



Three Lawyers and a Drone

Transcript: Interview with Sean McGowan, Tyler Black and Mike Deutsch of the Thompson Coburn LLP Drone Practice

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Sean McGowan: Hello everyone, good afternoon and welcome to “Three Lawyers and a Drone” coming to you from Thompson Coburn, a full-service national law firm of over 350 lawyers located in St. Louis, Los Angeles, Chicago and right here in Washington, D.C.

My name is Sean McGowan, I’m a partner in the Thompson Coburn Federal Regulatory practice group. I’m also co-chair of the UAS practice group. I’ve been a transportation regulatory lawyer for over 20 years, assisting clients in issues and all modes of transportation, aviation, rail, trucking and maritime before federal agencies here in Washington, D.C.

Joining me today are two other members of the firm’s UAS practice group, associates Tyler Black and Mike Deutsch. Tyler?

Tyler Black: Hello! I’m Tyler Black. I’m an associate in the International Trade and UAS practice groups. I have been at Thompson Coburn for five years now, and I’ve done a variety of transportation, trade and regulatory issues. I am also a private pilot. And I enjoy flying a little drone on the weekends and thinking about all there is to know about drones in this country.

Mike Deutsch: Hi everybody. I am Mike Deutsch. I’m an associate here at Thompson Coburn and I work on a variety of transportation regulatory issues. Prior to joining the firm, I worked at the Federal Aviation Administration and at the U.S. Department of Transportation, where I worked on a whole range of aviation and drone issues.

Tyler Black: So why are we doing this podcast? Unmanned aircraft present a unique set of challenges for the general public, private industry and the government regulators that are in this space. So we thought we'd chime in with our various insights and experiences and see what we could contribute to the conversation.

Mike Deutsch: That's right and we all have a shared interest in this topic. Between my work at the FAA, Sean's regulatory and aviation and product liability work and Tyler's experience as a recreational remote pilot, we have over 30 collective years in the transportation regulatory industry and we're going to draw on our unique and diverse backgrounds to discuss the things that matter to you, the listeners.

Sean McGowan: Great. We thought we'd kick off today's session by discussing what seems to be the hot topic in the drone community nowadays – drone disruptions in public places like sport stadiums and at airports.

Mike Deutsch: You must be talking about what happened at Gatwick and at the Super Bowl.

Sean McGowan: Exactly.

Mike Deutsch: The game was a total snooze but I'll tell you what I found particularly interesting was an article that I read afterward that said six drones were confiscated at or near the stadium.

Tyler Black: Interesting. That's probably a part of the standard operating procedures to restrict drone flights before, during and after a lot of major sporting events. It's typically done through a temporary flight restriction or TFR. If you're a young pilot, you can find those on tfr.faa.gov and there are a few other parties that host the locations of those temporary flight restrictions but what they basically do is they put a wide range around an event site at a particular time where pilots of any sort, drone, manned or otherwise, are not permitted to fly for any purpose and they must obey these limits or face thousands of dollars' worth of fines and/or criminal prosecution, so it's pretty serious.

Sean McGowan: Yeah, it seems like drone sightings are becoming more and more a regular day basis. I mean not only special events like the Super Bowl, but also at commercial airports and just around the country. But there doesn't seem to be any great way to stop drones from entering airspace.

Mike Deutsch: Yeah and not just around the country, Sean, but around the world. Gatwick was a recent example of a drone disruption at an airport.

Tyler Black: Right. That's the one where in December, there were multiple drones that were sighted around Gatwick Airport which is one of the busiest in the United Kingdom and they appear to actually be actively trying to disrupt the air traffic. It really created a lot of haywire and confusion.

Mike Deutsch: Yeah, it was a major mess. Easy Jet alone estimated that it cost the airline millions in pounds in lost operating revenue.

Tyler Black: That is a lot of fish and chips.

Mike Deutsch: Sure is.

Sean McGowan: And disruptions to airports is not anything new of course, as you know. I mean the aviation industry has been dealing with this for years and years, not only with remotely piloted vehicles like, you know, you'd see at local flying clubs but bird incursions. There's been a lot of work done on trying to get Canadian geese off airports, and things like that. Obviously with unmanned aircraft systems, the tricky thing is that, you know, they're small like birds but they are not as random and erratic. I mean, we have people piloting these aircraft and specifically going into locations where they're not supposed to be, either for selfish reasons or perhaps for nefarious reasons.

Tyler Black: So Sean, what are some of the solutions that people in governments are looking to in order to eliminate the presence of unwanted drones in the nearby air space?

Sean McGowan: Well, the FAA, as you know, is primarily concerned about compliance. They're not looking to really penalize everybody who's out there flying. and so before an event, the FAA does a lot. They do, as you've seen on their website, they're doing a ton of education on drones for the operating public about how to lawfully operate your drone. They're working with law enforcement officers because the FAA itself doesn't have the manpower so they're giving law enforcement guidance on what to do with errant drones and how to approach drone operators. They're encouraging manufacturers and companies to put geo fencing in to make it harder for drone operators to get around certain areas and fly in areas that they're not supposed to be doing.

