



PREFLIGHT

Chairman's Message:

Tibbets Dinner a Huge Success

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**August 6, 1945
The Bombing of
Hiroshima**

The Aviation Section held a dinner honoring Gen. Paul Tibbets on Friday evening, July 13, 2001. Gen. Tibbets was the command pilot of the B-29, Enola Gay, the aircraft that dropped the first atomic bomb during World War II. 189 people attended the dinner, which featured a United States Air Force Color Guard as well as a reading in honor of the "missing man." The reading was made by Mitch Twa, the outgoing Group Commander of the Atlanta Chapter of the World War II Round Table and a B-25 gunner in the China/Burma Theater during World War II.

John Webb, Esq., the Program Director for the Aviation Section, introduced Gen. Tibbets, and Edward McCrimmon, Esq., the Vice-Chairman of the Sec-

tion led the audience in prayer, honoring the sacrifices of veterans in World War II. Mayor Lillian Webb of the City of Norcross presented Gen. Tibbets with a key to the City.

A pre-med student, Gen. Tibbets dropped out of college to join the Army Air Corps as a pilot.

He began his military flying in 1938 and was flying from a base in North Carolina to Savannah, Georgia when he heard of the Japanese attack on Pearl Harbor.

Gen. Tibbets was transferred to England where he led a number of bombing raids on Europe.

During one of his bombing raids, his B-17 was riddled with gunfire injuring his co-pilot and a gunner. After extensive combat flying in Europe, Gen. Tibbets returned to the United States and was put in charge of the formation of the 509th Composite Wing. The Composite Air Wing required both bombers and transport aircraft, since the mission of the unit was top secret. The Unit could not have its materials transported by organizations that were not "secure." One day when Gen. Tibbets' wife

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**The Enola Gay on Display at the
National Air and Space Museum**

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observed him in the presence of a number of men wearing white suits, he did not tell her they were nuclear physicists. Rather, he told her they were plumbing engineers. She persuaded one of the engineers to assist her in resolving an issue in her residence such as a clogged drain.

General Tibbets' Wing had a code name "Silverplate." When that code name was used, whatever he required in terms of aircraft or personnel was supposed to be satisfied. One general who did not comply with his requests for transport airplanes was demoted from general to major.

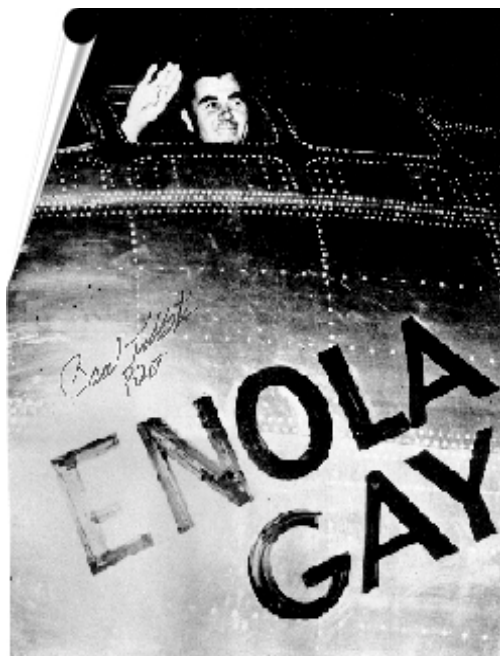
General Tibbets' Wing was not a conventional outfit. Five men under his command had convictions for murder or manslaughter. One at a time, the men were called into his office. He told them that if they did their jobs effectively when the mission of the unit was complete, he would give them the materials collected on them and a match. As it turns out, these five men received the equivalent of an executive pardon. After the successful bombing missions on Hiroshima and Nagasaki, General Tibbets, true to his word, gave the five men the records compiled on them. The identity of these five men remains a secret to this day.

An interesting aside in relation to the program of July 13 was the fact that a Japanese television film crew from Hiroshima, Japan filmed the presentation by General Tibbets that was aired on Japanese tele-

vision on August 6 of this year. August 6 was the date the first atomic device was dropped on Hiroshima by the "Enola Gay."

87 years of age, Gen. Tibbets can still pass a flight physical, and two of his crewmen are still living. After making his remarks and receiving a standing ovation, General Tibbets remained to autograph copies of his book, "Enola Gay." Gen. Tibbets related that a motion picture was made honoring his exploits entitled "Above and Beyond."

