

A photograph of a silver Bonanza airplane with red and white stripes, parked on a tarmac. The title 'PREFLIGHT' is written in large, blue, outlined letters across the center of the image. The background shows a cloudy sky and a runway.

PREFLIGHT

Spring 2009

In This Issue

Chairman's Message	2
Scrap LASP	3
SkyNotes	6
Transatlantic	8
From The Editor	9



AVIATION LAW SECTION

Chairman's Message:

To all who attended the recent Aviation Law Section luncheon, thank each and every one of you for coming to the Downwind Restaurant last month.


In 2010, we should conduct an aviation law seminar under the auspices of the Institute for Continuing Legal Education (ICLE). If anyone has any thoughts about topics for the seminar, please let me know. I am particularly interested in topics that may never have been covered before. We also need to have presentations dealing with ethics and professionalism. Any presentations which relate to trial practice or litigation tips are certainly welcome as well.

We have \$8,230.05 in our account and 143 members. If there is a feeling that this money could be spent towards any project that would benefit humanity or advance or improve the legal system, please let me have your comments or thoughts on that as well.

I know each and every one of you works hard in your job. The law is a very demanding (but hopefully rewarding) endeavor. However, it is also important that we have some fun from time to time. If any of you have ideas about recreational activities that might interest members of the Aviation Section, please pass those along.

For those of you who have an interest in old aircraft, just let me know, and I can have you receive a tour of the collection of aircraft housed at the Dixie Wing of the Commemorative Air Force. Also, for those of you who like to see these flying relics in action, please note that the Dixie Wing aircraft along with my Japanese Kate torpedo bomber will be touring the southeastern United States during this year. On at least two (and hopefully more) occasions, we will be reenacting the Battle of Midway.

(Continued on Page 7)



Come see us on the Web
www.gabar.org/avlaw.htm

A CALL TO SCRAP THE TSA'S LARGE AIRCRAFT SECURITY PROGRAM

By: Alan Armstrong

I.

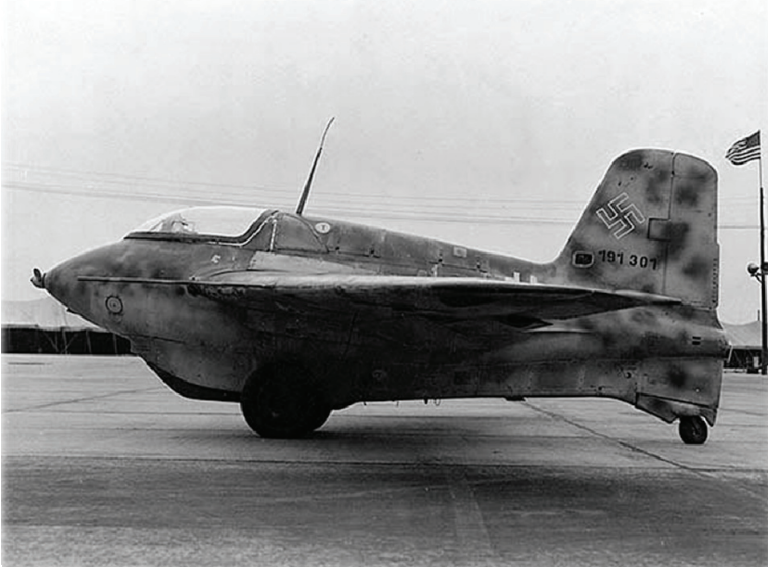
HISTORICAL BACKGROUND AND CONTEXT

Historically, private, civil aviation ("general aviation") has been an economic engine that has contributed to the productivity of the United States. It has facilitated transportation to remote regions in America not served by the airlines. It has provided air ambulance services to those who are sick or need of medical care. It has performed search and rescue, fire fighting and humanitarian relief functions, among others. In a letter from Congressman Dennis Moore to Congressman Barney Frank of January 12, 2009, Moore wrote:

"General aviation contributes more than One Hundred and Fifty Billion Dollars to the U.S. economy annually and employs more than 1,265,000 people."

Americans, in pursuit of business, individual liberty and recreation, have enjoyed the freedom to engage in air transportation without a layer of unnecessary and wasteful government bureaucracy. Now, all of that is about to change.

Eight years after the tragic events of September 11, 2001, an act that was perpetrated *by terrorists from foreign countries*, the Transportation Security Administration ("TSA") has decided some of the most affluent and responsible members of American society now constitute a "security threat." TSA is bent upon curtailing American civil liberties and undermining productivity in this country with no justification for its actions.



