

Report From The NATCA General Counsel

This month the National Air Traffic Controllers Association named William W. Osborne Jr. as its General Counsel. Mr. Osborne is a founding member of the Washington, D.C. labor law firm of Beins, Axelrod & Osborne, P.C. The firm's offices are located at 1200 15th Street, N.W., Washington, D.C. 20005. Mr. Osborne is a member of the Bars of the District of Columbia and the U.S. Supreme Court. In addition to having represented a variety of labor organizations during the past eleven years, he has taught labor

law at the Georgetown University, George Washington University and Catholic University law schools and also at the George Meany Center for Labor Studies, AFL-CIO.

In each future issue of this newsletter, the NATCA's General Counsel will present for your information a report of important recent legal developments. In this issue, a recent Supreme Court decision of significance to all federal employees is discussed:

In *O'Connor v. Ortega*, 480 U.S. ___, 94 L.Ed. 2d 714 (1987), the Supreme Court reviewed a case involving a warrantless search of a psychiatrist's office at a state hospital. The doctor had been placed on administrative leave pending investigation of a number of work-related charges. During his absence, hospital officials searched the office several times and seized various



items belonging to the doctor as well as several pieces of state property.

In a 5-4 ruling, the Court held that a supervisor's search of a public employee's desk and files would not violate the Fourth Amendment prohibition against searches and seizure so long as the intrusion was "reasonable" under all the circumstances. The Court rejected the contention that either a search warrant or "probable cause" were required before such searches could be conducted. This decision reflects the Court's continued trend of diluting the rights of public as well as private sector employees.

NATCA

NEWSLETTER

AUGUST 1987

NATCA Tells Safety Commission That Immunity Is No. 1 Priority

(Washington, DC, July 22nd)

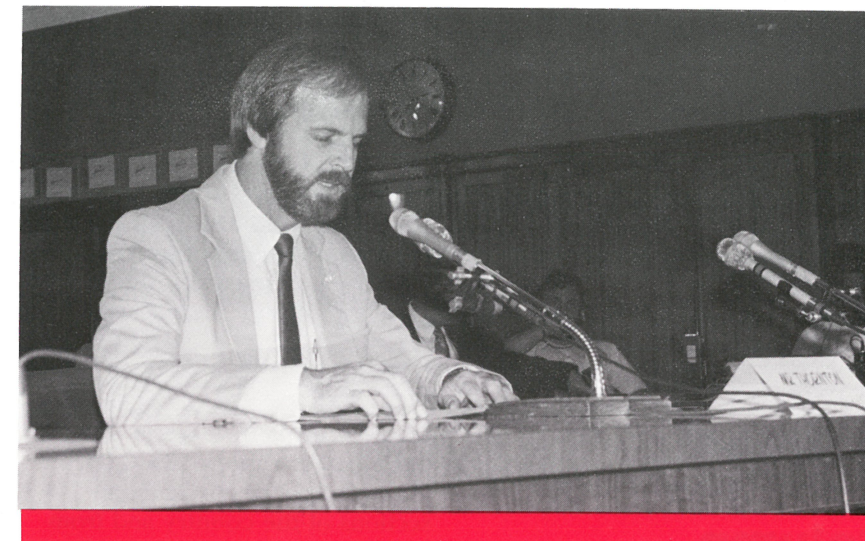
The Aviation Safety Commission finally got off the ground, holding its first full day of hearings as part of an extensive investigation into ways to increase aviation safety.

NATCA National Coordinator John F. Thornton told the Commission that reporting immunity was essential to any Controller "feedback program" designed to provide factual assessments of the ATC system.

The NATCA National Coordinator laid out a six-point program that could be used as a starting point for improving the ATC system. First on the NATCA agenda was immunity. He pointed out that the National Transportation Safety Board had recently urged the FAA to develop an adequate program for Controller feedback so that new problems can be identified and corrected.

Mr. Thornton concurred with the NTSB recommendation adding, "Operational errors, near midairs and runway incursions are up dramatically, but the Controllers themselves are frightened to report these incidents." He stressed that "it is paramount that Controllers be encouraged to provide factual assessments of the system and suggested remedies. However, promises of FAA goodwill and NTSB oversight are not enough; immunity is essential to that process."

