

TEAM COMMANDER'S NOTEBOOK

A SERIES OF ARTICLES FOR C.A.P. RANGER TEAM COMMANDERS

NO. 4

LEGAL ASPECTS OF RANGER TEAM COMMAND

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The material presented in this article cannot take the place of a lawyer's advice in any given situation. It should, however, provide a background of information and principles which should prove helpful to Civil Air Patrol Ranger Team Commanders and any others engaged in similar search and rescue activities. For cadets who find the material especially interesting, perhaps a career in law should be considered. A Law School Aptitude Test is given by Princeton that will indicate to a college student if he has the aptitude to finish law school. Pre-law training at the undergraduate level is NOT required for law school; any bachelor's degree is sufficient.

Three books are recommended for those who would dig deeper. The Lawyers by Kahn gives a good look at the law as a profession. Prosser on Torts (West Publishing Co.) and Perkins on Criminal Law (Foundation Press) cover the subject presented here in more detail.

The section presented here on Air Crash Laws has been taken largely from a similar section contained in part two of Land Search and Rescue (unpublished at the present time) and is used with permission of the authors.

Illustrations were supplied by Eileen Quarry and Judy Scapellati.

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This is No. 4 in a series of articles to be published at the rate of approximately two per year. Price of each issue is expected to be \$.50. The first three articles are:

- No. 1 - "Air-Ground Coordination"
- No. 2 - "Latitude and Longitude Conversion Tables"
- No. 3 - "Land Search Theory"

LEGAL PRINCIPLES FOR RANGER TEAM COMMANDERS

INTRODUCTION

Due to the nature of his activities, a Ranger Team Commander may have to take fast action in situations which can have legal repercussions later. It is the aim of this article to improve the Team Commander's understanding of the law covering many of the situations that he could conceivably encounter. Unfortunately, laws are not always as clear as black and white, and many situations are open to interpretation, as will be made clear later in this article. No attempt is made here to make this discussion specific to the law in only one state, rather it is a broad, general discussion that will hold true in most states with only minor modifications.

In general, the law in English speaking countries is divided into two parts; Civil and Criminal. Both branches are dominated and guided by a series of customs and judicial opinions, called English Common Law, which go back to medieval England and the Magna Charta.

CIVIL LAW

TORTS

One of the many possible definitions of a "tort" is "a non-criminal wrong for which the courts will grant damages". Beyond this definition, however, is the possibility that the same act may be a criminal act (for which the state will prosecute) and a tort (for which the wronged individual may sue in a civil court and recover a monetary award for "damages"). A list of several types of torts follows, with one or more of the possible defenses listed after each tort.

<u>Tort</u>	<u>Defense</u>
Assault	Self Defense; Consent
Trespass	Necessity
Slander	Truth
Invasion of Privacy	Consent
Negligence	Due Care; Contributory Negligence

INTENTIONAL INTERFERENCE WITH THE PERSON

Before starting this section on Assault and Battery, go to your dictionary and look up the word statute.

Battery

The terms Assault and Battery are seen so much together, that some think of them as one term, i.e., Assault and Battery. This is not the case. To achieve a better understanding, we will consider Battery first. Again, the reader is cautioned not to accept this article as an authoritative statement of the law in his particular state.

One definition of Battery is "the wrongful application of force to the body of another person". The purpose of this court action is the prevention of duelling and feuds by creating a non-violent method for a victim to gain retribution for a black eye or a bloody nose.

In order for a battery to occur, several elements must be present. There must be a striking, or application of force to the body of another person, and the striking must be non-privileged and intentional. Battery can be committed by any instrument from the bare hand to a black-jack, cricket bat, or Patton tank. Interestingly enough, willfully spitting on a person is a battery, although in Texas and Arizona this is limited to spitting on a person's face.



An example of a privileged battery would be an ordinary spanking of a child by a parent for disciplinary reasons, but that privilege may be lost if the child is seriously injured or maimed.

Assault

This subject is more difficult than battery since it deals with a state of mind in the victim rather than an obvious bruise or broken arm. Here there is a touching of the mind, not a touching of the body.

