navigation facilities, including airports.
8. It provides a plan for protecting the safety of flight by furnishing a means for removing or preventing hazards to air navigation on and in the vicinity of airports.
9. It provides additional means for necessary financial support of air transportation by the Government through direct payments.
10. It contains stricter prohibitions against the issuance of passes in air transportation.
11. It provides means for further developing traffic by air through the granting of discounts for quantity transportation.
12. It provides for reasonable compulsory extensions of air-line service.

13. It brings contract carriers by air under economic regulation.
14. It provides for a study of multiple taxation of persons engaged in air commerce and of their employers, in order to develop recommendations to prevent the growth of unsound tax policies affecting civil aviation.
15. It introduces numerous improvements in the administrative procedure under the Civil Aeronautics Act.
16. It provides for strengthening and expanding the Weather Bureau service in aid of our air navigation both domestic and international.
17. It codifies civil-aviation law by bringing isolated legislative provisions into the Civil Aeronautics Act.
18. It provides for the more efficient settlement of disputes involving air carriers by directing the Civil Aeronautics Commission to set up a procedure for the voluntary arbitration of such disputes.
19. It gives the airman in command of an aircraft, or other authorized employees, adequate power to prevent dangerous, disorderly conduct and otherwise assures safety of operation of the aircraft.
20. It calls for an investigation and report by the Civil Aeronautics Commission as to matters affecting aviation insurance and reinsurance.
21. It makes clear that all employees of air carriers are subject to the Railway Labor Act, and it extends that act to contract carriers by air and their employees.

B.

History

H.R. 3420, known as the "Lea Bill" was reported by Mr. Bulwinkle, on October 20 last from the Committee on Interstate and Foreign Commerce. It is presently before the Rules Committee and is expected to be debated and voted upon in the House about November 15.

The Interstate and Foreign Commerce Committee previously reported out a bill covering this subject in February, which bill was known as H.R. 1012. At that time the Committee had not decided to make recommendations concerning organizational changes in the administrative agencies dealing with civil aeronautics. Upon further consideration, however, the Committee felt such changes would be desirable and of course this made it necessary to alter much of the language of the bill it had then reported out. Accordingly that bill, namely H.R. 1012, was returned to the Committee and further hearings were held. As a result thereof, the present bill, namely H.R. 3420, considerably modified, was reported out in October of this year.

Much of the opposition to the bill comes from state public utility commissions and some state aeronautic commissions. This opposition was mostly directed at provisions of the bill reported out in February (H.R. 1012) and the railroads

are now carrying over this opposition to the new bill which, in its revised form, has taken care of most of the objectors' points. This will be discussed under a separate heading below.

Q.

What the Bill Does

The enactment of H.R. 3420 is vital to the sound promotion and development of all phases of civil aviation.

It is most important that the necessary foundation for the immediate post-war period be laid now. Other nations are preparing for rapid development as soon as the war is over. We must be ready to maintain our leadership. Furthermore civil aviation must be ready for immediate expansion, on a sound basis, at the war's end in order to provide enduring jobs for thousands of returning soldiers. A long range program of airport construction and development, a growing market for aircraft factories manufacturing both private and commercial planes and an expanded commercial national and international air transport system, if worked out in an orderly way will offer tremendous new opportunities for stable employment.

Under the Civil Aeronautics Act of 1938, and the Civilian Training Act of 1939, our civil aviation, in all its branches, experienced the most constructive and rapid development in its history and far out-stripped the rest of the world. Experience during the last five years points, however, to definite need for supplementary legislation. H.R. 3420 meets this need in the following respects:

1. H.R. 3420 contains the most constructive proposals ever formulated for the broad encouragement of private and miscellaneous flying -- of such crucial importance to the average young man who has learned to fly in this war. It makes permanent the temporary Civilian Pilot Training Act for pilots and mechanics, it makes concrete provision for aviation education, it provides the basis for a long range program of airport and airway development, it recognizes the need to promote flying clubs, and other private flying activities.

2. H.R. 3420 makes the administrative agency for civil aviation -- to be named The Civil Aeronautics Commission -- an arm of Congress and independent of executive domination, just as the Interstate Commerce Commission is an agency of Congress. It also restores to the law independent investigation of aircraft accidents -- the same principle embodied in the old Air Safety Board. Thus accident investigation would once more be conducted by an agency totally free of the body responsible for regulation, and would be unbiased and without fear.

