



PREFLIGHT

Chairman's Message:

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This summer, my family and I vacationed in London. On a couple of days, I traveled North to Cambridge by rail and then by bus south to Duxford Aerodrome. Duxford is about 43 miles North of London and sits almost precisely on the prime meridian, the coordinates being approximately 52 degrees North latitude 000 degrees East longitude. Duxford features a paved asphalt runway about 5,000 feet long and a grass runway about 3,000 feet long. It has a control tower that originated during World War II. It features displays of the Imperial War Museum (including a Battle of Britain display) as well



Mystery Plane #1



Mystery Plane #2

as a number of aircraft collections including those of Stephen Grey and Ray Hannah who operates as "The Old Flying Machine Company." Also on the field are a number of aircraft operated by Britling Fighters.

Duxford was a key airfield involved in the Battle of Britain where fighters of Twelve Group of Fighter Command battled Hitler's Luftwaffe. Later it was an airbase of the American Army Air Force.

I got a brief hop in a de Havilland DH-82A Tiger Moth which cost 89 Pounds or about \$157. To merely take off from Duxford and return for a landing required the payment of a 12 Pound landing fee. The Aerodrome is only open from 10 o'clock in the morning until 6 p.m. in the evening, and gasoline sales cease at 5:30 p.m. local time. Appar-

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From the Editor: Mystery Aircraft Sweepstakes



As I sit here preparing for my private pilot check ride at scenic DQH, I thought I might spice up the newsletter and do some marketing research at the same time. As you have probably noticed, various photographs taken by our esteemed chairman on his overseas trip have been designated "Mystery Plane #1", "Mystery Plane #2", and so on. For the first section member who contacts me and correctly identifies all four aircraft, they will receive free lunch for two at the Downwind at PDK (or another suitable \$100 hamburger place). I just thought I would see who was actually reading our beloved tome of aviation knowledge. Depending upon the response, I may make this a regular feature of the newsletter.

I also ran across the following older radio exchanges that I thought were pretty humorous:

Malibu at Kansas City

It was a really nice day, right about dusk, and a Piper Malibu was being vectored into a long line of airliners in order to land at Kansas City.

KC Approach: "Malibu three-two-Charlie, you're

following a 727, one o'clock and three miles."

Three-two-Charlie: "We've got him. We'll follow him."

KC Approach: "Delta 105, your traffic to follow is a Malibu, eleven o'clock and three miles. Do you have that traffic?"

Delta 105: (long pause and then in a thick southern drawl): "Well.....I've got something down there. Can't quite tell if it's a Malibu or a Chevelle, though."

Animal Runway Incurison

Tower: "Eastern 702, cleared for takeoff, contact Departure on 124.7."

Eastern 702: "Tower, Eastern 702 switching to Departure... by the way, as we lifted off, we saw some kind of dead animal on the far end of the runway."

Tower: "Continental 635, cleared for takeoff, contact Departure on 124.7...did you copy the report from Eastern?"

"Continental 635, cleared for takeoff...and yes, we copied Eastern and we've already notified our caterers." ✕

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AVIATION LAW UPDATE

By Chuck Young

If you're planning a flight to Orlando during these steamy summer vacation months, don't file a flight plan with a vector over the Magic Kingdom, and expect a stern rebuke from ATC if you drift that way.

New restrictions instituted earlier this year prohibit flight below 3,000 feet AGL within three nautical miles of Disney World. In case you're planning a cross-country trek, the same rule applies to Disneyland on the left coast. Media reports have stated that the restrictions (a) are buried in a 3,000-page bill that also restricted flights over "Air Defense Identification Zones" in Washington, D.C., and New York City, and (b) do not mention the Disney parks by name. The new Department of Homeland Security has since relaxed some of the restrictions, but has yet to lift the bans on Disney flyovers.

Still, many did not know of the Disney airspace ban until July 6, when judge Anne C. Conway of the U.S. District Court for the Middle District of Florida rejected a request by a conservative Christian organization to lift the no-fly zone. The Family Policy Network wanted the ban temporarily dropped to enable it to fly banners touting an anti-homosexuality web site during the annual "Gay Days" celebration at the theme park, and it argued that the no-fly zone infringed upon its right to preach freely during the festival. The court disagreed

but did not publish its opinion.

Many groups, including the AOPA, have lodged objections to the restrictions as a whole and to the Disney restrictions in particular. But because Congress (and not the FAA or DHS) mandated the restrictions, any rollback will be difficult. So, for now, give Disney a wide berth as you travel.

Thrombosis cases continue to advance; Supreme Court to reconsider "accidents" under Warsaw Convention

As reported in the last Aviation Law Update, the "economy class syndrome" case Blansett v. Continental Airlines, Inc., 237 F. Supp. 2d 747 (S.D. Tex. 2002) saw plaintiffs defeat a motion to dismiss their claims that the airline should have warned them of the possibility that

blood clots could develop in passengers' lower extremities during long flights. The lead plaintiff in Blansett had suffered a debilitating cerebral stroke ostensibly from a clot that had formed during a Houston-to-London flight.