Assault is the offer or attempt to commit a battery or a wrongful act which places the victim in reasonable fear of bodily harm. Society is, through the creation of this tort (assault), attempting to protect the individual from apprehension or fear of harmful contact.

It is the intent of the actor, as interpreted by the victim (and a jury) that counts. Thus, even a joke could be interpreted as an assault. The raising of a club, the threat with an unloaded gun, the shot fired to miss, all are assaults even though no battery is committed.

The actor must have a present ability to harm the victim. Thus a person confined to a wheel chair could not reasonably be expected to commit an assault with his hands on a football player. Further a telephoned threat would not be an assault due to the lack of a present ability to do the threatened harm in most cases.



Question: "Does a man with a long-range guided missile in Pennsylvania commit an assault when he telephones a threat to an enemy in Ohio?"

Question: "Does a man commit an assault when he yells across a street and tells his neighbor that he is coming over and punch him in the nose?" (Neighbor is standing on his own front porch.)



Assault and Battery

For all practical intents, a battery includes an assault, although this is not true on a fine legal sense. In most states this is also a criminal wrong by statute.

Question: "Does a battery include an assault if A awakens B by striking B with a belt?"

Aggravated Assault

An occasional newspaper reference may be found to this offense, sometimes known as malicious wounding, assault with a deadly weapon, or other names. In essence, this is a battery with use of a deadly weapon -- such as a bicycle chain, razor, broken bottle or other such device.

Most states have made this a statutory crime punishable by imprisonment; Virginia specifying three to twenty years. Battery would normally arise when a non-deadly force (the hand, etc.) were used and malicious wounding when a knife or gun were used.

Conclusion

You have just had a very short, general look at a small part of English Common Law - 700 years of common sense. Even though you are not now qualified to argue a case in court, it is hoped that you may have discovered how to stay out of trouble by intentional interference with the person of another.

INTERFERENCE WITH PROPERTY - TRESPASS

The tort of trespass can be subdivided into trespass to land and trespass to property other than land (chattels). One thing must be kept firmly in mind - the law places a higher value on human life than it does on the protection of property. As a result, deadly force may not be used against trespassers. (An exception to this can occur under some circumstances in a man's home, but that is outside the scope of this article.)

Trespass on Land

Trespass on land may be a crime as well as a civil wrong (tort) in most states, however, this discussion is limited to the non-criminal aspects.

Any intentional act which interferes with land in the possession of another is trespass. "Intentional" may mean walking on or causing a tree to fall on another's land. It does not include a person being placed there against his will by others. Even causing water to fall on another's land qualifies as trespass. "Interfere" does not require damage to be done to the land, the law infers damage. "Possession" may be through rental, ownership, or lease.

Through the years, the law of trespass has been developed gradually, and in that development, some strange cases have come before the courts.

One New York case (1847) held A guilty of trespass on the land of B because A caused C to enter on B's land through fear.

One of the most unusual cases though is the Tasmanian Cat Case (1927) which occurred on the island of Tasmania. Since Tasmania was part of the British Empire, they follow the same general law as the United States. Here, the defendant A (a Mr. Bennison) shot a cat which was on the roof of the house of a neighbor, (B). The dead cat, complete with bullet, fell on the land of a third party (C). B sued A for trespass and won, on the theory that by shooting across B's land A interfered with B's property. C was not heard to complain; perhaps the cat belonged to B and was keeping both A and C awake?



Trespass Versus Right of Entry

At this point, the careful reader will remember that one of the possible defenses against trespass was listed earlier as necessity. CAPR 900-3 very clearly states how this exception fits into the role of CAP in search and rescue work. Paragraph 6b is quoted below:

"Entry upon private property by civilians is justified, if such act is for the purpose of saving life or personal property. There must be a reasonable certainty, however, that the persons or personal property are actually upon the land and that entry upon said land is necessary in order to save a life or personal property."

