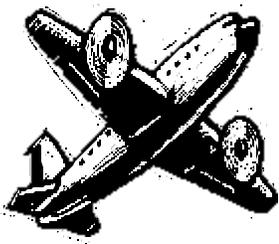


# Aviation Law Section Newsletter

Summer 1999

State Bar of Georgia

## Chairman's Message



**C**ongratulations are in order to each and every member of our Section. Our Section is scheduled to receive an Achievement Award during the State Bar's Annual Meeting, beginning June

16, 1999 at the Hyatt Regency in Savannah, Georgia. Two other sections are to receive an achievement award -the General Practice and Trial Section and the Labor and Employment Law Section. The Environmental Law Section will receive an award as Section of the Year.

In relations to upcoming events of our Section, I would urge every member to mark her or his calendar for **Wednesday, June 30, 1999, commencing at 11:45 a.m.**, when Lieutenant Colonel Charles R. Dryden (USAF, Ret.) will be our guest speaker. Born in New York City on September 16, 1920, Lt. Col. Dryden was selected for aviation cadet training at the Tuskegee Army Flying School in Alabama in August, 1941. His aviation cadet class consisted of only three graduates. He was in the second class of black pilots to graduate from the Tuskegee Army Flying School. He was commissioned as a Second Lieutenant in the U.S. Army Air Corp. on April 29, 1942.

After completing training stateside, Lt. Col. Dryden joined the 99th Pursuit Squadron,

which later became the 332nd Fighter Group, which served in North Africa, Sicily and Italy during World War II. His airplane, a P-40 Warhawk, was nicknamed "A-Train." Lt. Col. Dryden encountered enemy fighter aircraft on June 9, 1943, over Pantelleri, Sicily. This was the first engagement between black American pilots in the U.S. Army Air Corp. and enemy combat pilots.

Lt. Col. Dryden's military career spanned twenty-one years, and he served on assignments in Korea, Japan and Germany, as well as ten different bases in the United States. He has served as a Professor of Air science at Howard University and retired in 1962, as a Command Pilot with over four thousand flying hours.

Copies of Lt. Col. Dryden's book entitled, *A-Train Memories of a Tuskegee Airman* will be available for autograph at the conclusion of his remarks.

Our Section's meeting, where the presentation by Lt. Col. Dryden will occur, will take place at the 57th Fighter Group near the Dekalb-Peachtree Airport. Admission to attend the luncheon is \$15.00. The deadline for making a reservation to attend the luncheon is Friday, June 25, 1999.

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### **Chairman's Message (Cont'd)**

In conjunction with the remarks by Lt. Col.

Dryden, it is our hope to have Sam Lyons, Jr. a noted aviation artist, displaying aviation artwork attendant to our luncheon meeting.

I wish to extend a special thank you to John Webb, our Program Director, in connection with his securing Lt. Col. Dryden as our luncheon speaker. I hope that each member of our section can take time from her or his busy schedule to attend this presentation by Lt. Col. Dryden.

*Alan Armstrong  
Section Chair*

## **EDITOR'S NOTES**



I hope this newsletter finds every member well. There are just a few items that I would like to bring to everyone's attention. The first is, as usual, we need contributions for this newsletter. I will not harp on this too much as I know we all are extremely busy. However, we really do need some contributions to this newsletter and so I hope each member will contribute something. The second is that I hope everyone will attend this year's meeting. Last year was a huge success and extremely enjoyable. I look forward to meeting more of you at the meeting scheduled this June and I hope to receive articles from each member as well.

You may fax your article to me at (912) 755-0018, or you may mail your articles to the following address: Richard C. Spivey, Editor, Randall, Nestor & Spivey, LLC, Post Office Drawer 1018, Macon, Georgia 31202. My office number is (912) 755-0010 or you may call me at home at (912) 992-9834.

Again, I look forward to hearing and meeting each and every one of our members.

