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# STRICT TORT LIABILITY TO GROUND VICTIMS IS APPLICABLE TO AVIATION FLYING SCHOOL OPERATORS WHO SEND PLANES ALOFT

By LAWRENCE VOLD\*

This paper is intended as a needed supplement to an earlier article in *The Hastings Law Journal*.<sup>1</sup> In that article I set forth a workable analysis of the pervasive underlying reasons which support the application of strict liability to flying school operators for crashes and forced landings on outside ground victims by student pilots whom they send aloft.<sup>2</sup>

The present paper aims to set forth from the record of two recent jury cases the most pertinent portions of their factual testimony bearing on this point by two flying school operators themselves. This factual testimony evidences that in ordinary course of student pilot training flying school operators actually do send student pilot solo flights aloft.

In order the better to recognize the cogency of the factual testimony set forth in the present paper it seems desirable briefly to review the pervasive underlying reasons which on facts of this type support the application of strict liability. Under the common law strict liability for crashes and forced landings on ground victims outside of established landing areas applies to one who takes the plane aloft.<sup>3</sup> The same basic reasons which support that result at common law also apply to one who sends the plane aloft.

## I. *The California Superior Court Decision.*

My earlier article in *The Hastings Law Journal* called attention to a California Superior Court decision in point.<sup>4</sup>

In its ruling on the flying school operator's motion for nonsuit the Superior Court, Hon. John D. Foley, Judge, stated as follows:

"The motion for a non-suit made by the Defendant Lenerville, dba as Lenerville Flying Service, is ordered denied.

"I might state also, that my views as to the liability of the Defendant, Lenerville, are governed, in my opinion, by the rule as stated in the Restatement of Torts, Sections 519 and 520, and it seems to me that as far as the evidence has gone, without the Defendant putting on any evidence, that his

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<sup>1</sup>Vold, *Strict Liability for Aircraft Crashes and Forced Landings on Ground Victims Outside of Established Landing Areas*, 5 *HAST. L. J.* 1 (1953).

<sup>2</sup>*Id.* at 24-33.

<sup>3</sup>The article cited in note 1 *supra*, in its own note 33, listed the available common law judicial decisions on this point. To these may now be added *United States v. Praylou*, 208 F.2d 291 (4th cir. 1953). Parker, J., delivered the opinion and repeated an earlier dictum on strict liability in such cases at common law. He proceeded to deal with the question of the liability of the United States in such cases under the Federal Tort Claims Act.

<sup>4</sup>*Boyd v. White*, Civil No. 77860, Calif. Super. Court, County of Santa Clara, July 28-30, 1953.

liability is what we might term more or less absolute for any damage that was done as a result of this plane crashing into the Plaintiff's home.

"It seems to me that this case comes within the rule stated in the Restatement of Torts as to an ultrahazardous activity

"I am also somewhat influenced by the statutory law that we find in Act 151a of the General Laws, Subdivision 2, particularly Paragraph D thereof.

"Now, I think we must agree that the Legislature, when it enacts a statute, has some purpose in mind. I don't think that we can assume that they are performing an idle act, so to speak.

"In that section, or Paragraph D, we find this language:

"For damages caused by a forced landing, the owner or lessee of the aircraft, or the operator thereof, shall be liable, as provided by law."

"Now, either the owner or lessee or operator is or is not liable for damages arising out of a forced landing. If they are liable, then this section doesn't mean anything because it simply says they are liable as provided by law.

"I am of the opinion that this is an attempt, although it is not very clearly expressed, to make the owner, lessee or operator liable for damages arising out of a forced landing, and it may be that the phrase, 'as provided by law,' has application not to the word 'liable,' but to the word 'damages.' Otherwise, it doesn't seem to me that the statement there means anything. And while the language isn't too clear, it may be an attempt on the part of the Legislature, as far as forced landings are concerned, to fix an absolute liability upon the owner or lessee or the operator of the aircraft.

"However, regardless of that, assuming that 'as provided by law' refers to the question of liability and not to the question of damages, then what does the law provide as far as that liability is concerned? I find no statutory law on it.

"And it seems to me that the rule in the Restatement of Torts should control, it appears to me to be a reasonable rule, and particularly in the light of the statute that we do have in which the Legislature apparently has distinguished the liability of aircraft owners and operators with respect to the owners of other aircraft, and with respect to passengers in aircraft, as distinguished from the liability of the owner or lessee or operator of an aircraft that does damage to some stranger's property, so to speak, that has no bearing upon aviation as we have in the case here.