Question: "If A reports that he saw a flying saucer land in the woods on B's property, and if the Air Force office investigating UFO's requests a CAP Ranger Team to investigate, does the team have the right to enter B's property without his permission?"



Trespass to Chattels

Chattel is a word used in the law to denote property other than land, the word being of the same ancient French origin as the word cattle, i.e., personal property.

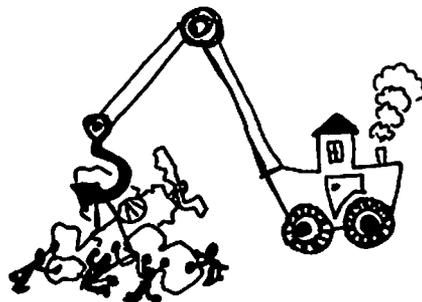
The right sought to be protected by this court action is to protect a person from direct wrongful interference with a chattel in his possession. Lawful possession is the right being protected.

Obviously a Sheriff, with a court order to surrender a chattel, would not qualify as wrongfully interfering when he seizes the chattel. Possession does not require ownership; rental, loan, or lease is sufficient.

Do not confuse this civil action with the crime of theft. Theft is punishable by the state and the consequence is jail. Trespass is a civil action and the consequence is monetary damage. In both cases, a jury is used, but the standards of proof are higher on the criminal side. A criminal case would appear on the court docket as the State vs Miller whereas a civil action would appear as Jensen vs Miller.

Question: "Can A sue B for trespass (to chattels) if B woos A's wife and persuades her to run away with him?"

Question: "Can the owner of a crashed airplane sue a Ranger Team Commander for trespass if the Ranger Team Commander refuses to let the owner remove the airplane from the scene of the crash until the FAA investigators arrive and examine the plane?"



Conversion

This tort is a big brother of trespass to chattels which occurs when A takes the property of B and converts it to his own use. Conversion is a more serious tort than trespass to chattels, and the best way to distinguish between them is in their court remedies.

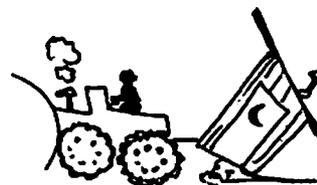
The court remedy for conversion is an enforced sale. For example, if Smith steals a widget from Jones and sells it to Peters, Jones may sue Peters for conversion and the state may prosecute Smith for theft (if he can be found). Peters has no defense through ignorance of the theft. If Peters loses, the court will order him to pay Jones the value of the widget, which Peters may then keep. Conscious wrong doing on the part of Peters does not have to be proved, and if he returns the widget in good condition, he may still be sued for damages. MORAL: Don't buy stolen widgets.

Question: "If Joe Sneaky, a Ranger Team Commander, steals a compass from an airplane wreck and puts it in with the Team's equipment, and the compass is discovered by the airplane's owners two years later while John Stalwart is the Team Commander, is John liable for conversion if he knows nothing of the theft and was not even a CAP member when it took place? Is the squadron commander liable?"

Taking of goods does not require a club and mask, but merely the intent to exercise dominion over the goods of another. For instance, moving an automobile a few feet to clear a driveway would not be conversion, but locking it up in a strange garage without permission is serious enough to be conversion. The intent of the converter and the extent of the interference in the second case make it the more serious case.



Question: "If A parks a bulldozer on B's property overnight without permission, and if B padlocks the bulldozer with a chain to his fencepost, is B guilty of conversion? Is A guilty of trespass? Who can sue whom? and for what?" (We warned you all questions were not black and white.)



Question: "Who owns a lost widget? Who owns an abandoned widget?"

Your attempts to answer the above questions should convince you that this article cannot turn you into a lawyer overnight. Only the bare essentials have been covered here concerning the laws on interference with property. One principle stands out like a shining beacon, however, NOWHERE MAY DEADLY FORCE BE USED AGAINST A TRESPASSER OR CONVERTER. The courts provide a solution.