3. H.R. 3420 takes definite steps toward long overdue airport zoning. It does not force zoning on the various local communities. The bill leaves the matter entirely to the discretion of the State or municipal agency owning the airport. But if the local agency so elects, the bill makes available to the community a procedure for zoning or condemnation -- under standards guaranteeing fair compensation and full judicial review -- whereby safety in the use of an airport can be assured. This measure is designed to protect the traveling public, as well as miscellaneous flyers flying on business and pleasure, and will assure that airports can be effectively used in time of national emergency.

4. The bill would extend the benefits of the Act of 1938 to aviation between points within States as well as between points in different States. This will mean for all of aviation a coordinated, simplified code without the possibility of duplicating and conflicting State and Federal laws. As a result the burden of multiple governmental regulation will be avoided. There will be no possibility of the aviator facing different wing-loading, lighting, lift and drag, or other requirements from one place to another. The aircraft manufacturers will also be able to produce according to single sets of specifications which will be good everywhere. The commercial operator will be able to do business and communities will be able to secure service, according to tariffs, franchises, and service connections under one law instead of having to run a gauntlet ranging from two to forty-nine different government agencies.

5. H.R. 3420 does not destroy States' rights. Under the bill, the States and municipalities may still build, administer and operate airports; engage in educational and other promotional activities; regulate purely intrastate private and miscellaneous flying consistently with such federal safety regulations as may be applicable, including pleasure flying, sight-seeing, training schools, sky writing, crop dusting, aerial photography, etc.; aid in the enforcement of the federal regulations; zone airports and airport approaches; and carry out a host of other activities.

6. H.R. 3420 gives an economic charter for contract carriage by air, thus providing definite rights of which returning military pilots can take advantage in starting up a new type of business.

7. H.R. 3420 provides for the formulation of a plan -- for later submission to Congress -- looking to the transportation of all mail by air wherever delivery would be speeded, contemplating a mail by air system available to all communities throughout the nation on fair and equal terms. Such an extension of the air mail system will bring great benefits to all classes of people and to every community in the nation.

8. H.R. 3420 was drafted after nine months' intensive study and long hearings by the House Committee on Interstate and Foreign Commerce, which is the Committee responsible for development of all transportation legislation.

9. The principles of the bill have the enthusiastic endorsement of the American Bar Association, the training schools associations, the aircraft manufacturers, the largest organization of private fliers, the airlines, the Airline Pilots' Association, the Air Line Mechanics' Association, the Army-Navy Journal, and other aviation groups, including strong editorial support by the organ of the National Aeronautics Association which represents every branch of aviation.

D.

Answer to Statements Concerning
"States Rights"

As will be pointed out hereinafter, the railroads and bus companies are drawing a "red herring" across the trail by bringing into this picture the States Rights issue. It is true that the bill extends Federal regulation in

an effort to avoid the difficulties in aviation that the trucking industries have suffered by reason of the multiplicity of conflicting State Laws. The following analysis of the bill indicates that the States Rights issue is purely and entirely a fallacious one.

1. Functions which can still be performed by the States if Lea Bill is adopted.

A. Construction and operation of airports.

B. Licensing and other regulation of airport operators.

C. Airport zoning.

D. Economic regulation of the private carrier, of aviation training schools, local sight-seeing operations, crop dusting, aerial photography, and any other aerial operations not constituting the carriage of persons or property for compensation or hire from one point to another.

E. Regulation of aircraft factories.

F. Promotion of aviation education, flying clubs, and other promotional activities of all types.

G. Safety regulation of local air navigation which does not hinder, burden, interfere with, or impair uniformity in interstate air navigation, and which is not inconsistent with federal regulation. For example: Under the bill a state could still prescribe additional airworthiness requirements, in addition to those required by federal regulation, for an aircraft operated by a local private flyer wholly within the state.

H. Prescribing venue in the case of crimes committed on or in connection with aircraft.

I. Section 802(b) of the bill also contemplates that Congress may consent to other action by the states. One very likely possibility is that in the reasonably near future there can be worked out some means for cooperative enforcement of the civil air regulations by both state and Federal authorities such as was provided for in the air commerce bill adopted by the House in 1926.

Literally the great bulk of the work now done by state officials is in the field of promotion, airport construction and administration, and airport zoning. None of these functions would be disturbed by the bill. Indeed, the bill provides for federal encouragement and assistance to the states in carrying out such functions. With very minor exceptions, the only present regulatory activities by the states which would be affected by the bill are safety regulations which simply duplicate the federal safety regulation.