Second on NATCA's list was in-



NATCA National Coordinator John F. Thornton testifying before the Aviation Safety Commission.

creasing the number of FPL Controllers by 3,000 over the next three calendar years. Mr. Thornton argued that although the FAA believes that it can make do with fewer Controllers, NATCA is convinced that the agency is dead wrong. "You can shuffle flights, rearrange routes and impose delays only so much. The core problem remains: we have too many airplanes in the sky and not enough Controllers to manage them," he concluded.

NATCA also brought up a proposal it had raised during congressional hearings on forming the Commission: dividing the FAA's work between two separate agencies. One would promote the commercial aspect of aviation and remain within DOT. The second would be an independent aviation safety agency that would handle all air traffic control, inspection, maintenance, and duties related to the integrity of the ATC system.

Fourth, NATCA suggested the FAA should be required to report back within 90 days to the

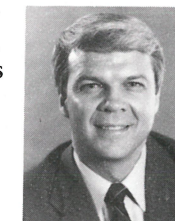
appropriate congressional committees on any NTSB recommendations. Mr. Thornton said that "too often we have seen ex-

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McArto Confirmed By Senate

(Washington, DC,
July 17th)

The Senate today unanimously approved T. Allan McArto to be Administrator of the Federal Aviation Administration. He succeeds Admiral Donald Engen who retired earlier this month. T. Allan McArto



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cellent suggestions by the NTSB swallowed up in the FAA bureaucracy and never acted upon."

Fifth on the list, was the call for an independent audit, perhaps by the GAO, into the chronic equipment problems plaguing the ATC system. The NATCA National Coordinator stated that "Controllers cannot be expected to do their jobs without the proper tools....New equipment should be brought on line on an expedited basis. However, if we

must make do temporarily with the present equipment, let's make sure that we have enough qualified Systems Specialists to maintain it properly."

NATCA's final suggestion was to end the practice of contracting-out FAA facilities. "Now more than ever, this essential service must be seen and treated as a whole....We need a fully integrated system where all of the elements -- whether they be people or equipment -- operate in harmony and up to rigid stan-

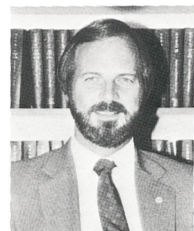
dards," Mr. Thornton concluded.

Senate Majority Leader Robert C. Byrd (D-WVA), the originator of the Commission, warned that communications between the Congress and the Administration on the "vital and potentially fatal issue [of aviation safety] has broken down." He went on to say that "while the Congress makes the safety of American citizens the issue, the Administration hides behind the curtain of deregulation -- a curtain it won't let anyone touch."

National Coordinator's Column

A great deal has occurred in and around Washington since my last report to you.

As you can see from the page one story, NATCA recently testified before the Aviation Safety Commission. We have also been asked to submit comments to a number of congressional committees on a variety of issues. More about those in the next issue.



John F. Thornton

Interest in NATCA has soared since certification. Doors that were once closed to individual Controllers are now open to NATCA, and official Washington wants to know what we as the official Controllers' union have to say about policy and legislation. I trust that anyone who is committed to the integrity of the System and to a better life for Controllers will join NATCA so we can hear your views.

I am very pleased by the membership applications we have

received in the few weeks since our election victory. The 1187 forms are pouring in from all sections of the country and from both centers and terminals. This should give us a good representation of Controller interest and opinion. If you have not signed up, take the time to do so today. Your facility rep. can give you the paperwork. If you have already joined, try signing up two or three fellow Controllers during lunch or break times.

A new addition to the NATCA family is Bill Osborne Jr. who will be serving as our legal counsel. Bill has a strong labor relations background and will be writing a monthly legal column in the newsletter. He is also examining some of the current problems confronting Controllers, such as drug testing, and will be reporting back to us shortly.

In the weeks ahead, the Controller work force will also be receiving some additional information about the benefits you will get by joining NATCA. I think you will agree that it is an extremely attractive package.

Also starting next month, the NATCA NEWSLETTER will go to eight pages. Included will be a column describing activities from each of the nine regions.