NEGLIGENCE

A more complete title to this section would be Negligent Harm to the Person of Another. When one considers the U.S. Army definition of responsibility "A commander is responsible for everything his unit does or fails to do" one sees that a semi-military unit commander such as a Ranger Team Commander is potentially liable for many deeds of either commission or omission. (If he is prudent, the Ranger Team Commander also carries extra personal liability insurance over and above the normal Homeowner's Policy.)

In New Jersey, a scoutmaster was sued for \$100,000 by the mother of a Boy Scout who allegedly suffered frostbitten feet while in the field with the scoutmaster.

The law imposes a legal duty of proper conduct and due care towards others. Unlike the case of crime, the state of mind of the person is usually not a factor.

Negligence is conduct which involves an unreasonable risk of injury to another. An example would be exceeding the speed limit in a city.

Actionable Negligence is negligent conduct which proximately results in injury to another person, or his property. An example would be where speeding resulted in an automobile crash with damage to another person, automobile, or property. The three elements of actionable negligence are: (1) the duty to be prudent (due care) owed by the defendant to the injured party, (2) the violation of this duty, and (3) the resulting injury. Proximate cause used in this sense indicates a result that would be foreseen by a reasonable man. If a reasonable man would not have foreseen injury to anyone from his conduct, then he does not owe a duty to anyone who is hurt. As an example, if a man has reason to believe that he is alone on an island, and he throws a rock into a bush, he has not violated any duty not to injure a person who happens to be hiding there. In other words, no-one is liable for damages resulting from a million-to-one mischance. (The question of where to draw the line is a major area of study in Law School. See Appendix 2.)

Ordinary Skill and Care are required to be used by anyone who is in a position where everyone of "ordinary sense" would recognize that a danger of harm to persons or property would exist without the skill and care. An example of this would be the negligent lighting of campfires during a dry spell. In other words, where the ordinary prudent man would recognize danger, a duty is owed to others to exercise the same care and skill that prudent man would exercise.

Sometimes it is necessary to violate this duty. In this case, it is necessary to strike a balance among all factors. The likelihood of injury, the extent of injury, and the social importance of the activities all play a part. An obvious case illustrating this is crashing a vehicle through a fence to get to a burning crash where there is a possibility of saving a life. In this case, the social importance of lifesaving outweighs the duty owed to the owner of the fence. In all cases where the actor's decision is questioned, the jury will be deciding the question on the basis of what they feel a reasonable man would have decided in the same circumstances.

Question: *If a member of a Ranger Team becomes separated from the team during a route march, is not missed for two hours, and suffers hardships before being found by the team, is the Team Commander responsible for these hardships? Must there be an injury? Is contributory negligence a defense?*

Negligence in Aid of Others

This section deals with possible liability arising from actions taken (or not taken) to aid other persons who are already injured or in danger.

In general, there is no legal duty to go to the aid of another person who is injured or in danger. As callous as this may seem, you have no legal duty to aid a stranger whom you observe to be bleeding to death on the sidewalk. Two exceptions exist to this rule. The first is if the person is injured or in danger through some action of yours. The second is if there is some special relationship between you and the injured party - perhaps he is a member of your mountain climbing group and you are both on an expedition, or perhaps he is a Ranger cadet whom his parents have entrusted to your care.

You will note that the preceding paragraph talks exclusively about a legal obligation to render aid. Obviously members of Civil Air Patrol should not consider a

legal obligation to be necessary - there is a strong moral obligation to render aid that is affirmed by the very fact of membership in the organization. It would be psychologically impossible for a Ranger to pass by a stranger bleeding to death on the sidewalk without doing everything in his power to render aid. Once the basic decision to render aid has been taken, it is necessary to be aware of the legal consequences of this decision.

Due care must be exercised in giving aid to the injured or endangered. The fact that someone needs your aid does not give you freedom from being held accountable for your actions. The guidelines followed by the court in judging actions is again the standard of the "Reasonable Man". In other words, did you do what a normally reasonable man would have done in the same situation?

Doctors, and others with specialized training, are held to a somewhat higher standard of conduct. A doctor rendering aid at a crash site is held to be responsible for exercising the same skill and judgment that the ordinary doctor would use in the same situation.