2. Section 802(b) of the bill which concerns the extension of Federal jurisdiction is essentially necessary for the following reasons:

The section provides that no regulation of air carriers or foreign air carriers or air contractors shall be valid unless provided for or consented

to by Congress, and that no other regulation shall be enforced so as to hinder or impair uniformity in the conduct of air navigation or air commerce unless provided for or consented to by Congress.

At first blush this provision may seem unnecessary in view of the extension of federal jurisdiction so as to regulate all air navigation and air commerce. Thus it might be thought that if Congress has so fully "occupied the field," no further express prohibition against other regulation would be necessary.

However, the recent course of decisions in the Supreme Court will show that the provision is of fundamental importance.

These decisions are discussed in a lengthy memorandum at pp. 223-232 of the original hearings on the bill.

They may be summarized as follows: The Court leans over backward to sustain State regulation, despite congressional regulation of the same subject matter, and will permit such State regulation unless there is a clear conflict between it and the federal law, or unless Congress has specifically prohibited it. In one very recent case, for instance, a state statute requiring every freight train to have a caboose was sustained even as to interstate trains which would have to hook on the caboose before entering the state and could not detach it until after leaving the state. See Terminal Railroad Association v. Brotherhood, 318 U.S. 1 (1943). In short, the Court has virtually said that it will not "imply" an intention on the part of Congress to prohibit state regulation unless the intention is perfectly clear.

In view of these decisions, section 802 (b) is necessary to make sure that the several states will not impose varying and additional regulations upon an air carrier. For instance, without the section, a state might require every airline airplane to be equipped with a particular kind of lights in addition to the lights required by federal regulation. Or wing loading requirements stricter than those required under federal regulation might be enforced by different states. And so on.

To take another example: The federal law takes pains not to regulate the matter of the number of schedules or the times thereof, operated by an airline. Yet in the absence of section 802(b) state laws might do so, even on interstate trips, and recent court decisions leave grave doubt as to whether such regulation would be invalidated. Similarly securities issued of air carriers and other matters not regulated by the federal law might, in the absence of section 802(b), be regulated by state laws.

The constitutionality of the section is clear. Within a field which Congress may regulate, it may also prohibit regulation without its consent.

The states may still regulate air navigation which is not point-to-point transportation for hire, provided that the state regulation is consistent with federal safety regulation and does not unduly

hinder, burden, etc., air navigation among the several States. Thus states could license and otherwise regulate such activities as crop dusting, sky-writing, fixed-base sight-seeing, aeronautical training schools, private carriage of persons and property, pleasure flying, etc. Activities such as these constitute the great majority of air activities in terms of quantity.

There are very few things which could be done which would more definitely promote the economy and efficiency of air carrier operations than the adoption by Congress of a law providing that all regulation of air transportation shall be exclusively a federal matter.

This would forestall various State laws which can be constitutionally applied even to interstate air carriers which could greatly cripple the industry. For example, railroads have struggled with "full crew" state laws which regulate the number of employees which must be used in the operation of a railroad train through that State. And the courts have sustained laws of this type. It is theoretically conceivable that Illinois could provide that an air carrier must have a pilot and copilot; Indiana could provide that in addition there must be a flight engineer; Ohio could provide that in addition there must be a steward; Pennsylvania could provide that in addition there must be a radio operator and New York could provide that in addition there must be a navigator.

The courts have been inclined to sustain a great variety of State laws affecting motor operations, even in the case of interstate motor carriers, on the theory that somehow or other they may be related to the safety of people within the State. The same kind of reasoning would sustain an infinite variety of State regulations applicable to flying within a State on the theory that a State can take measures to keep airplanes from falling on its citizens.

In the motor carrier field the cutest and most devastating trick which the railroads have played on the motor carriers has been successful due to the above theory. For instance, the railroads have persuaded State legislatures to adopt various laws relating to the loads and measurements of motor trucks. They are careful to prevent those laws being uniform. Thus they have actually succeeded in bringing about a legal situation whereby a motor truck carrying nuts and bolts between California and Washington has to stop at the Oregon border, unload, and have another type of truck proceed with the load in Oregon. What the Supreme Court has done is to lean over backward in permitting State laws to apply, even to interstate carriers or interstate business unless there is a square, clear conflict between the State regulation and some federal regulation. The Supreme Court has said that if Congress has not prohibited the State regulation, the courts will not interfere. That is why it is necessary to have a definite prohibition in civil aviation legislation. In other words, it isn't enough simply to provide that federal regulations apply to all air commerce; it is necessary to go further and to say that State regulations cannot be applied.

