



AVIATION POLICY: LOOKING BACK AND LOOKING FORWARD

**Remarks of
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**American Bar Association
Forum on Air and Space Law
Washington, D.C.
November 6, 2003**

It is a privilege to be back at the ABA Forum on Air and Space Law and to have the opportunity to speak with you again about the ever-changing, ever-challenging aviation business.

I should start by telling you that, as I looked over the list of complex and thorny issues that the Forum included in the agenda for this conference – issues like mergers, competition, air services negotiations, and aviation infrastructure, one word came immediately to mind: It was “Hooray!” With the firestorm of events that have pounded the aviation industry over the past two years, it is nothing short of wonderful to be able to devote our attention again to some of the more familiar – or should I say “legacy” -- issues that confronted the aviation industry in less tumultuous times.

Given this long-awaited return to some semblance of normalcy, I thought it would be appropriate to do two things today: first, to reflect at least briefly upon the events and accomplishments of the past two years; and second, to talk about the challenges facing the U.S. aviation system going forward.

CRISES AND RESPONSE

Let me turn first to the events and accomplishments of the past two years. As many of you know, I have logged a lot of years in government. A lot of that time has been devoted to aviation. I think I can say with some authority, therefore, that there has never

been a period as challenging for aviation – and thus for aviation policy makers – than the period from September 11, 2001 to date.

The industry has been buffeted by crisis after crisis, each of unprecedented severity: September 11th; Operation Enduring Freedom; Operation Iraqi Freedom; SARS – all accompanied, of course, by the bursting of the dot-com bubble, a downturn in the broader economy, and a concomitant decline in business and leisure travel. The most frequently cited reference in speeches about the aviation industry over the past two years has been *The Perfect Storm*. I read it. This is not “the perfect storm.” This is the *Book of Job*.

Today, things seem a bit different. The most recent set of quarterly financial reports contains at least some cause for cautious optimism – with some of the majors reporting lower than anticipated losses and others even reporting small profits. A number of carriers have made significant improvements in their balance sheets. And of course the low-cost carriers continue to post encouraging results. All of this is certainly good news for our airlines, their employees, other businesses that rely heavily on air transportation, and our Nation as a whole -- considering the enormous contribution that aviation makes to our economy and our standard of living.

It would be premature, of course, to send up the all-clear signal. Many of the businesses affected by events of the past two years – including many of our major air carriers – are still struggling to recover. But it is not premature, I believe, to reflect upon our response to the events of the past two years.

That response has had a number of elements.

First, it included stabilizing and strengthening the financial condition of America’s airlines. Although it has been only two years, we sometimes forget – or perhaps suppress – the abiding concern for the very survival of America’s airlines that prevailed in the immediate aftermath of September 11th. It is no overstatement to say that the huge loss in revenue from the four-day shutdown, the substantial reduction in demand, and unforeseen costs threatened the existence of significant parts of our commercial airline industry, with potentially enormous knock-on effects for the rest of our economy.

Faced with this unprecedented situation, Congress and the Administration took quick action. They worked together and with industry at a record pace to design and pass a number of important measures to help stabilize the airline industry, including \$5 billion in grant authority, \$10 billion in loan guarantee authority, and third party war risk liability insurance authority. The Department of Transportation was then charged with delivering much of the relief – a responsibility that it discharged in record time, largely thanks to the leadership of Secretary Mineta and a herculean effort by DOT staff.

Second, Congress and the Administration took our approach to aviation security to an entirely new level. It is fair to say that our creation of TSA and the suite of new measures and requirements introduced by the new agency represented nothing less than a transformation of the fundamental framework within which air transportation is

conducted. To be sure, that transformation was accompanied by some growing pains we won't soon forget, but the net result has been the restoration of a system in which travelers have confidence. Whatever problems continue to compromise the industry's economic performance, fear of flying is not among them.

Third, while all of this was going on – and with no additional resources – the Department continued to fulfill its many “bread-and-butter” aviation responsibilities. We continued to focus on improving aviation safety and infrastructure. We financed new airport projects. We continued to run the EAS program, monitor competition in the industry, grant licenses for domestic and foreign air transportation, and work with other nations to liberalize our international aviation markets.

Along the way there have been a number of specific accomplishments of which I'm particularly proud. Let me single out two new treaties that haven't received very much notice – perhaps because, like so much that we do in the field of international transportation policy, it's not easy to sum up in a sound bite.

The first is our successful conclusion of the Cape Town Convention on International Interests in Mobile Equipment – a treaty that will establish an international registry for aircraft and thus eliminate much of the uncertainty and risk that accompanies the financing of aircraft in a great many developing countries today. What it means is that, once Cape Town comes into effect, the cost of financing aircraft in many parts of the world will be sharply reduced, more aircraft will be sold abroad thereby enhancing our balance of trade, and air safety will improve as the introduction of new, state-of-the-art equipment is accelerated on a global basis. Not bad for a treaty that has gone virtually unnoticed in the press.