"So those are my views, gentlemen.

"And also, the motion made by the Defendant Lenerville for judgment on the pleadings is ordered demed.

"So without any further evidence being introduced, and at this stage of the case, the Court is of the opinion that the only issue that will be presented to the jury in this case is the issue of damages as far as the Defendant Lenerville is concerned. Now, of course, I don't know what evidence that Defendant will have. On those issues raised by the pleadings, whether there will be evidence to create a question of fact for the jury to determine, other than the question of damages, we don't know as yet. But I thought that I better tell you in advance what my views were in the event that no other issue of fact is presented."<sup>5</sup>

<sup>5</sup>Reporter's Transcript, pp. 113-116.

## II. *Three Basic Features Which Point Toward Strict Liability.*

Available legal writings have seldom dealt systematically with the legal liability of flying school operators.<sup>6</sup>

My earlier article in *The Hastings Law Journal* shows that three typical basic features which on the merits at common law point toward strict liability apply with accentuated emphasis to the activity of flying school operators who, in the course of student pilot solo flight training, send planes aloft that crash or make forced landings on outside ground victims.<sup>7</sup>

These three basic features may be briefly resketched as follows:

1. One-sidedness of the activity with respect to receipt of benefits and with respect to creation of risks to outside ground victims is here quite as conspicuous as it is in flights operated by pilots holding private or commercial flying licenses.<sup>8</sup> The flying school operator who sends the plane aloft participates in creating the danger, and in reaping the benefits. The ground surface victim of the crash or forced landing, though taking no part, suffers the damage.

2. The "extrahazardous" feature continues very acute with respect to crashes and forced landings on outside ground victims in course of student pilot solo flight training.<sup>9</sup> Airplanes operated by partially-trained student pilots in course of student pilot training "necessarily involves risk of serious harm to the person, land or chattels of others which cannot be eliminated by the exercise of the utmost care." Clearly, too, such solo flying in course of student pilot training "is not a matter of common usage." Such solo flying is not "customarily carried on by the great mass of mankind or by many people in the community." Student pilot solo flights in course of student pilot training thus affords a vivid example of activity that is "ultrahazardous" as that term is defined in the carefully worded language of the Restatement of Torts.<sup>10</sup>

3. Aviation flying school activity is a type of enterprise which can distribute the loss from its crashes and forced landings on outside ground victims through insurance or otherwise as part of its costs to those who receive

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<sup>6</sup>I have noticed in the law reviews only one earlier article specifically devoted to this question. See Russell, *Liability of a Flying School for Damage Done by a Student Pilot*, 4 AIR L. REV. 254 (1933).

A law review note, "*Guest and Secondary Liabilities in Private Aviation*," appears in 30 IOWA L. REV. 442 (1945). At pages 449-452 this note briefly discusses the liability of the flying school from the negligence standpoint. This discussion, however, does not distinguish between typical negligence situations such as aircraft collision in the air and collisions of aircraft on the ground at airports and situations whose distinctive aspects bring strict liability into operation. See Vold, *supra* note 1, at 1-8.

<sup>7</sup>Vold, *supra* note 1, at 27-33. See also note 3 *supra*.

<sup>8</sup>*Id.* at 1-3, 17, 27-28.

<sup>9</sup>*Id.* at 3-5, 17-20, 28-29.

<sup>10</sup>Quotations in the foregoing text are from § 520 of the Restatement of Torts. This is referred to in the statement by the trial court which is quoted at length in Part I above.

its benefits.<sup>11</sup> Pertinent here, too, is the legal maxim embodied in the California Civil Code, section 3521, that "He who takes the benefit must bear the burden."

Youthful and relatively immature student pilots usually have not the means to pay for the damage done where the loss is more than trivial. It is apparently well known in aviation circles that the financial responsibility of youthful aviation student pilots is negligible. In pilot training solo flights, however, the risk of crashes and forced landings on outside ground victims is a constant risk and a general one. This constant and general risk is created by the activity involved in the flying school business. This business is carried on by the flying school operator. The risks involved to outside ground victims can be insured against by the flying school operator and distributed among his customers as a cost of carrying on the flying school business.