One example will show why this is important. The federal law

carefully refrains from the issuance of securities by air carriers. Therefore, a State law regulating such issuance would not be inconsistent with the federal law. Again, it is likely that if a State sought to regulate the issuance of securities the State law would be sustained; unless there is a prohibition against State regulation included in the federal law.

Another example is the matter of schedules. The federal law does not regulate schedules. We know that in various States, State Commissions sometimes do regulate the schedules of various types of carriers. In the case of air carriers, unless there is a federal law which prohibits State regulation, State regulation of schedules would probably be sustained as not being inconsistent with the federal law.

The railroads have lawyers and others interested in their welfare in every middlesex village and town. The air carriers have no such widespread, and well-schooled "lobbyists". Nor can the air carriers begin to match the resources, financial and otherwise, of the railroads. Hence, if the railroads seek crippling State legislation affecting air carriers, as they have been so successful in doing in the case of motor carriers, the air carriers are bound to come off second best. The air carriers can much better protect themselves if the whole matter of regulation is made a federal matter. For then they can concentrate their resources on fighting to protect themselves in one spot -- i.e. Congress -- with some chance of success.

There is another reason for having exclusive federal legislation. If intrastate air commerce is left up to the State, the States can grant licenses for intrastate operation. After an operator gets such authorization he then can come to the C.A.B. with a much stronger case in support of an application for interstate operations. The C.A.B. will have a much harder job of properly planning the air transport system, and the air carriers themselves will have a much harder job of fighting to prevent unwise duplication of service, if every State is going to be free to issue certificates for intrastate operations.

E.

Necessity For Extension of
Federal Jurisdiction

1. There are no air routes today confined to a single State. Never has been in last ten years if ever.

2 & 3. Since even an intrastate route would have to get a federal economic certificate or license to carry interstate traffic, requirement of another certificate from a State is pure duplication. (Note: railroads were all built up before certificates were required.)

4. If interstate line not permitted to engage in intrastate commerce needless economic burden would be thrown on the interstate operation. Therefore question of issuing certificate for interstate and intrastate operation has to be decided together and in one place.

5. Intrastate schedules cannot be regulated apart from rest of air system. Practical experience has shown that one schedule change between local points can affect an entire connecting transcontinental schedule.

6. Intrastate rates have to be in line with interstate rates. Both types of traffic in same airplane and subject to same costs.

7. Possible points between which an intrastate carriage would not competitively affect an interstate carriage virtually nil. To require showing of specific effect in each case before applying federal regulation would be slow, expensive and provoke litigation.

8. National defense requires federal control so that in emergencies schedules, routes, and rates can be changed promptly and clearing only through one place. The major operation performed on airline service pattern within 30 days in May, 1942, could never have been done if it had been necessary to clear with different state agencies.

9. Unlike railroads and bus and trucks, air system has developed as interstate, nation-wide system from the very first. This has meant that States have played no part in economic regulation and development.

10. As instrument flying has developed, more and more essential that operations depend on federal civil airways and other federal air navigation facilities.

11. Federal mail pay an essential part of all airline revenue.

12. Whereas railroads and motor carriers have much local traffic and many localized problems justifying expense of State economic regulation, such regulation for air carriers serves no real economic or social purpose because of relatively negligible amount of purely localized problems. Only result, therefore, would be duplicating expense, redtape, and regulation. The industry is already regulated to the hilt - more than any other means of transportation. State regulation would merely add to burdens.

13. Can't plan development of air service except on nation-wide and regional basis, cutting across State lines. Isolated operations within separate States would sooner or later have to be tied into a nation-wide system.

14. Safety regulation of traffic rules, and pilot and aircraft qualifications and standards, has to be uniform and federally handled. But such regulation directly affects economics of operation -- costs, etc. Hence it is foolish to have one agency determining all equipment and personnel rules and someone else determining economics. Economic regulation determines the revenue to pay the costs which are determined by safety regulation.

15. Can't have safety without economic soundness. If federal regulation is essential for safety it is equally essential that economic soundness be determined by federal regulation.

16. For national defense there must be interchangeability and standardization in equipment and practices. This matter very much affected by economic regulation. For instance, for national defense reasons it might be necessary to equip all aircraft to operate on certain octane gasoline. This would be expensive and might require changes in rates.