The dinner honoring Gen. Tibbets was made possible by the hard work of John Webb, the Aviation Section's Program Coordinator who enlisted the support of the World War II Roundtable and ensured that this program was a success. —Alan



Tibbets in the Enola Gay



B-29s at the Boeing Factory

PARTS SMARTS:

By Don Mitchell and Frank Polk

A recent ruling from the U.S. Bankruptcy Court for the Southern District of Ohio has left some folks with parts smarts feeling a little... well, less smart. The case, *In re Southern Air Transport, Inc.; Southern Air Transport, Inc. v. Northwings Accessories Corp.* concerns a creditor's non-consensual lien on a debtor's spare aircraft parts and how the creditor did (or in the Court's opinion did *not*) perfect its security interest in the parts for nonpayment of repairs. The ruling sets new precedent and casts doubt over practices that have been routinely followed by the FAA and the aviation industry for years.

Where possession is not nine-tenths of the law

Northwings Accessories repaired aircraft parts for Southern Air Transport. The bill, which was never paid, totaled over \$160,000. In accordance with Florida law, Northwings kept possession of the parts as security for payment. Florida law does not require, and Northwings did not file, any notice of lien. It's unclear from the facts when in the timeline Southern Air filed for bankruptcy.

Southern Air contended that Northwings' lien wasn't properly "perfected" and could therefore be set aside. They argued that fed-

eral law pre-empted state law in determining the priority of security interests in aircraft parts. Without having filed a notice of lien with the FAA, Northwings' valid state law possessory lien was therefore invalid against third parties, including a bona fide purchaser.

The Court found Northwings' lien valid under Florida law and that its security interest was perfected by continued possession of the aircraft parts. However, its validity under state law is irrelevant, the Court said, if federal law pre-empts state law in this instance.

FAA filings are mandated for conveyances and other matters affecting title to U.S. registered aircraft, including leases, security interests and other instruments executed for security purposes. The Court noted, however, that this case differed from all others because it concerned a filing requirement for statutory possessory liens for spare aircraft parts.

After a lengthy examination of federal statutes, Supreme Court precedent and even legislative intent, the Court concluded that Northwings was in fact required, by federal law, to file a notice of its lien with the FAA. This despite the fact that Florida law does not require any filing – simply possession of the parts. In fact, the Court ruled that FAA recording of *any and all* liens is required

in order to be enforceable against third parties, regardless of type or origin.

Here's the rub. The FAA has historically *rejected* filings of non-consensual claims of lien for engines, propellers and spare parts. The FAA has also consistently rejected filings which are made to perfect possessory lien claims, unless the relevant state law provides a method to perfect these liens through filing. More importantly, the Aeronautical Center Counsel's office (ACC), which acts as counsel to the FAA, has consistently supported the FAA's decision to reject these filings.

On April 8, 1993, the ACC issued an opinion analyzing the Federal Aviation Act (now, Transportation Code) and Federal Aviation regulations, and concluded that "Section 503(a)(2) of the Act [now, 49 U.S.C. §44107] does not authorize the recording of non-consensual liens on engines and propellers." The same rationale holds true for spare parts.

Further complicating matters, FAA regulations require that

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filings for spare parts be accompanied by a “statement by the air carrier” that it holds a certificate under 49 U.S.C. §44705 and that the spare parts are being maintained by or on behalf of an air carrier, presumably for installation on aircraft owned or leased by that air carrier. A written statement from the air carrier for non-consensual filings is impractical, given its disputed nature. The Court did not discuss, and it remains unclear from the facts, whether this case would apply between two “non” air carriers. Southern Air was a Part 121 operator and was such an air carrier.

FAA filings are performed to perfect security interests and evidence title transfers in all aircraft and to perfect some types of security interests in certain engines, propellers and spare parts. The mandate for filing liens and instruments against aircraft is broad: “conveyances that affect an interest in civil aircraft.” The mandate is more restrictive for engines, propellers and spare parts, when it provides for the filing of all “. . . leases and instruments executed for security purposes . . . that affect an interest in. . .” certain engines, propellers and spare parts. The FAA and ACC have always interpreted the term “for security purposes” to mean a consensual security agreement and they believe this interpretation is consistent with the Transportation Code and international aviation law.

Aviation equipment is highly mobile. The stated intent of the Transportation Code is to provide a clearinghouse for parties to be notified of certain interests affecting this equipment – not necessarily *all* interests. The FAA, ACC and various courts have all taken the position that the FAA can only accept the filing of liens if the



Transportation Code has authorized it. Until *Southern Transport*, that had *excluded* all possessory liens against engines, propellers and spare parts.

Where this ruling doesn't make sense is that notice to any potential buyer of these spare parts was served by Northwings' maintaining possession. That's precisely why no filings are required for *possessory* liens.