Mystery Plane #1

In a Notice of Proposed Rule Making (NPRM) of October 30, 2008, with only a 60 day comment period, the TSA published in the Federal Register a 260 page document proposing sweeping changes to general aviation operations in the United States that will substantially erode civil liberties, inflict further harm on an aviation industry all ready in trouble, and put TSA in the business of regulating general aviation air travel. The TSA proposed rule, as written, relates to aircraft weighing 12,500 pounds or more and is called the Large Aircraft Security Program ("LASP").

If the reader of this paper is in favor of these ill-conceived measures, then do nothing. However, if you oppose rules and regulations that will treat general aviation like the airlines for no justifiable reason, then please continue to read this paper.

II.

ELEMENTS OF THE PROPOSED RULE

A. THE BURDEN ON AIRCRAFT OWNERS AND OPERATORS

For those aircraft owners and operators whose aircraft weigh 12,500 pounds or more, the level of bureaucracy proposed by the TSA is breathtaking. The TSA's LASP proposed rule, if implemented in its present form, will include the following elements:

(1) Pilots and flight attendants will have to undergo a fingerprint-based Criminal History Record Check (CHRC) and a Security Threat Assessment (STA) like those employed by the airlines. According to the TSA, it will cost \$74.00 per person to complete these required checks. Follow up checks will be required every five years.

(2) Passengers for proposed flights will have to be vetted against both a TSA "selectee" list and also a "no-fly" list. If the proposed passenger generates a positive response from the "selectee" list, then additional screening will be required. If the proposed passenger generates a positive response from the "no-fly" list, then the passenger may not board the aircraft.

(3) While currently commercial air carriers conduct the vetting process in house, the TSA proposed rule will create a cottage industry of Watch List Service Providers (WLSP) who will conduct the vetting for the aircraft operator. The WLSP will charge the aircraft operator for the vetting service.

(Continued on page 4)

(4) The aircraft operator will have the option of checking passengers on a flight-by-flight basis or creating a Master Passenger List (MPL) which the TSA claims will alleviate the need for a flight-by-flight check. This position by the TSA is inconsistent with reports in the field from an air taxi operator that presently vets its passengers by employing the TSA lists. The MPL notwithstanding, both the passengers and flight crew must be vetted with the TSA lists before every flight.

(5) Inbound international flights using the Bureau of Customs and Border Protection (CBP) electronic advance passenger information system (eAPIS) would not need to submit passenger information to TSA, the submission to CBP being sufficient

(6) The proposed rule will require the designation of key security personnel for the aircraft such as the Aircraft Operator Security Coordinator (AOSC), the In-Flight Security Coordinator (IFSC), and the Ground Security Coordinator (GSC).

(7) Weapons could only be transported in an inaccessible cargo area or in a locked box under the control of the In Flight Security Coordinator.

(8) Various items of sporting equipment and tools could not be carried aboard the aircraft.

(9) The TSA proposed rule would require the development of specific security-related procedures for use in the event of a security threat.

(10) The aircraft operator would have to identify procedures for securing the aircraft while at home base and on the road.

(11) The aircraft operators would have to undergo training to ensure that they understand procedures for obtaining law enforcement assistance in the event of a security need.

(12) TSA would require aircraft operators to follow specific regulatory requirements in the event of a threat concerning a bomb or piracy.

(13) Claiming it lacks sufficient general aviation inspectors to oversee the Large Aircraft Security Program, TSA proposes that third-party auditors conduct security inspections and submit reports to TSA which would determine whether or not the aircraft owner had achieved regulatory compliance.

B. THE BURDEN ON AIRPORTS

Not only will aircraft operators suffer under the economic and time-consuming burdens imposed by TSA's new safety initiative, but operators of public airports will find their own dose of misery in the Large Aircraft Security Program. An interview of Mike Van Wie, A.A.E., Assistant Director of the DeKalb Peachtree Airport (PDK) on January 14, 2009, confirmed the following:

1. PDK is a General Aviation "Reliever Airport."

2. After 9/11, PDK received Federal funds to raise the fencing around the airport from 4 feet to 8 feet and to add barbed wire.

3. In the current post 9/11 environment, airport operators are not inclined to spend resources on security measures because of concerns that any initiative taken at the local level will not satisfy any new Federal initiative. Moreover, why spend money out of the local budget when Federal funds may become available for new security initiatives?