*Richard C. Spivey  
Editor*

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## ***FEATURE ARTICLE***

### **GEORGIA SUPREME COURT AFFIRMS TRIAL COURT'S DECISION IN DISMISSING A NUISANCE SUIT AGAINST OWNERS OF A PRIVATE AIRSTRIP**

Robert and Christine Horne developed a private airstrip in Pike County, Georgia, after the County granted them a special exemption to construct the airstrip in 1986. Four years after the Hornes got approval from the County, Mr. Wiggin purchased real property surrounding the Horne property. Two years after Mr. Wiggin purchased the surrounding property, Pike County approved the application of Mr. and Mrs. Horne to build a "fly-in" subdivision on their property. Mr. Wiggin then filed suit against the Hornes, claiming fraud, nuisance encroachment on his property, and he sought to settle an alleged boundary line dispute.

The deposition of Mr. Wiggin was taken. He admitted that, when he purchased the property surrounding the airstrip in 1990, he did so with full knowledge of the airstrip and planes landing and departing from the airstrip. Accordingly, the Georgia Supreme Court affirmed the decision of the trial Court granting summary judgment to the Hornes, declaring: "Allegations of mere speculation or contingent injuries, with nothing to show that in fact they will happen, are insufficient to support a prayer for injunctive relief."

The Georgia Supreme Court went on to affirm the decision of the trial court, since there was no evidence of fraud, nor was there any evidence of a supposed boundary line dispute.

Mr. Wiggin was represented by George P. Dillard, Esq. and G. Douglas Dillard, Esq., of the firm of Dillard & Galloway, L.L.C., while the Hornes were represented by Dean R. Fuchs, Esq. and Newton M. Galloway, of the firm of Newton M. Galloway & Associates. The trial court judge was the Honorable Paschal A. English, Jr. of Pike Superior Court.

*Wiggin vs. Horne*,  
Ga. \_\_\_\_\_, Case #S98A1828  
(February 8, 1998)

### **SURVIVORS OF PILOT RECOVER FOR IMPROPERLY ATTACHED PROPELLER**

Mr. Peterson was a pilot who flew his Cessna 206 to evaluate vibrations of the propeller. The plane crashed in terrain about ten minutes after takeoff. Mr. Peterson died and was survived by his wife and three adult children. Mr. Peterson earned about \$600,000.00 annually and was a partner in a sand-dredging business.

It was claimed that the repair shop that re-attached the propeller over-torqued the studs, resulting in the propeller departing the airplane. It was further claimed that the United States Government was liable under the Federal Tort Claims act for the failure of Air Traffic Control to advise Mr. Peterson of a safe flight path in reference to the hilly terrain.

The case was tried, and a jury returned a verdict of \$13.91 million, Mr. Peterson's estate receiving \$6.96 million, his wife receiving \$5.5 million, and the three adult children receiving \$485,000.00 each. The jury apportioned liability as fifty percent to the repair shop, forty percent to the United States

Government, and ten percent to Mr. Peterson. The District Court judge found for the United States Government and awarded no damages against the United States Government. It appears that the plaintiff's intend to appeal the decision of the Federal District Court judge. The plaintiffs in the case were represented by Lewis S. Franeke, Esq. and James P.

Harrison, Esq. both of whom are from San Francisco, California.

***Peterson vs. United States***

U.S. District Court, N. District of California  
Case #C-96-1439-DLJ (September 24, 1998)



**Article Provided By Alan Armstrong**

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***It's Time to Join The Aviation Law Section  
For the New Bar Year (June 99 to June '00)***

***If you've already joined on your State Bar dues notice, disregard this note.***

***Yes, I'd like to join the Aviation Law Section  
of the State Bar of Georgia***

Name \_\_\_\_\_

Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

My Bar # \_\_\_\_\_

**Enclosed a check for \$10 made payable to the  
"State Bar of Georgia"**

**Mail to:**

State Bar of Georgia  
Membership Dept.  
800 The Hurt Building  
50 Hurt Plaza  
Atlanta, GA 30303