The second development was securing the Senate's advice and consent to the ratification of the Montreal Convention of 1999, the long overdue modernization of the 1929 Warsaw System of airline liability to passengers. At long last we have an international regime in which the families of the victims of international aviation accidents will be treated more humanely, will not have to prove fault on the part of the airline in order to recover an appropriate measure of damages, and thus will be spared the protracted litigation ordeal that the old Warsaw System required in so many past cases. Montreal '99 represents one of the most significant advances in the legal framework for international aviation that we have seen in a very long time.

In sum, I believe that our actions over the past two years – the actions of the Administration, DOT, Congress, and all of you and the organizations you represent – give us much to be proud of.

CHALLENGES FACING AVIATION

Let me now turn to the challenges of the future. I want to address four in particular: the importance of helping industry innovate; the ever-present challenges of aviation infrastructure; the need to manage technology more effectively; and of course globalization.

Innovation

The first challenge that I want to address may be the hardest, but I think it's the most important. In a nutshell, it reduces to this: while remaining true to its public interest mandate, government has to get better at accommodating experimentation and innovation in the airline industry. Secretary Mineta has asked his aviation team to become more creative and agile. This applies across the board – whether we're talking about capital structures, financing, means of bringing products to market, delivering services, and so forth.

Part of the challenge here is simply to keep pace with the changes that are already occurring in this dynamic industry, including the rise of low cost carriers, and the efforts by our network carriers to respond to new competitive pressures by cutting costs and by developing new methods of marketing, distribution, and product delivery. We need to understand these developments. And – except where such activities threaten to affect the public interest adversely – we need to do what we can to facilitate them – or at least be prepared to get out of the way. As long as our airlines are thinking creatively about their future, government must think creatively along with them – and that means keeping an open mind about the merits of new initiatives even if it means having to amend our laws or regulations to facilitate the implementation of ideas that are in the public interest.

One such amendment that the Administration has already proposed is changing the statutory restrictions on foreign investment in U.S. airlines, from a 25 percent limit on foreign ownership of U.S. airline voting stock to 49 percent. The goal here is to afford U.S. airlines greater access to foreign capital markets, and bring us into conformity with the limits imposed by many other countries. We look forward to working with Congress to take up this issue.

I am particularly excited that Secretary Mineta recommended, and President Bush nominated, Karan Bhatia as the next Assistant Secretary of Transportation for Aviation and International Affairs. I know, if his nomination is confirmed by the Senate, Karan will bring precisely the kind of freshness and creativity to our aviation policy making that we need. I can also tell you, having worked closely with him for many years in the private sector, that he's an impatient guy who likes to get things done in real time. I fully expect that we will see a dramatic uptick in the pace of activity in that office once he's in place.

Aviation Infrastructure

The second challenge that confronts us is the need – perhaps more pressing than ever before – to create a physical infrastructure for our aviation system that will enable it to remain responsive to our transportation requirements. That aviation infrastructure must allow our airline services to grow and our citizens and our economy to benefit from that growth.

We cannot allow the recent economic downturn to cause us to lose focus on the need to expand capacity in the system, or we will not be prepared to accommodate the demand for air travel when the economy rebounds.

I'm sure many of you know that a bill reauthorizing the FAA and all of its programs – having been approved in conference -- is currently awaiting Senate action. We are hopeful that the Senate will act quickly to ensure that FAA and its critical programs are fully authorized and funded.

One aspect of aviation infrastructure that's receiving special attention at the moment is our air traffic management system. While the Congressional reauthorization debate will determine what our programs will look like over the next few years, our ultimate goal must be to create a modernized air traffic system that can handle whatever the air transport market of the future has in store for us.

I'm not a futurist. I don't pretend to be able to predict with any confidence what the aviation marketplace will look like 25 or 50 years from now. Will air cargo move mostly in "UAVs" -- unmanned aerial vehicles? Will there be small, inexpensive personal jets constructed of composites? Will the sky be darkened by dentists? I have no idea. All I know is that the system will be characterized by far more operations than we have in the system today. The summer of 2000 taught us that, once the economy is running again at full tilt, and that's not very far away, demand for air services will begin to push hard again at the outer bounds of the system's capacity. No – I don't know what the market will look like a few decades hence, but I do know that it's government's responsibility to provide sufficient capacity and safety in the system to accommodate any of these possible futures.

For the past few years, as part of its overall strategy, the FAA has placed important emphasis on its Operational Evolution Plan, or OEP, as a means of delivering incremental improvements, and important increases in capacity, over the next decade. The OEP is a critical element in our strategy for ensuring sufficient capacity in the near and medium term, and is already bringing us real and substantial benefits.

But Secretary Mineta believes that more aggressive steps will be necessary to accommodate the air transportation market 15 or 20 years from now. He is not alone in that conviction. Recent reports by the Commission on the Future of the U.S. Aerospace Industry and the Aeronautics and Space Engineering Board of the National Research

Council have reached the same conclusion. For that reason, the Secretary is leading a new initiative to modernize the way we manage our airspace over the long term.