4. PDK is serviced by 110 police officers from two jurisdictions that employ 75 police cars. Under LASP, all the officers will need to be trained and 75 aircraft radios will have to be purchased and installed in the police cars.

5. The TSA will require that PDK keep a record of the officers' training, but the LASP proposed rule does not define what records have to be kept.

6. PDK will have to be able to receive and disseminate sensitive material and be capable of destroying such material for security reasons.

7. There are twenty locations on the airport from which a large aircraft could operate and therefore twenty areas that could require the posting of LASP notices.

8. The availability of the Airport Security Coordinator is not defined, e.g., on site, available by cell phone but one hour away from the airport, or available by cell phone but out-of-town.

9. Finally, some airports may think it expedient to refuse access to aircraft weighing 12,500 pounds and above. However, as public use airports receiving Federal funds for airport improvements or maintenance, excluding aircraft weighing 12,500 pounds in order to avoid complying with LASP would be a breach of the airport's grant assurances to the FAA that it will make the airport available to all aeronautical activities and users without economic discrimination. Excluding access to aircraft covered under LASP is not the answer to the budgetary and manpower burdens imposed by LASP.

(Continued on page 5)



Mystery Plane #2

III.

PUBLIC POLICY ARGUMENTS AGAINST THE PROPOSED RULE

Over 15,000 aircraft and 10,000 operators will be impacted by the proposed rule. Operators of aircraft weighing more than 12,500 pounds are typically corporations or other business entities. Unlike airlines engaged in common carriage, private aircraft are flown by pilots who almost without exception know their passengers. Passenger access to corporate aircraft is generally restricted and secure. The mission of corporate aircraft is speed, efficiency, flexibility and *security* of operation. Historically, private aircraft have been a secure way to engage in air transportation.

The typical pilot flying an aircraft that weighs 12,500 pounds or more holds an airline transport pilot certificate, has received initial or recurrent training at an aircraft training facility recognized by the manufacturer such as Flight Safety or SimCom, who undergoes a flight physical every six or twelve months and who is evaluated both physically and psychologically by an aviation medical examiner (AME), and who is subject to random drug testing. These pilots are carefully scrutinized by their employers before they are hired.

Without any supporting data, TSA has arbitrarily determined that this disciplined and responsible element of society has magically become transformed into a "security threat."

Besides the foregoing, like the rest of the economy, general aviation has been impacted severely by the effects of the crippled American economy. Adding a level of unnecessary bureaucracy that achieves nothing is the last thing general aviation needs in this environment.

Not only does the proposed rule make absolutely no sense from a public policy standpoint, it may be unlawful. Since a light sport aircraft is equally capable of delivering a nuclear device as opposed to an aircraft weighing 12,500 pounds or more, the trigger weight in the proposed rule appears to be arbitrary and capricious. The consequence is that the proposed rule, if adopted, may be stricken as unconstitutional by a court of appropriate jurisdiction as a violation of substantive due process in violation of the Fifth Amendment. Courts will, in a proper case, strike down a rule or policy that is arbitrary and capricious. *Motor Vehicle Mfrs. Assn. v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29, 43 (1983). Furthermore, there must be a "rational connection between the facts found and the choice made" as required by the United States Supreme Court in *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

The simple fact is that the basic premise of the TSA proposed rule, that is, that aircraft weight is an indicator of its capacity to pose a security threat, is false. The weight of the aircraft, whether 12,500 pounds or 3,000 pounds, has nothing to do with its capacity to carry a biological or chemical weapon. Accordingly, there is scarce justification for the TSA rule as presently written.

IV.

HOW TO CONTACT YOUR CONGRESSMAN

The online directory for the 111th Congress is on the Internet. Please visit the following website:
<http://www.visi.com/1juan/congress/>

It is strongly recommended that you either telephone your congressman or senator or send him or her a written letter. Email is easy to delete. If you have the time, a telephone call is suggested.