Where flying school operators send student pilot solo flights aloft, accordingly, they carry on an activity whose creation of risks and infliction of damage on outside ground surface victims is wholly one-sided, extrahazardous and insurable. Strict liability therefore is here properly applicable when resulting crashes or forced landings actually do damage to such outside ground victims. Otherwise, this would be a flagrant instance of permitting the party who carries on the training activity overhead to create the risks to others and to reap the benefits while throwing the losses upon his helpless ground victims below. The underlying reasons being identical, strict liability for damage to outside ground victims is properly applicable<sup>12</sup> to one who sends the plane aloft as well as to one who takes the plane aloft.

### III. *Flying School Operators Are Participators, Not Mere Bailors.*

This basic factual question of "Who sent the plane aloft?" can have very great practical importance. It has been well said that "Owing to the nature of an airplane, the relation of the student pilot to the school is difficult to fit into the well-recognized legal classifications."<sup>13</sup> It is often said at airfields that a student pilot "rents a plane"<sup>14</sup> from the flying school, at so much

<sup>11</sup>Vold, *supra* note 1, at 5-8, 20-23, 30-33. See also Jaffe, *Damages For Personal Injury: The Impact of Insurance*, 18 LAW AND CONTEMPT. PROB. 219-240 (1953)

<sup>12a</sup>"Where the reason is the same, the rule should be the same." CALIF. CIV. CODE, § 3511 (Deering, 1949).

<sup>13</sup>Russell, *supra* note 6, at 256-257.

<sup>14</sup>The following testimony of the parties, both being flying school operators, is from the case of *White v. Lenerville*, Calif. Super. Court, County of Santa Clara, July 11, 1951.

"Q. And you knew that any planes that he would rent from you, he would rent for the purpose of re-renting to his students, his student pilots, isn't that correct? A. Well, not necessarily to a student pilot, but it was my opinion and it was my understanding that they would be re-rented, yes.

"Q. And you, in turn, would re-rent planes that you would rent from Mr. Lenerville? A. Yes, I have." (White), Reporter's Transcript, p. 14, lines 7-14.

"Q. And you have rented planes to students and others for both training and for trips, is that correct? A. That's right." (Lenerville), Reporter's Transcript, p. 39, lines 17-19.

"Q. On previous occasions, when Mr. Galindo came out to the field, did you rent him one of

per hour, etc. Even if technical legal precision in the use of terms borrowed from other settings were possible, minute legal precision is not to be expected under these circumstances.

Use of such terms as "rent a plane" to the student pilot under these circumstances tends to obscure the factual participation of the flying school operator in sending the plane aloft in student pilot training. The connotations of such words as "rent a plane" suggest the legal relations of lessor and lessee, licensor and licensee, or bailor and bailee. On such form of words, therefore, even flying school operators and their legal advisers have sometimes tried to escape from legal responsibility to ground victims by invoking the well-known principle that the bailor is not answerable for the bailee's misconduct.<sup>15</sup> They have wanted to make it appear that the flying school operator was only a bailor of the plane to the student pilot, the bailee. On that basis the student pilot, bailee, as operator of the plane would be the only person subject to strict liability to ground victims in the event of a crash. The antidote to this deceptively plausible distortion of the realities is found in careful scrutiny of the facts of actual participation by the flying school operator in sending student pilot solo flights aloft.

In analyzing the reasons why, in this setting, strict liability is applicable to flying school operators, as well as to the student pilots who crash on ground victims, it therefore seems very important to recognize the basic fact that flying school operators actually do send student pilot solo flights aloft. In ordinary course of training of student pilots flying school operators are much more than mere bailors who rent planes to student pilots. That is the aspect of flying school operations which this paper is intended to demonstrate.

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your planes? A. Oh, yes, this was the first time he ever flew anybody else's planes. He always rented my airplanes and had flown them.

"Q. Did you have any hesitancy in renting him my planes? A. No, never." (Lenerville), Reporter's Transcript, p. 49, lines 25-26, and p. 50, lines 1-4.

In the above case of *Boyd v. White*, *supra* note 4, which grew out of the same crash on the Boyd house which had been involved in the case of *White v. Lenerville*, counsel for Defendant White used the same form of expression in his opening address to the jury. His language was as follows:

"Mr. Lenerville conducted a flying school in that particular area. He needed an airplane and it was rented to Mr. Lenerville for a given number of dollars per hour, and paid. Mr. Lenerville took the same plane and rented it to Mr. Galindo at a different rate." (Peters, counsel for White), Reporter's Transcript, p. 22, lines 6-11.

