

Thoughts on Drones: The View from the Bench

Amundsen Davis Aerospace Alert

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Having just returned from the American Bar Association Aviation and Aerospace Committee Conference, I would like to share some thoughts on drones conveyed from the view of the bench and the regulators.

As the Honorable Alfred Cavello, United States District Court for the District of Connecticut, said “the horse has left the barn” on drones. In other words, we have been fretting about their arrival for years, and now they are here. There are 600,000 licensed operators set to come on line in the coming months. Including the recreational uses, the nation may well hit 4 million unmanned aircraft being operated in our skies. Judge Cavello identified two significant areas of concern in the development of UAS related law.

First, unmanned aircraft are likely to become a magnet for conflict preemption; where federal regulations come into direct conflict with state or local regulations. For example, he points out that Part 107 is silent on the issues of privacy; limiting its regulatory authority towards prohibitions of operation over persons not involved in the flight. The gaping hole left in the regulation involves a legally flown drone that utilizes its elevated perspective to zoom in on previously protected points of view. Many governmental entities have rushed to fill this void. And, in their haste, Judge Cavello warns, these agencies may be overreaching into the exclusive province of the Federal Government’s authority. There are many communities that have prohibited drones, completely, limited flight in certain areas, or even authorized proactive action to ‘capture’ drones. However, a conflict arises in the form of federal criminal law that prohibits willfully damaging or destroying an aircraft. [18 USC sec. 32] Part 107 does very clearly identify these drones as “aircraft.”

Second, Judge Cavello acknowledges the anxiety regarding the increasing number intrusion of drones into controlled airspace. However, Judge Cavello is bullish on drones; seeing more opportunity than problems from UAS development. Using the amazing number of 4 million new aircraft – which closely corresponds to the number of Canada Geese migrating through our airspace; the Judge points out that we have learned to get along with the geese. He suggests that the airspace system will more easily absorb drones that are being operated pursuant to regulations.

The Chairman of the National Transportation Safety Board, Hon. Chris Hart,

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discussed his agencies involvement with drones. He indicated the first drone investigation took place only a year ago involving a Customs Agency aircraft operated near the border at Nogales ,TX. Since that time, the Board has investigated more than 30 incidents. He is quick to point out that every single investigation to date involves a single vehicle incident. Thus, while acknowledging the grave potential for mischief, it has not yet manifested itself. The NTSB does not have any current plans to increase staffing or to direct resources solely to the address the increasing volume of drone related investigations.

Let's hope their positive attitudes prove accurate in the future.

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