The text below may be employed in your written communication to your congressman or senator or in your conversations with him or her

Dear Congressman/Senator:

The Transportation Security Administration (TSA) has embarked on an assault against the general aviation community. In a Notice of Proposed Rule Making (NPRM) no less than 260 pages long, the TSA has proposed a host of sweeping rules and regulations that will cripple the general aviation community. Besides flight crew background checks, security training, the requirement to obtain permission from TSA to carry passengers aboard the aircraft through a watch list supervisor, the designation of an aircraft security coordinator, an in flight security coordinator and a ground security coordinator, the TSA rule will require operators of aircraft that weigh 12,500 pounds or more to undergo auditing at their own expense. The auditors will then send reports to the TSA, and the TSA will determine whether or not the aircraft operator is or is not in regulatory compliance. The carriage of tools and equipment aboard the aircraft will be prohibited along with weapons unless they are placed in an inaccessible cargo hold under the control of the in flight security coordinator.

The elements outlined above in the TSA proposed rule demonstrates that the TSA has no understanding of general aviation. Apparently, it thinks that private aviation or general aviation is just like the operation of an airline which is engaged in common carriage. There is a remarkable distinction. General aviation pilots almost invariably know their passengers. There is no need for them to have their passengers cleared through the TSA. Pilots undergo recurrent training, routine flight physicals and often are subject to random drug testing. The owners and operators of aircraft are almost without exception very successful and accomplished people. With the stroke of a pen, the TSA has deemed these people "security threats."

America is in the midst of a recession. Like other segments of the economy, the aviation community is struggling. Allowing this TSA rule to become final may signal the death nell for many segments of the general aviation community.

I implore you to put a stop to this misadventure by the TSA and make sure that its Large Aircraft Security Program is terminated permanently.

Respectfully,

(Your signature)

(Continued on page 6)

V.

FILING COMMENTS TO THE PUBLIC DOCKET

Besides contacting your congressman or senator, it is suggested that you file comments to the public docket. In filing comments, you should reference TSA Docket No. TSA2008-0021. You may submit your comments by mail or fax to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building - Ground Floor, Room W12-140, Washington, DC 20590-0001, Fax: 202-493-2251.

You may submit your comments electronically through the Federal Rulemaking eRulemaking portal at <http://www.regulations.gov>.

VI.

CONCLUSION

Getting the TSA involved in general aviation is a terrible mistake. While the triggering weight of the TSA for deeming an aircraft to be a potential security threat is currently 12,500 pounds, the weight could be lowered tomorrow to 10,000 pounds, 5,000 pounds, or even lower. *Allowing TSA to become involved in general aviation is something we cannot and must not allow.* Please contact your congressman or senator today and tell him or her to stop the TSA's Large Aircraft Security Program. →

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Mystery Plane #3

SKYNOTES**2009 SMU Air Law Symposium**

February 25-27, 2009.

www.smuairlawsymposium.com

12th Annual Thunder In The Valley Air Show

March 21 - 22, 2009

Columbus Metropolitan Airport (CSG), Columbus, Georgia

www.thunderinthevalleyairshow.com/

WWII Heritage Days 2009

April 18th & 19th at Peachtree City, GA, Falcon Field.

www.dixiewing.org

35th Annual Sun-n-Fun

April 21-26, 2009

www.sun-n-fun.org/

32nd Vidalia Onion Festival, Air Show

April 25 -26, 2009

www.vidaliaonionfestival.com/airshow.html

Angel flight Golf Tournament

May 14th, 2009 at Chateau Elan

www.AngelFlightSoars.org

2009 Robins Air Force Base Air Show

May 2-3, 2009

Featuring U.S. Air Force Thunderbirds, U.S. Army Parachute Demonstration Team, the Golden Knights, the Sky Soldiers, a Cobra Demo Team, and many many more.

www.robins.af.mil/airshow/



Chairman's Message (cont.)

Anyone with an interest in appearing at those air show performances may check out the following websites: www.japanesebomber.com or www.dixiewing.org. Presently, it appears that we will be reenacting the Battle of Midway at Warner Robins Air Force Base on May 2-3, 2009, and at the Monroe Veterans Day Air Show in Monroe, North Carolina on November 8, 2009.

There may also be a reenactment in Columbus, Georgia on March 22-23, 2009, and Goldsboro, North Carolina at Seymour Johnson Air Force Base on April 26, 2009, and at the Beaufort Marine Corps Naval Air Station in South Carolina on April 16-17, 2009.

Once again, thank each and every one of you who attended the luncheon, and please feel free to pass along any ideas you may have for making our section more vibrant and interesting. ➔

Happy landings, Alan.



Mystery Plane #4

Transatlantic – The Planning Begins

By: Mark Stuckey

In December 2005, I started contemplating my transatlantic flight. What followed for several months was trying to plan for every contingency I could think of, and then actually taking flight in June 2006 and realizing all the things I had never considered.