<sup>15</sup>This was pointedly illustrated in the case of *Boyd v. White*, *supra* note 4.

In that case there was no dispute about that portion of the basic facts showing that a training plane owned by White had been turned over by him to Lenerville whose student pilot, Galindo, was using it in a training flight under Lenerville's instruction when it crashed on the Boyd house. In that case, counsel for White at the opening of the trial, made an argument to the court on the point that the bailor of a plane is not answerable for the negligence of the bailee. (Reporter's Transcript, pp. 6-8.)

At that stage of the proceedings the court ruled, however, that the case should proceed to trial (Reporter's Transcript, p. 9.)

Counsel for Lenerville, the flying school operator, thereupon moved for a dismissal upon the same grounds that were urged by counsel for White. The court denied that motion also. (Reporter's Transcript, p. 9.)

Careful scrutiny of the facts readily discloses that flying school operators in ordinary course of student pilot training are active participators in sending student pilot solo flights aloft. Being active participators who send planes aloft, they are subject to strict liability for damage to ground victims by crashes or forced landings of the planes they send aloft.<sup>16</sup>

#### IV. *Two Jury Cases Growing Out of A Student Pilot's Crash on A Home.*

On August 28, 1949, a student pilot in course of training under Mr. Lenerville, the operator of a flying school near San Jose, California, made a solo flight. This flight ended in a crash or forced landing on the home of Miss Boyd, a High School teacher in San Jose. The plane used in this particular flight, as it happened, had been supplied for this occasion by its owner, Mr. White, for an agreed rental of \$5.00 an hour. Mr. White, like Mr. Lenerville, carried on a flying school business at the same airport near San Jose. Fortunately, no person was killed in the crash on the home. Fortunately, this home was not set on fire, but it was greatly damaged. Mr. White's plane, too, was greatly damaged.<sup>17</sup>

In June, 1951, White's action against Lenerville<sup>18</sup> for the damage to the plane involved came to trial in the Superior Court, sitting with a jury. Briefly, this action was based on the claim that Lenerville, as bailee of White's plane, had been negligent in that he had entrusted this plane for solo flying to a student pilot whose shortcomings as a pilot he should have recognized as involving unreasonable risk of damage to the plane.<sup>19</sup> Lenerville's attempted defense, in that case, was that in what he had done he had throughout acted with reasonable care.<sup>20</sup> At the conclusion of this trial, the jury brought in a verdict for the plaintiff White.<sup>21</sup> This case was not appealed.

At the time of the trial in this case of *White v. Lenerville*, the student pilot himself was in the military service and was out of the local jurisdic-

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<sup>16</sup>See note 2 *supra*.

<sup>17</sup>The records in the two cases cited respectively in note 4 and in note 14 *supra*, growing out of this same disaster, show no dispute over that portion of the facts recited in this text paragraph.

<sup>18</sup>Calif. Super. Court, County of Santa Clara, July 11, 1951.

<sup>19</sup>A statement of White's counsel, addressed to the court, was as follows:

"Well, if Your Honor please, it goes to the question of care in selecting the students, and that sort of thing, and this man has been a flight operator for a considerable period of time, and his testimony as to the type of person Galindo was and is, is material." (Reporter's Transcript, p. 7, lines 7-12.)

<sup>20</sup>A statement of Lenerville's counsel, addressed to the court, included the following:

"One of the elements in this case is the matter of knowledge on the part of Mr. Lenerville, and I think, in fact, practically the only issue was whether or not he was negligent in permitting Mr. Galindo to rent a plane from him. Now, any knowledge he would have as to his characteristics or attributes on the matter of flying is a necessary matter of proof." (Reporter's Transcript, p. 29, lines 17-25.)

<sup>21</sup>Reporter's Transcript, p. 64, lines 21-23.

tion.<sup>22</sup> He was therefore not available then as a witness. White and Lenerville, however, each testified at considerable length. Among other matters they also dealt with details in giving instruction and practice in flying, as well as the control that flying school operators actually exercise over the conduct of student pilots while in the air even in solo flights. Some portions of this testimony seem highly informative on the point with which this paper is concerned, namely, that flying school operators actually do send student pilot solo flights aloft. The most pertinent portions of this testimony on this point are given in subdivision V of this paper.