To sum up; you have no duty to aid a stranger in distress, but once you do render the aid, you must carry through with it and use such skills as you possess. If the injury or danger is something you caused, you are legally obligated to render aid.

The preceding is a general summary. Some states have specific "Good Samaritan" laws designed to lessen the legal liability for negligence suits in the case of aid rendered to a stranger. (See Appendix 1 for the Pennsylvania statute on this subject.) This area is one which each Ranger Team Commander should definitely check into for his own state. It should be obvious that the question of negligence in aid to others is a crucial area for Civil Air Patrol. It should also serve as a reminder that once training in a lifesaving speciality is received, it must be kept current. A good case for negligence could be built if a qualified first-aid-er could not stop hemorrhaging because he had not thought about his first aid since he took the course.

CRIMINAL LAW

Criminal law covers the case of offenses against the state where the community as a whole (as represented by the government) will impose a penalty on the offender. As indicated earlier, some acts may be both criminal and civil wrongs. In the case of trespass, for instance, a constable may haul the offender before a magistrate who will levy a fine (payable to the state) for the criminal wrong, the property owner may file suit in civil court to recover damages (payable to the owner) to the property, and no double jeopardy is involved.

SERIOUSNESS OF THE CRIME

Crimes against the state are graded in seriousness into two general categories: Misdemeanors and Felonies.

Misdemeanors are generally minor offenses, often against local ordinances. The penalty is usually a fine, possibly a short jail sentence, and the trial may be a hearing before a local magistrate rather than a full court trial with jury. Examples of misdemeanors are: Disturbing the Peace, Traffic Offenses, Trespass, Hunting out of Season, etc.

Felonies are major crimes. Punishment may be by fine, jail, or even death. Examples are: Treason, Murder, Arson, Rape, Burglary, Armed Robbery, Grand Larceny, etc.

The following definitions, while not in the scope of CAP activities, will probably be of some help in providing a better understanding of the law in action. These definitions are from the common law and may be expressed slightly differently from state to state.

Arson is the willful and malicious burning of the dwelling house of another during the hours of darkness. (Expanded by statute in most states.)

Larceny is the felonious taking and carrying away of the personal property of another with the intent to permanently deprive the owner of the property taken.

Robbery is the same as larceny, but the taking is by force or fear from the person of the owner or in his presence.

Burglary is the breaking and entering of the dwelling of another after the hours of darkness, with the intent to commit a felony therein, such as larceny, robbery, arson, murder, etc. (Usually expanded to include cars, trailers, airplanes, etc. and all times of day.)

Murder is the unlawful killing of a human being with malice aforethought. Without malice, the crime is Manslaughter.

More words that would be interesting to look up are: mayhem, extortion, embezzlement, fraud, treason, perjury, forgery, and culpability.

POWER OF ARREST

Arrest is defined by Webster's as "to seize or take into custody by authority of the law." The usual process is to have a court official issue a warrant for the arrest of a particular person for a particular crime. The warrant is then served on the malefactor by a law officer. Once a warrant has been issued anyone may make the arrest provided the person arrested is, in fact, the person described in the warrant. A private citizen is rarely involved, however.

Police Officers are privileged to make an arrest without a warrant if they reasonably believe that a felony has been committed and reasonably believe that the person being arrested committed the felony. In the case of a misdemeanor, a police officer may arrest without a warrant if the misdemeanor has been committed in his presence and the person arrested is actually guilty.



Citizens are held to a higher standard if they make a warrantless arrest. The arrest is legal if a felony has in fact been committed and he has a reasonable belief that the person being arrested committed it. (See below.)

Force may be used to enforce an arrest, but the amount of force allowable depends on the nature of the offense and the circumstances. Deadly Force is never allowed in arrest for a misdemeanor. The use of deadly force is generally allowed only in those felonies which are classified as serious (e.g., murder, rape, armed robbery, etc.) Naturally, force may never be used unless made necessary by resistance to arrest.