17. For national defense reasons, industry will have to be controlled centrally. There will have to be certain number of large transports, certain number of medium, certain number of small types, and certain number of experimental and scout types like helicopters. This will depend on our Air Force's requirements for transport auxiliary. There cannot be proper control of this matter if the commercial system is split up under forty-nine different agencies.

F.

Summary of Pertinent Issues

The Lea Bill does not destroy States' rights. On the contrary it contains renewed recognition of the importance of the States and municipalities in the aviation field. It has provisions to aid them in effectuating their own airport development, zoning, and aviation education programs. It requires the closest cooperation with them on the part of the federal agencies. Moreover there is no impairment of the States' power to regulate intrastate private fliers, flying schools, sight-seeing operators, operators of airports, sky-writing, crop-dusting, and all the other countless aviation activities (other than point to point air transportation for hire), so long as such regulation is consistent with basic federal safety regulation - which the States have always complied with in any event.

The Lea Bill would not create any confusion by its reorganization of the CAB and CAA. The present situation is confused. There is no law or single set of documents to show where power is lodged. It is necessary to read a law, two Reorganization Plans, several Attorney General's opinions, a Bureau of the Budget letter, and various informal memoranda - some of which are not even public records. The Lea Bill will end confusion by making the CAB a clear-cut independent Commission like the I.C.C. Furthermore it will simplify the CAB's work by relieving it of the duty to investigate accidents - the bill provides for a Director of Air Safety to do that. Moreover the CAB has no war powers, so there would be no change in the emergency controls for the prosecution of the war which the Army administers.

The Lea Bill would not promote monopoly. It retains provisions of existing law expressly outlawing monopoly and declaring for regulated competition. Far more important it leaves untouched that portion of the Civil Aeronautics Act of 1938 which outlaws ownership of airlines by competing forms of carriers. The Reece bill on the other hand specifically breaks down this restriction and opens the door wide to the "integration" of airlines with surface carriers and by so doing makes possible the creation of super-monopolies in the carrier transportation field.

The Lea Bill does not impose unbearable subsidies. It definitely does not forbid State or local taxation. Both the Lea and the Reece bills call for steps to be taken to eliminate unreasonable and burdensome multiple taxation by the States. The only difference between the two bills so far as State taxes are concerned is that the Lea bill contains a declaration that such multiple taxation is contrary to the public interest. So far as expenditures for airport construction are concerned, the Lea bill leaves that to be covered in appropriation acts in the future. It simply grants authority to construct airports when in the public interest. The Appropriation Committees will still have to pass on the amounts to be spent.

The Lea bill does not authorize training of aviation employees to compete with war veterans. It merely continues the C F T program so that essential aviation training schools will not go out of business and a vital national asset be lost. Again the Appropriation Committees will have to pass on the funds to be appropriated.

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PSE Aviation

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March 28, 1944

Date- 3-11-59

Signature: Carl D. Spicer

MEMORANDUM FOR THE PRESIDENT:

Subject: Policy of the United States Army Air Forces in regard to International Commercial Aviation.

1. Since the position of this nation in the field of post-war international air transportation will have a direct effect upon the air power of the nation, I have had prepared a study covering the policy of the United States Army Air Forces in regard to international commercial aviation. The following paragraphs set forth the basic principles of this policy.

2. National security is of prime importance in the formulation of any international civil aviation policy. A powerful air force is a prerequisite of national security.

3. The nation's air power is dependent on the peacetime existence of a strong aviation manufacturing industry.

4. A strong domestic and international air transport system readily adapted to military use is vital, and will provide a potent stimulus to maintenance of a strong peacetime aviation industry.

5. Our experience that we should favor an international commercial aviation policy embracing freedom of air transit with respect to specified routes, with right of technical stop at designated airports; the right of commercial entry at designated airports to serve international traffic, subject to such reasonable limitations as may be necessary; the designation of airports of entry adjacent to traffic centers irrespective of geographic location; the establishment of an International Civil Aviation Authority to standardize air traffic procedures; the control, operation and maintenance of airports by the sovereign power except where by agreement joint national exercise of the functions is required; and the exclusion of enemy nations from any participation in civil aviation during the post-war period.

6. The national policy with respect to the international commercial aviation policy should include maximum encouragement of regulated private competitive enterprise in United States international air transport operations; ownership and operation of communication systems serving United States

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