There's the erection of site-specific netting or barriers where applicable around some stadiums. They're also publicizing it. I think one way for them to make a real impact is publicize their enforcement efforts. They don't have a ton of enforcement efforts right now –

Tyler Black: No.

Sean McGowan: But, as more and more drones enter the airspace, I think we will see prosecution of drone operators and deterrence of bad actors. And lastly, engaging with vulnerable events and industry areas like nuclear power facilities or transmission areas, to plan ahead for certain incursions that may occur.

Tyler Black: Okay, so all that seems to be more or less preparatory. Mike, what are some things that are viable options once an operation has begun?

Mike Deutsch: So once you have an operation that's in progress, the first thing and probably the most obvious step would be to try and find the drone operator and stop the operation from the ground. Now, that can't always be done and in a situation where you just can't find the drone operator – say you see the drone flying overhead but you don't know who's controlling it, you can't see where the person is, then you can try and disrupt the communication between the

operator and the aircraft or between the aircraft and a navigation aid, for example a satellite. Another option would be to use a counter-drone device like a giant net to take down the drone, or even animals. Some organizations have been using hawks and eagles to actually go out and physically take down a drone. If you have some spare time, I would highly recommend Youtubing hawks taking down drones or eagles taking down drones. There's some pretty cool videos out there.

Finally, if all those options aren't available, there's always the option of using a kinetic force weapon.

Tyler Black: Sounds like a gun.

Mike Deutsch: A gun, yes, or a water canon or a beanbag weapon, just something to throw an object or material at the drones to knock it out of the sky. And just to be clear to all you listeners out there, we are talking authorized government agencies taking a drone out of the sky, not John Q. Shotgun from his roof. Please people, please-please-please do not shoot at drones.

Tyler Black: So unfortunately, it seems like there are some obvious problems with each of those corrective actions.

Mike Deutsch: There are, unfortunately. In some cases it could be difficult or just impossible to locate the drone operator while in the act. That was the case with Gatwick. Or it could be happening, the act could be happening at a site where radio frequency jamming or kinetic force weapons are dangerous or undesirable. Or there's always the possibility that the bird or the net or the other counter drone technology could simply be unsuccessful. This is all relatively new and a lot is still in the testing phase.

Sean McGowan: So what are the FAA and similar agencies in other countries doing about the problem now?

Tyler Black: It's been a lot of testing for a number of years as everyone tries to figure out what are the best ways to deal with these incursions. The Denver

International Airport right now is serving as a test location for detecting and countering unmanned aircraft. A few years before that, the Atlantic City International Airport served in the same type of role. Some of those technologies really focus on the detection and triangulation of the location of the aircraft and the operator to rapidly deploy ground personnel to take care of those aspects of the operation. But there's a gap right now, unfortunately, between the sophisticated capabilities of the aircraft themselves with higher and higher rates of speed, maneuverability, and on the other hand, the capabilities – the more limited capabilities of the technologies to dissuade or prevent those unwanted operations.

Mike Deutsch: And Tyler, just to elaborate a little bit on that. It's not just a technological gap. There's also significant legal and regulatory gap.

Tyler Black: Right. No, that's absolutely right. The Federal Communications Commission, FCC, is still of the mindset that they are going to block a lot of the domestic development of counter unmanned aircraft jamming technology because they're very concerned about the widespread, rapid, untested deployment of jamming devices just as much or more so than the FAA is concerned about the widespread deployment of drones.

Mike Deutsch: And they're certainly valid concerns. I think moving forward, the FAA getting remote identification out will absolutely be a critical component in combating and discouraging these rogue operations.

Tyler Black: And can you say really quick what do you mean by remote identification?

Mike Deutsch: So, remote identification entails identifying – having an identifying marker on each drone – think aircrafts. Aircrafts have a tail number that identifies them.

Tyler Black: Right.

Mike Deutsch: This would be – when I say remote identification – I'm referring to something similar but for drones. Now, it's my understanding that the FAA may require manufacturers to build remote identification into the aircraft. I think some

kind of electronic signature so law enforcement and FAA personnel on the ground will be able to determine who owned the aircraft. And just to be clear, this is absolutely critical. The FAA has announced that they are working on a remote identification notice of proposed rulemaking. Their timeline right now is they're aiming for July, July 21 is the exact date, to release the proposed rule. But fear not, comments are due around the end of October 2019. And this is going to be a big one for the entire industry, whether you're a hobbyist, a commercial operator, a civil operator – this will impact the industry as a whole, so keep your eye out for that one.

Sean McGowan: Well there's certainly a lot of developments to keep an eye out for so please keep it tuned here as these developments happen. Thanks for joining us today and feel free to follow us on our Twitter account @TCDroneLaw for podcast episodes, Tweets and commentary, or direct message us for your specific questions. Thank you.

Disclaimer: This Podcast does not constitute legal advice and does not cover all the applicable rules. It is for informational purpose and to generate thoughtful discussions about the current issues facing drone operators in the U.S. and elsewhere. For more information or questions, please contact TC via our Twitter handle @TCDroneLaw or visit our website www.ThompsonCoburn.com

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