Until next month,
John F. Thornton

NTSB Faults ATC System -- Not Controller -- For Cerritos Crash

(Washington, DC, July 7th)

The National Transportation Safety Board today laid the blame for last year's Cerritos air tragedy on the procedural and technical shortcomings of the Air Traffic Control System. The collision of an Aeromexico DC-9 and a Piper PA 28 resulted in 82 deaths in the air and on the ground.

The NTSB's finding came as a surprise; staff had focused principally on human error. They and NTSB Chairman Jim Burnett emphasized that the Piper's pilot, who

intruded into the Los Angeles Terminal Control Area



(TCA) could have avoided the collision. The staff also criticized the Controller on duty for not detecting the potentially dangerous situation and warning the pilot.

However, the board decided to address the larger issue of the weaknesses of an outdated Air Traffic Control System. Board member John Lauber argued that the ATC system, which is based on pilots flying Instrument Flight Rules, cannot deal adequately with a visual situation such as the one that developed over Cerritos.

The Board made the following recommendations to the FAA:

- "Expedite the development, operational evaluation, and final certification of the Traffic Alert and Collision Avoidance System (TCAS) for installation and use in certified air carrier aircraft.
- "Amend 14 CFR Parts 121 and 135 to require the installation and use of TCAS equipment in certified air carrier aircraft when it becomes available for operational use."

In addition, the NTSB recommended that the FAA:

- "Implement procedures to track, identify and take appropriate enforcement action against pilots who intrude into Airport Radar Service Areas (ARSAs) without the required ATC communications;
- "Require transponder equipment with mode C altitude reporting for operations within TCAs and ARSAs after a specified date compatible with the implementation of TCAS requirements; and
- "Take expedited action to add Visual Flight Rule conflict alert (mode C intruder) logic to Automated Radar Terminal System (ARTS) IIIA systems as an interim measure to the ultimate implementation of the Advanced Automation System."

Controller Errors On The Rise, NTSB Chief Says; Calls for Controller Feedback

(Washington, DC, July 8th)

The head of the National Transportation Safety Board told a Senate panel today that the FAA should be encouraged to have an "adequate program for Controller feedback so that new problems can be identified and corrected."

Testifying before the Senate Appropriations Subcommittee on Transportation, NTSB Chairman Jim Burnett said that the Safety Board will monitor the program through its oversight and investigative functions. "We hope that if this new program is effective in reducing Controller workload, there will be a corresponding reduction in operational errors, runway incursions and near midair collisions."

Mr. Burnett revealed that operational errors for April and May 1987 are 10 percent higher than comparable 1986 figures.

Near midair collision reports are also increasing; 173 reports have been received through the first five months of 1987 compared to 124 for the same period in 1986.

Earlier this year, the NTSB urged the FAA to: (1) reduce airport

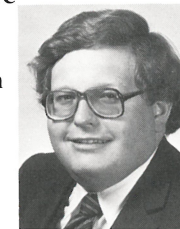
acceptance rates and limit flight plan approval; (2) identify control sectors that have the potential of being saturated and implement appropriate flow control programs; (3) permit no further relaxation in flow control measures; and (4) disseminate the locations where, and times when, traffic density may approach critical limits and encourage flight planning to avoid these areas.

Unfortunately, the FAA denied last May there was a flow control problem and fought additional traffic restrictions. According to Chairman Burnett, the FAA did allude to "enhanced capabilities which will be forthcoming" when the new Aircraft Situation Display computer program becomes fully operational. However, this new tool will not be effectively implemented until the fall and will have little impact on summer traffic increases.

Mr. Burnett told the subcommittee that the Safety Board's concern about the effectiveness of present flow control procedures was reinforced by two recent operational errors -- one at O'Hare TRACON and the other at the Denver Air Route Traffic Control Center. "Both of these errors occurred during a time when the Controllers were overburdened with a lot of traffic and complex control problems."

In a chilling revelation, the NTSB Chairman stated that one of the supervisors at the Enroute Center facility outside of O'Hare entered into the facility log, "...it's the worst I have ever seen ..." and, "this isn't a safe operation."

Mr. Burnett said that the Safety Board is "encouraged" by the new air traffic procedures released by DOT on June 11th: "It appears that the DOT and the FAA have at least in part acknowledged the need to address the problems of saturated airspace in the ATC system."



Jim Burnett