He has established a multi-agency joint planning office, led by the FAA, for the purpose of developing a framework for this effort. Working in close collaboration with NASA and the Departments of Commerce, Defense, and Homeland Security, the new JPO will develop a national plan for what the aviation system of the future should look like. Overseeing the work of the JPO will be a Senior Policy Committee chaired by the Secretary of Transportation and including senior representatives from the participating agencies. Secretary Mineta has already chaired the first meeting of the Senior Policy Committee, and the level of enthusiasm for the project across the Administration is impressive. I know that you will be hearing more about this important initiative in the weeks ahead.

Technology

Talking about our airspace modernization initiative furnishes a convenient segue to a discussion of the technology challenge in its broader context. As you know, I work for a boss who represented Silicon Valley in the Congress for 21 years. Norm Mineta understands the importance of exploiting technology in the interest of enhancing the capacity, efficiency, and safety of our transportation system. When he persuaded Congress to create the new position that I currently inhabit, one of the things he had in mind was establishing a more intense and effective focus on technology as a key Departmental theme.

For that reason, I spend a lot of time on technology issues. Why, you may ask, am I telling you lawyers all this? The reason is that I've stumbled across an interesting revelation: it's that a lawyer – I still pay my bar dues -- actually has something to contribute to the way the government does technology. That is because the administrative processes by which technology decisions get made have everything to do with the substance of those decisions, and lawyers are better trained in administrative process than anybody else.

Take the issue of spectrum allocation, for example. Spectrum allocation decisions are made by the Federal Communications Commission – an independent regulatory agency. The Department of Transportation is responsible for a great many systems – not the least of which is our air traffic control system – that are absolutely reliant on clean, interference-free spectrum. DOT is also working on the deployment of intelligent transportation systems on our highways, innovative new systems for increasing the safety and security of travel and cargo movements, and a whole host of critical new innovations, all of which depend on spectrum.

When the FCC wants to consider facilitating the introduction to the market of a new communications technology, and that's its job under the federal communications laws, it conducts an administrative proceeding. The Department of Transportation gets to

participate in that proceeding only indirectly, by asking an office in the Department of Commerce to express its concerns to the Commission. I don't think this process is all it could be.

Please understand: This isn't about heroes and villains; DOT strongly supports innovation, particularly in telecommunications. But we want to be more confident that the transportation community's equities – including the integrity of DOT's air traffic control system and other safety-of-life applications – are given their proper weight. It's something we are working hard with our sister agencies to get right.

That's just one of a number of areas – the management of our GPS system is another – that DOT is addressing in a far more aggressive way than at any time in the past, and I am confident that the aviation community will be an important beneficiary of that attention.

Globalization

Our final challenge is adjusting to globalization. As many have observed, it is a paradox of the first magnitude that the industry that has done so much to foster globalization in other sectors of economic activity continues, in certain key markets at least, to be hamstrung by bilateral air services agreements that limit designations, routes, scheduling and pricing flexibility; and, in the area of safety and security, by the absence of agreements with certain key partners altogether. We are working hard to change all that.

Nonetheless, the past decade has been a testament to the success of the international aviation policy that has been pursued by the past three administrations. We have substantially reduced restrictions on airline operations and we have increased competition in our international aviation markets. We have concluded bilateral aviation safety agreements with over 20 countries. Some 60 open-skies air services agreements have created the opportunity for our airlines to improve service, lower prices and to introduce new travel options in thousands of international aviation markets. Moreover, the success of our bilateral aviation agreements has provided a model for other nations to follow, and we are now working with them to develop new structures for aviation relationships that enable our airlines to function more effectively in a global environment. These structures include the creation of broad, multilateral or regional frameworks to replace the current patchwork of individual bilateral aviation agreements we have with other nations.

APEC -- the Asia Pacific Economic Cooperation forum -- provides one model for establishing a regional approach to international air service. The U.S. and six other nations are parties to a multilateral aviation agreement that establishes one large open aviation market between the parties, and that creates a fresh, new approach to the legal framework for international air services. Significantly, the agreement is open to accession by both APEC and non-APEC economies, thereby creating a streamlined mechanism for expanding commercial aviation opportunities beyond a bilateral or even regional context.

I last addressed a meeting of this Forum almost exactly a year ago in Hollywood, Florida. That was just three days after the European Court of Justice had issued a decision that hastened the delivery of a negotiating mandate to the European Commission. As a result, we are at last in consultations with the Commission – representing all EU Member States -- about the kind of open transatlantic market we would like to see.

These are important talks, and we have waited a long time to start them. They will challenge both sides to consider new issues. Perhaps what is most interesting is that we now have, for the first time in history, an aviation partner on the other side of the table that represents a market, and an airline industry, as large and complex as our own. The U.S. and Europe share similar philosophical approaches with respect to free markets. What we have, therefore, is not a classic negotiation in which the two sides horsetrade with each other, each seeking to maximize its own benefits at the lowest possible cost. We have instead two parties attempting to develop nothing less than a new vision for commercial aviation. It won't be easy, and it is important that both sides maintain realistic expectations. But the talks have exciting potential, with the prospect of important new benefits for consumers, shippers, communities, and carriers on both sides of the Atlantic.

I'm afraid I have talked for too long, but I wanted to cover a lot of territory. Let me stop here. I look forward to working with you on all of these issues.

Thank you for inviting me to be with you today.

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