CITIZEN'S ARREST

Citizen's Arrest was briefly mentioned above as being a possibility under certain circumstances. Like many things legal, there is an amazing amount of misinformation passed around on this subject. A good general rule is to consider this action as strictly a last resort in a bad situation. There are good reasons for shunning citizen's arrest; particularly for CAP members.

The arrest by a citizen is limited to violent felonies such as murder, rape, arson, etc. and the fact of no warrant existing. The central event is the felony - there must in fact have been a felony and the arresting citizen operates at his own peril here. A mistake is no excuse and opens the door for a law suit against the arresting citizen. DO NOT OPERATE ON RUMOR. The citizen's authority rests on the fact of the violent felony and there must also be reasonable grounds to suspect the person arrested. A law officer is held to less stringent standards, and may arrest on reasonable suspicion that a felony has been committed. So far as you as a private citizen are concerned, you should not attempt an arrest unless you yourself SEE a violent felony being done, and even then you are better off legally to simply make an accurate observation of the events, contact a law officer, and concentrate on being a good witness.

What of the practical aspects of citizen's arrest? Since the felony is a violent one, the felon is probably armed and dangerous while the ordinary citizen does not go armed. Therefore, even if the legal requirements are met, there is the practical one of how to make the arrest stick. In most cases this is impossible and the citizen risks being maimed, killed, or kidnapped if he interferes. The lower level of involvement of being a good witness is therefore generally to be preferred. A good witness, in fact, is the central requirement for a criminal conviction and the law will operate more smoothly with a live witness than a dead volunteer. Remember that, unlike deer, criminals tend to shoot back.

POSSE COMITATUS

Having been suitably impressed with the general undesireability of citizens acting as law officers on their own, we will explore the area of aiding a law enforcement officer to make an arrest. As a general rule, if a law enforcement officer requests the aid of a citizen, the citizen may not refuse the aid - even if the aid involves considerable danger to the citizen. Refusing this aid is a misdemeanor. Citizens thus pressed into service are known as a Posse Comitatus. ("Go round up a posse, Tex, and we'll head 'em off at the pass.")

The obligation to act as part of a posse comitatus does not extend, however, to those in Federal Service. This probably stems from the desires of the states to remain in control of their own law enforcement programs. Thus, an army officer is not required to aid in the hunt for a local bank robber. In fact, if he does so he is violating a federal law. Section 1385, Title 18 of the United States Code provides:

"Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years, or both."

The FBI may not enter into a local case unless a specific federal law has been violated, or unless the local police request assistance. In other words, it is improper for any federal person to interfere in local affairs.

CAPR 900-3 spells out how this situation affects Civil Air Patrol. In general, the U.S. Air Force cannot authorize a mission for CAP which violates section 1385. It would also be improper for CAP members to participate in a posse with CAP owned and marked equipment or in CAP uniforms because of the clear statement on the CAP insignia that CAP is an auxiliary of the U.S. Air Force. Any involvement by CAP members in law enforcement activities MUST be in their capacity as private citizens. Note that an exception might exist to this rule in the event of Martial Law being declared in a local emergency.

SELF DEFENSE

Every person has the right to defend himself. Two modifications to that right exist, however.

Deadly Force may be used only as a counter to deadly force. If the initial assault is with non-deadly force, the reply may only be with non-deadly force. As an example, consider the case where A attacks B with his fists. B replies by pulling out a knife and employing it on A. By escalating the encounter from the non-deadly to the deadly category, B has lost any possible claim of self defense and is now the aggressor.

Retreat must often be practiced in the face of an assault. The retreat rule may be stated this way: Even the innocent victim of a murderous assault must elect to retreat, if an obviously safe way to retreat exists, rather than to resort to deadly counter-force. An exception to this rule is if the victim is in his own home (or place of business in many states) or if the assailant is a robber (a thief using force). The retreat rule is the general law of the land in the Eastern part of the United States. The Western and Southern states follow a somewhat different rule, but the retreat rule is the safe rule to follow everywhere.

The retreat rule makes much sense when you remember that the reason for the existence of a police force and court system is to replace the Code of the Hills, Fueds, and Vendettas with a more reasoned method which will reduce private violence.