I really cannot say what actually made me think that flying across the Atlantic was a good idea. I had a hankering to do something different and noteworthy; I was 37 years old, so perhaps it was an unconscious mid-life crisis. Like so many of us, I am at my best when I have a specific goal to accomplish. And once the thought of crossing the ocean started to solidify in my head, I was not going to stop until (a) I convinced myself I simply could not accomplish the feat, or (b) I was standing on English soil.

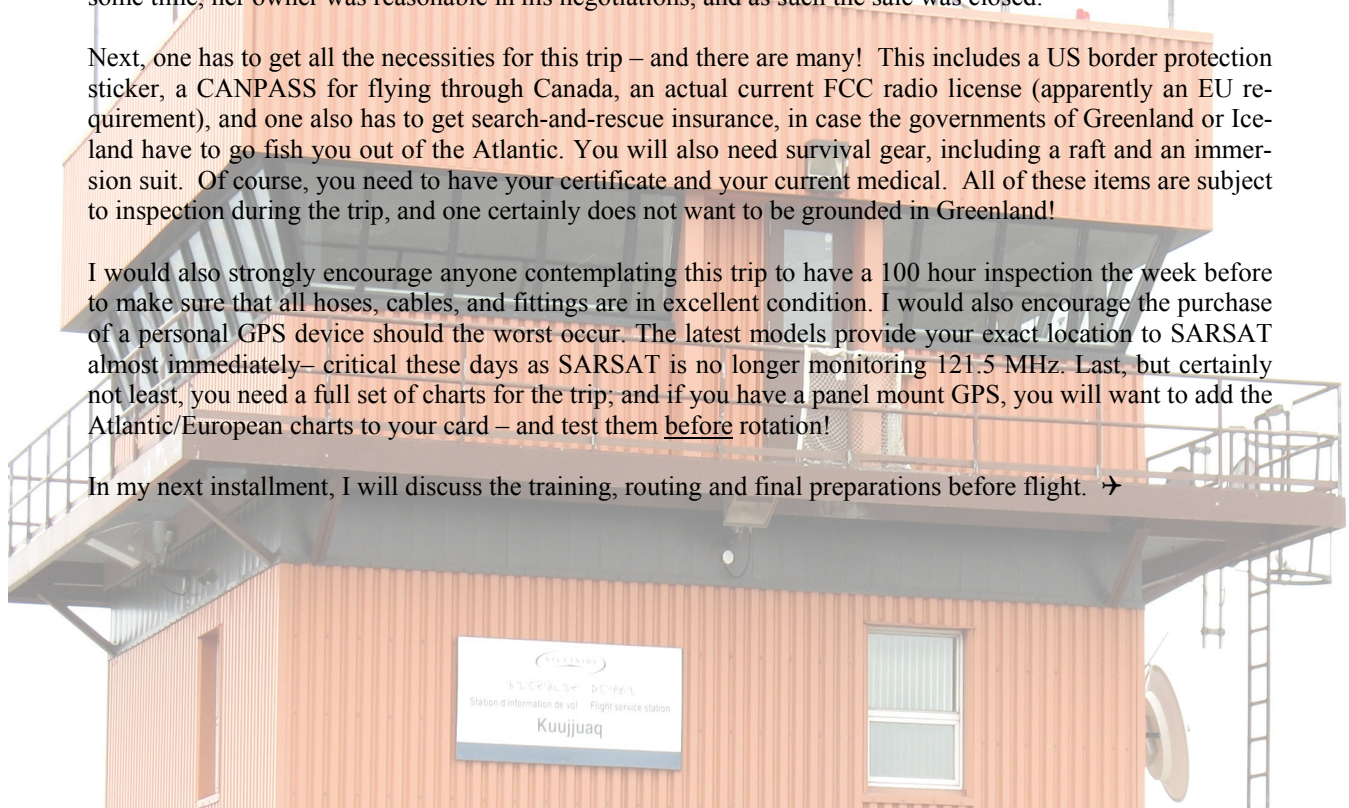
So the planning process began. First, the plane. At the time I was flying my trusty Beechcraft Sierra, but was already contemplating switching to a Bonanza. The Sierra is kind of like the Dauntless SBD – very, very slow (not deadly, fortunately). When I started plotting the actual distances to be covered over water, and assuming that I would have a headwind at least one way, it became quickly apparent that the Sierra was going to be impractical for the trip. I could have put aboard one of those large ferry tanks that one puts in the cabin, but that made no sense to me. First, I would have to get a ferry permit and essentially get specific permission for my trip from the FAA, as the plane would have been overloaded with fuel. I had my doubts that the FAA would approve such a venture, and even if they did, it would take forever to get that approval. I also was concerned about the expense of having such a tank installed, tested, approved and then uninstalled when I was done. While a transatlantic trip is not for the faint of heart financially, the significant one-time expense made my prior contemplations of the Bonanza all the more substantial.