In July, 1953, Miss Boyd's action against White<sup>23</sup> and Lenerville for damages caused by the crash on her home came to trial in the Superior Court, sitting with a jury. Galindo, the student pilot, was also joined as defendant. He was defaulted,<sup>24</sup> but this time appeared as a witness.

In this case, when plaintiff's testimony touching liability had been completed, motions for nonsuit were made separately on behalf of White and on behalf of Lenerville. The Superior Court granted White's motion for nonsuit.<sup>25</sup> The Superior Court denied the motion of Lenerville, the operator of the flying school, who had sent the student pilot solo flight aloft that ended in the crash on the plaintiff's home.<sup>26</sup>

In denying Lenerville's motion for nonsuit, the Superior Court at the same time ruled that with respect to the crash on the plaintiff's home, Lenerville was subject to strict liability.<sup>27</sup> Accordingly, the court submitted to the jury only the question of the amount of the damages. The jury rendered its verdict for the plaintiff, assessing the damages at \$5,559.50<sup>28</sup> for which judgment was entered. Lenerville did not appeal.

At the time of the trial in the case of *Boyd v. White and Lenerville*, Galindo, the student pilot, appeared as a witness. He, as well as White and Lenerville, testified at considerable length. Certain portions of the testimony from each of these witnesses, two flying school operators and a student pilot, are significantly informative on the point that flying school operators actually

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<sup>22</sup>Reporter's Transcript, p. 33, lines 16-21.

<sup>23</sup>See note 4 *supra*.

<sup>24</sup>Reporter's Transcript, in *Boyd v. White*, p. 9, lines 18-21.

<sup>25</sup>Reporter's Transcript, p. 113, lines 8-9; Clerk's Transcript, p. 21, lines 14-16.

The record at this point shows that with respect to the motion by Defendant White the court simply stated that that motion was granted, without further utterance of explanation.

While this paper is being written (February, 1954) an appeal by Plaintiff Boyd from the judgment of nonsuit in favor of Defendant White is still pending. This paper does not attempt to discuss the special aspects involved in that appeal.

This paper is concerned merely with the demonstration, from the available evidence, that flying school operators in the ordinary course of student pilot training actually do send the student pilot solo flights aloft.

<sup>26</sup>Reporter's Transcript, p. 113, lines 10-12; Clerk's Transcript, p. 21, lines 12-14.

<sup>27</sup>The court's elaborate explanation of its reasons for this ruling as to the liability of Lenerville, as appearing in the record, is given in the text in Part I above.

<sup>28</sup>Clerk's Transcript, p. 22, lines 1-5.



do send student pilot solo flights aloft. The most pertinent portions of their testimony on this point are given in subdivision V of this paper.

### V. *Factual Testimony on Who Sends the Plane Aloft.*

The factual testimony from these two cases concerning who sends the plane aloft may conveniently be arranged in four groups as follows:

#### 1. *Solo Flights in Course of Student Pilot Training Are a Part of the Regular Course of Business of the Flying School.*

"You give them one hour of dual for each three hours of solo after they solo." (Lenerville.)<sup>29</sup>

"We ride dual with them until we figure they're proficient to fly by themselves, or solo." (Lenerville.)<sup>30</sup>

"They come in and check in the office and find out what airplane they are going to fly and whether it is going to be dual or solo." (White.)<sup>31</sup>

#### 2. *The Flying School Operator Directs the Partly-Trained Student Pilot When to Do Solo Practice.*

"If a student is still, oh, say, around 10 or 12 hours, you would give him a whole hour of dual before you would let him solo. If he were still a little weak, you might have him come back again and give him another hour. It's up to the discretion of the instructor who is flying how well the student is doing before he turns him loose, as we call it." (White.)<sup>32</sup>

"Any student, until he receives his private license, is under the jurisdiction of an instructor, and it's up to the instructor, after he checks a student out, to tell the student what maneuvers he will practice and what flying he will do." (White.)<sup>33</sup>

"Q. When a student was given a plane for solo instruction, you would give certain orders or directions to that student as to the flight pattern or course that he was to take during that solo instruction, would you not?  
A. Yes. All students are under the jurisdiction of an instructor until they receive a license of their own." (White.)<sup>34</sup>

"You do give him his instructions if he's a student pilot. He is under the jurisdiction of an instructor: That is why they call him a student pilot.