AIR CRASH LAWS

When an airplane crashes, the wreckage is examined to determine the cause of the crash. From this examination, the authorities may determine that the crash was caused by: pilot error, owner's negligence, faulty design of some component, or even sabotage or some other criminal act. Civil Air Patrol is often called on to protect the wreckage of an airplane until the proper authorities can examine it. Indeed, preservation of the wreckage should be considered as standard operating procedure for a Ranger Team. The details of how to provide crash site security will not be discussed here (they will be included in part 2 of Land Search and Rescue) but we will discuss the legal basis for such action.

INVESTIGATING AUTHORITIES

The responsibility for investigating all aircraft accidents in the United States lies with the National Transportation Safety Board (NTSB); a branch of the Department of Transportation. The NTSB essentially replaces the old Civil Aeronautics Board (CAB) and the NTSB Bureau of Aviation Safety serves the same function previously served by the CAB Bureau of Aviation Safety.

When the NTSB is in charge of an investigation, it may delegate part of the investigation or ask for investigator assistance from the FAA. In general, the NTSB has delegated to the FAA the authority to investigate many of the accidents involved in private aviation, especially the non-fatal ones, reserving to itself the investigation of fatal accidents and commercial aviation accidents.

Pennsylvania, and presumably many other states, has its own air-crash investigators. The interests of the federal investigators must come first, however.

LEGAL AUTHORITY

This area is one where much misinformation has been passed on by word-of-mouth. The most persistent myth is that a crashed plane and the property on which it lands becomes federal property from the time of the crash until the wreckage is released by the investigators. THIS IS NOT TRUE. That this cannot be true should be obvious when one remembers the language of the fifth amendment to the U.S. Constitution which ends with "...nor shall private property be taken for public use, without just compensation."

The complete federal statutes pertaining to the removal of wreckage are reproduced on the inside back cover of this booklet. We will briefly summarize them here though:

- A. Disturbing the wreckage of a civilian plane or the property aboard it without permission of the investigators is punishable by a civil penalty of up to \$1,000.
- B. Removing or concealing wreckage of a civilian plane or the property aboard it is punishable by a criminal penalty of \$100 to \$5,000 and/or up to one year in prison.
- C. Removing or concealing wreckage of a military plane comes under the heading of stealing U.S. Government property and is punishable by a criminal penalty of up to \$10,000 and/or 10 years in prison.

As noted previously, CAP members in uniform may not arrest persons violating these laws but they can INFORM POTENTIAL LAWBREAKERS OF THE PENALTIES and make it obvious that they will be identified to the authorities if they persist. Another useful strategem to keep crowds away is to enlist the cooperation of the property owner in posting NO TRESPASSING signs on his property around the wreckage. Persons who persist in ignoring the signs can then be identified to a local policeman. A camera is a help here - photos can be evidence.

The action of CAP members at a crash site is also covered in CAPR 900-3, where the prohibition against CAP members serving as police is reiterated.

To aid in the protection of air crash wreckage, a sample sign is reproduced on the back cover of this booklet. It is suitable for local reproduction, and copies of it should be prominently posted around each crash site that a Ranger Team is involved with. The combination of this sign, a waist-high rope around the perimeter of the crash, and a camera will eliminate many potential crash site security problems.

Please bear in mind here that we may have two conflicting objectives when a Ranger Team is first at the scene of an aircrash. There is the obligation (legal) to preserve the wreckage for investigation, and the obligation (moral) to aid survivors who may be trapped in the wreckage. Remember here the social importance rule mentioned in the section of Negligence. Saving lives comes before protecting property. (Note how this is recognized in Federal Regulation 320.10c.)