Another court has now ruled similarly. In Miller v. Continental Airlines, Inc., 260 F. Supp. 2d 931 (N.D. Cal. 2003), the defendants moved to dismiss plaintiffs' claims on Warsaw Convention grounds. But the court, like the Blansett court, viewed the defendants' failure to warn plaintiffs of the risk of thrombosis as an "accident" within the Convention. One plaintiff suffered a heart attack soon after a flight from Paris to San Francisco; the plaintiff had run the Paris Marathon during her trip. Another plaintiff was hospitalized for seven days after sustaining a

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If you get too close to Space Mountain, expect a greeting by some neighboring F-16s who might be tempted to test the effectiveness of their Sidewinders on your hapless 172

Aviation Law Update (cont.)

(Continued from page 3)

blood clot in his leg during another Paris-to-San Francisco flight.

But the plaintiffs' victories in the thrombosis cases might be short-lived because the Supreme Court has granted certiorari in Husain v. Olympic Airways, Inc., 316 F.2d 829 (9th Cir.), cert. granted, 123 S. Ct. 2215 (2003). In Husain, the Ninth Circuit held that an airline's failure to move an asthmatic passenger from a seat near the smoking section of an international flight, causing him to suffer a fatal asthma attack, was an "accident" under the Convention. The Ninth Circuit further held that the airline's refusals of requests to move the passenger constituted "willful misconduct" under the Convention, entitling the plaintiff to unlimited damages.

Curiously, the Athens-to-New York 747 flight was not full despite the statements of the flight attendant in response to numerous adamant requests from the passenger and his wife. Drawing on the Supreme Court's definition of an "accident" in Air France v. Saks, 470 U.S. 392, 405 (1985) as "an unexpected or unusual event or happening that is external to the passenger," the Ninth Circuit held that the district court had correctly deemed the events an accident. The court appeared particularly moved by "the warnings and knowledge of the [passenger's] medical problems" as ignored by the flight attendant.

Any pronouncement the Supreme Court makes regarding Warsaw Convention issues is obviously of interest. A new ruling on the "accident" issue, however, can be expected to have extremely broad ramifications for pending cases like the thrombosis cases.

Third Circuit upholds INS checkpoints against constitutional challenge

In United States v. Pollard, 326 F.3d 397 (3d Cir. 2003), the court considered whether an INS "departure control checkpoint" at St. Thomas, Virgin Islands, violated the Fifth Amendment's equal protection guarantee. The defendant, while attempting to board a flight to New York City, had falsely stated she was a U.S. citizen and had presented fraudulent documentation, but she then recanted during interrogation and was arrested. (She also sought to suppress her confession, claiming that her Miranda rights had been violated.)

After a thorough discussion of the Immigration and Nationality Act and its enabling regulations, the court held that treating Virgin Islands passengers differently from other U.S. domestic and territorial passengers satisfied the "rational relation" test because the conduct and policy arose from a legitimate government purpose, deterring illegal immigration from the Virgin Islands to the continental United States. This

interest, in the court's view, outweighed the minimal intrusions such checkpoints impose on travelers' liberty interests.

Eleventh Circuit news

Finally, the Eleventh Circuit recently affirmed a judgment for Delta on a pilot's claims under the Americans With Disabilities Act in Davila v. Delta Air Lines, Inc., 326 F.3d 1183 (2003). But this case is useful not so much for aviation issues, or even disability discrimination issues, as for its considered discussion of the *res judicata* or claim preclusion doctrine. Practitioners needing authority on that doctrine in aviation or other cases would benefit from reading this case. ✖

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Mystery Plane #3

Chairman's Message (cont.)

(Continued from page 1)

ently, most light aircraft operate VFR in the United Kingdom, and the instructor pilot with whom I flew told me to file an IFR flight plan and fly on an airway would cost 100 Pounds.

I enjoyed flying the Tiger Moth. It was an easy airplane to fly. In returning to America from Britain, I am thankful for the liberties and freedoms we enjoy in this country. I am glad DeKalb Peachtree Airport does not charge a landing fee. I am glad that fees are not imposed for filing IFR flight plans or using ATC services. The freedoms we enjoy in America make aircraft ownership and operation a more viable mode of travel than is the case in Britain. I neglected to

mention that you must phone ahead and make arrangements to operate your aircraft at Duxford. In extraordinary circumstances, it is permissible to request permission to land at the airport by radio, but the preferred method is to phone ahead and secure permission by telephone. Also, my instructor told me that every flight across the English Channel must be IFR, and you have to call customs and make arrangements for them to meet you at your point of arrival at a specific time.

I hope all of us who fly or who enjoy a law practice relating to aviation appreciate the freedoms we have in this country.

Have a safe summer.

Happy landings,

Alan Armstrong



Mystery Plane #4

SKYNOTES

TFR AT KING'S BAY, GA

There is a ongoing TFR prohibiting flights at or below 3000 MSL in a 2 NM radius of the King's Bay nuclear submarine base at St. Mary's, GA;
www.aopa.org/whatsnew/notams.html#ga

Robins AFB Open House & Air Show

September 6-7 at WRB;
www.robins.af.mil/airshow

Great Georgia Air Show 2003

September 6-7 at Falcon Field;
www.wingsoverdixie.org

2003 National Air Tour

September 17-18 at Falcon Field
www.nationalairtour.org

Fernbank Centennial of Flight Lecture Series

8/29 - 100 Years of Aviation
 9/5 and 9/9 - Eighth Air Force
 9/19 - Owning Your Own Plane
 9/26 - Aeronautical Science
fsc.fernbank.edu/flight

Wings Over Georgia Air Show

November 1-2 at Perry (PXE);
www.wingsovergeorgia.com