The Bonanza is essentially a longer and faster version of a Sierra, and its longevity and reliability was a big plus to me. Additionally, the addition of tip tanks to the Bonanza would give her the range I needed, and said tip tanks would obviously be useful long after the trip, both in terms of the range of the plane (they were very useful in my business trips to Colorado and California), as well as in terms of resale value. Fortunately, one was for sale that my FBO had been maintaining, so I felt comfortable regarding her maintenance history. She had low time on both the airframe and the factory remanufactured engine; given that she had been for sale for some time, her owner was reasonable in his negotiations, and as such the sale was closed.

Next, one has to get all the necessities for this trip – and there are many! This includes a US border protection sticker, a CANPASS for flying through Canada, an actual current FCC radio license (apparently an EU requirement), and one also has to get search-and-rescue insurance, in case the governments of Greenland or Iceland have to go fish you out of the Atlantic. You will also need survival gear, including a raft and an immersion suit. Of course, you need to have your certificate and your current medical. All of these items are subject to inspection during the trip, and one certainly does not want to be grounded in Greenland!

I would also strongly encourage anyone contemplating this trip to have a 100 hour inspection the week before to make sure that all hoses, cables, and fittings are in excellent condition. I would also encourage the purchase of a personal GPS device should the worst occur. The latest models provide your exact location to SARSAT almost immediately – critical these days as SARSAT is no longer monitoring 121.5 MHz. Last, but certainly not least, you need a full set of charts for the trip; and if you have a panel mount GPS, you will want to add the Atlantic/European charts to your card – and test them before rotation!

In my next installment, I will discuss the training, routing and final preparations before flight. →



From the Editor – Guess Who's Back?

Well, after a three year hiatus, I just couldn't stay away any longer. Many thanks to prior editor Johnny Friedman for his hard work, and likewise thanks to Alan and the Aviation Section for having me back. In this issue, Alan addresses the serious problems raised by the TSA's LASP. While my Bonanza certainly doesn't weigh over 12,500 pounds (even after Thanksgiving), I think everyone can see where such draconian measures – based upon the flimsiest of justifications - can eventually lead to regulations on all aircraft – jet, light twin and even the trusty 172. I would urge you to consider Alan's plea and both comment before **February 27** and contact your friends in Congress to stop this nonsense.

Additionally, I will be writing a series of articles regarding my 2006 solo transatlantic trip. Something a little lighter – and hopefully more entertaining – than reading aviation regulations.

The Mystery Plane Contest has returned. Given that I am returning to England later this month (commercially this time), I have stuck with a European theme. The first person who can identify all the mystery aircraft gets a gift certificate for \$35 to a local eating establishment – *The Downwind* at PDK and *The Flying Machine* at LZU are always good, but you can use the certificate anywhere you like. Just give me a call or send an email with your responses.

I want to give a plug for the Warner Robins Air Show, down the road from my home in Macon, which will be the weekend of May 2-3, 2009. The Thunderbirds will be there, along with the Dixie Wing (including our own Alan Armstrong and Keith Wood) as well as the Golden Knights and other performers and static displays. The airshow website is here: www.robins.af.mil/airshow Additionally, Warner Robins is home to the Museum of Aviation, a 51 acre site that is the second largest USAF museum in the country and contains over 93 aircraft and numerous exhibits; their website is here: www.museumofaviation.org

Finally, you may recall my article in 2003 about the three generations of Stuckey aviation. In 2005, the Ruston airport, founded by my grandfather, named their terminal building for him. My father and I flew to the dedication ceremony and were photographed below posing in front of a local Piper Cub, a personal favorite of Stuckey aviators. Unfortunately, Dad passed away suddenly in August 2007 and was buried in Ruston. I could not help but notice that his final resting place lies directly in the pattern at RSN, and every time I visit and I see a 172 high above, I can hear him saying "Keep your airspeed up!" →

--Mark Stuckey




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