APPENDIX 1

Pennsylvania Act No. 301 - 8 August 1963 ("Good Samaritan Act")

Section 1. Any physician or any other practitioner of the healing arts, licensed by any one of the United States, who happens by chance upon the scene of an emergency or who arrives on the scene of an emergency by reason of serving on an emergency call panel or similar committee of a county medical society or who is called to the scene of an emergency by the police or other duly constituted officers of the State or a political subdivision or who is present when an emergency occurs and who, in good faith, renders emergency care at the scene of the emergency, shall not be liable for any civil damages as a result of any acts or omissions by such physicians or practitioner in rendering the emergency care, except any acts or omissions intentionally designed to harm or any grossly negligent acts or omissions which result in harm to the person receiving emergency care.

Section 2. "Good faith" shall include, but is not limited to, a reasonable opinion that the immediacy of the situation is such that the rendering of care should not be postponed until the patient is hospitalized.

APPENDIX 2

Palsgraf Decision

A is running to catch a train and B, a conductor, helps him. In the process B jostles A and A drops a package of fireworks which falls under the wheels of the train and detonates.

Fifty meters away, the blast knocks a brass scale over and a Mrs. Palsgraf is injured by the falling scale.

Question No. 1: *Was the conductor (or his actions) a proximate cause of the injury to Mrs. Palsgraf?*

Question No. 2: *Does A owe a duty of aid to Mrs. Palsgraf?*

The above is a simple statement of an actual case arising on the Long Island Railway in 1928. In the final court decision it was held that the railroad was not liable for Mrs. Palsgraf's injury, i.e., the action of the conductor (the agent of the railroad) was not the proximate cause of her injury. The question of any responsibility of A was not before the court.

The following are excerpts from the United States Code (USC).

49 USC 1441 - Accidents Involving Civil Aircraft

- (b) The Board may, without regard to the civil-service laws, engage, for temporary service in the investigation of any accident involving aircraft, persons other than officers or employees of the United States and may fix their compensation without regard to the Classification Act of 1949, as amended; and may, with consent of the head of the executive department or independent establishment under whose jurisdiction the officer or employee is serving, secure for such service any officer or employee of the United States.
- (d) Any civil aircraft, aircraft engine, propeller, appliance, or property aboard an aircraft involved in an accident in air commerce, shall be preserved in accordance with, and shall not be moved except in accordance with, regulations prescribed by the Board.

49 USC 1471 - Civil Penalties

- (a) Any person who violates ... any provision of .. [the above sections] or any rule, regulation, or order issued thereunder shall be subject to a civil penalty of not to exceed \$1,000 for each such violation

49 USC 1472 - Criminal Penalties

- (o) Any person who knowingly and without authority removes, conceals, or withholds any part of a civil aircraft involved in an accident, or any property which was aboard such aircraft at the time of the accident, shall be subject to a fine of no less than \$100 nor more than \$5,000, or imprisonment for not more than one year, or both. (Public Law 87-810, sect. 4, Oct. 15, 1962, 76 Stat. 921.)

Code of Federal Regulations

14 CFR 320.10

- (a) The operator of an aircraft is responsible for preserving to the extent possible any aircraft wreckage, cargo and mail aboard the aircraft, and all records, including those of flight recorders, pertaining to the operation and maintenance of the aircraft and to airmen involved in an accident or occurrence for which notification must be given until the Board takes custody thereof or a release is granted pursuant to section 320.11 of this part.
- (b) Prior to the time the Board or its authorized representative takes custody of aircraft wreckage, mail or cargo such wreckage, mail and cargo may be disturbed or moved only to the extent necessary:
 - (1) To remove persons injured or trapped;
 - (2) To protect the wreckage from further damage, or
 - (3) To protect the public from injury.
- (c) Where it is necessary to disturb or move aircraft wreckage, mail or cargo, sketches, descriptive notes, and photographs shall be made, if possible, of the accident locale including original position and condition of the wreckage and any significant impact marks.

NOTICE

**FEDERAL LAW
PROHIBITS
REMOVAL OR
DISTURBANCE OF
AIRCRAFT WRECKAGE
EXCEPT BY
PERMISSION OF
FEDERAL INVESTIGATORS**

Maximum Penalty for Disturbance: \$1,000

Maximum Penalty for Removal or Concealment: \$5,000 and/or 1 year.