What to do

This ruling now stands unless overturned on appeal or challenged by an-



other jurisdiction. It is possible as well that future courts will conclude that FAA's practice is simply incorrect and that these filings should be accepted. Any prudent creditor in this or a similar situation should attempt to file a notice of lien with the FAA. If the FAA rejects the filing, the creditor should maintain the rejection as proof of an attempt to file. The ambiguity left from this decision, however, may still leave the possessory lien open for challenge. It will take either an appeal of this decision or a lawsuit on the FAA's refusal to accept a non-consensual lien filing against engines, propellers or spare parts to settle what is now a troublesome ruling.

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Websites of Interest to the Aviation Lawyer

I have compiled this list over the past couple of years from my own internet searches, as well as from the suggestions of aviation lawyers and pilots. There are hundreds, if not thousands, of aviation web sites out there, so I have included the ones that I have returned to on a regular basis. Feel free to email me with other sites of interest so that I may include them in future newsletters. —Mark



www.faa.gov

The FAA home page

www.faa.gov/ATPubs/AIM/index.htm

The Airmen's Information Manual (AIM) online

www.faa.gov/avr/afs/fars/far_idx.htm

Provides links to both current and historical FARs

www.faa.gov/ATPubs/ATC/index.htm

The ATC manual online (7110.65)

www.faa.gov/ATPubs/NTM/index.htm and www.faa.gov/NTAP

Notices to Airmen (NOTAM's) online

av-info.faa.gov/ad/AD.htm

FAA Airworthiness Directives online

registry.faa.gov/frame.htm

The FAA civil aviation registry online, with information

regarding both aircraft (including N-number searches) and airmen certification

nadsac.faa.gov/asp/fw_searchus.asp

Contains NTSB safety recommendations to the FAA, as well as the FAA responses



www.nts.gov/aviation/aviation.htm

The NTSB aviation page, which includes a database of accident synopses, as well as publications related to major investigations such as TWA Flight 800 and Korean Air Flight 801



www.gao.gov

Home page of the General Accounting Office, which has done numerous reports and studies about the FAA, ATC and aviation safety and efficiency; includes a search engine of reports from 1975 to the present

www.airtrafficcafe.com

The ATCafe, where you can find all sorts of useful ATC information, including employment information, live ATC feeds, and a library of useful ATC manuals and arti-

cles.

www.natca.org

The official website of the National Air Controllers Association

www.airdisaster.com

Web site that lists practically every significant aviation accident, with articles, photos, videos and a database that goes back to 1950; useful for finding news reports and general overview information

aviation-safety.net/index.shtml

Another airliner accident web site, including accident reports since 1945, photos and aviation safety news

www.aopa.org

Official AOPA website

www.avitop.com/aviation

Lists the top 100 aviation sites, ranked by hits in the last 5 days; over 20 categories include clubs, schools, disasters, classifieds, historic, art and airshows

www.avweb.com

Listed as aviation's most visited web site, with numerous articles and columns covering everything from product reviews to aviation law to news and weather

www.lpba.org

Official website of the Lawyer Pilots Bar Association

www.icao.int

Official website of the International Civil Aviation Organization

www2.smu.edu/lra/jalc

Journal of Air Law and Commerce



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SKYNOTES

Wings over Dixie Air Show

Sponsored by the Confederate Air Force

September 8-9, 2001; Falcon Field in Peachtree City

www.wingsoverdixie.org

12th Annual Georgia Invitational Golf Tournament

September 27-28, 2001; Robins Air Force Base

Appearances by Sam Nunn and General Robert Scott

Proceeds benefit the Museum of Aviation

AOPA Expo 2001

November 8-10, 2001; Ft. Lauderdale

Section Luncheon, State Bar Midyear Meeting

January 11, 2002 at 12:00 PM, Location TBA

FAA Dedicates New Tracon at Peachtree City

On May 14, 2001, the FAA dedicated the new Tracon at Peachtree City. The Tracon, which is adjacent to Falcon Field, contains the latest all-digital ARTS IIIIE, a fully electronic flight strip system (EFSTS) and newly designed Large Screen Displays.

The relocation of the Tracon from Hartsfield to Peachtree City will allow for future consolidation of the air traffic operations in Macon, Columbus and Atlanta in the future.

Total cost of the construction of the new Tracon is estimated by the FAA at \$56.6 million. The Tracon has over 200 employees, including 166 air traffic control (ATC) employees and 40 Airway Facilities (AF) employees.



The Adams M-309, covered in our last newsletter, has now been re-named the "CarbonAero"



Cessna 402, similar to the plane that crashed in Marsh Harbor and claimed nine lives