We have a curriculum set up whereby our students know from hour to hour what they are going to do. They come in and check in the office and find out what airplane they are going to fly and whether it is going to be dual or solo." (White.)<sup>35</sup>

"Q. Incidentally, what is the practice followed by you and other flight instructors when a person comes out to the field, desires to rent a plane, and of whom you have no knowledge, no knowledge of their ability? A. When

<sup>29</sup>White v. Lenerville, Reporter's Transcript, p. 40, lines 11-12.

<sup>30</sup>*Id.* at 49, lines 21-23.

<sup>31</sup>Boyd v. White, Reporter's Transcript, p. 48, lines 7-10.

<sup>32</sup>White v. Lenerville, Reporter's Transcript, p. 17, lines 17-22.

<sup>33</sup>*Id.* at 18, lines 16-20.

<sup>34</sup>*Id.* at 14, lines 20-25.

<sup>35</sup>Boyd v. White, Reporter's Transcript, p. 47, line 27; p. 48, lines 1-10.

a person comes out, we always check their license first, and we also check their medical certificate. They are of only two year's duration in the case of a private pilot or a student pilot. If that is satisfactory, we take them out and check them out in the traffic pattern. In other words, we ride dual with them until we figure they're proficient to fly by themselves, or solo, and that's the standard procedure used by most fields that I know of." (Lenerville.)<sup>36</sup>

"Q. Now, whenever a student pilot stops flying for a period of over nine months, is there a custom or practice with respect to instruction regarding that student? A. You fly dual with him and check them and see if they are proficient enough to fly solo.

"Q. Yes. A. Which I did in this case here. . . .

"Q. And then you gave the plane to him solo: is that right? A. That's right.

"Q. How long after you gave the plane to him solo was it before the crash occurred? A. I flew in another plane as soon as I let him go solo. I think I got back about thirty minutes and that is when I heard about it." (Lenerville.)<sup>37</sup>

"Q. In this particular instance after Mr. Galindo was told to solo the plane, as I understand it, you then went dual with somebody else? A. That's right." (Lenerville.)<sup>38</sup>

"Q. And as a matter of fact, you had checked him out for solo flight purposes, had you not? A. That's right.

"Q. You didn't check him out to make take-offs and landings but for solo flight purposes? A. That's true. (Lenerville.)<sup>39</sup>

"Q. And then what happened? A. I think we took off and we made about three landings and take-offs. I think we did some maneuvering; I'm not sure, and we came back to the airfield and I made the landing and taxied toward the end of the strip to take off again, and Mr. Lenerville stopped and he said that I could take it up by myself.

"Q. All right. Did you take up the plane by yourself? A. Yes, I did." (Galindo.)<sup>40</sup>

### *3. The Flying School Operator Directs the Partly-Trained Student Pilot What Operations or Maneuvers to Perform in the Course of the Particular Solo Flight in Question.*

"Yes, at that time he was getting ready to take his solo cross-country, and I instructed him to go and land at different airports around the area here, and which I presume he did." (Lenerville.)<sup>41</sup>

"Well, he told me that he was out practicing landings at strange fields, and which I instructed him to do." (Lenerville.)<sup>42</sup>

"It was before we had—or took a man on a cross-country, we take them around dual and landed at different airports to give them a little ex-

<sup>36</sup>White v. Lenerville, Reporter's Transcript, p. 49, lines 13-24.

<sup>37</sup>Boyd v. White, Reporter's Transcript, p. 60, lines 5-20.

<sup>38</sup>*Id.* at 62, lines 15-18.

<sup>39</sup>*Id.* at 125, lines 6-10.

<sup>40</sup>*Id.* at 83, lines 14-22.

<sup>41</sup>White v. Lenerville, Reporter's Transcript, p. 25, lines 21-24.

<sup>42</sup>*Id.* at 46, lines 24-25.

perience at landing at different fields. After we had done that we told them to go out and do it themselves to gain a little more experience." (Lenerville.)<sup>43</sup>

"It's up to the instructor, after he checks a student out, to tell the student what maneuvers he will practice. . . ." (White.)<sup>44</sup>

"Q. And then the student would take off, make landings, or banking, or whatever you instructed him to do? A. That's right." (White.)<sup>45</sup>

4. *The Flying School Operator Starts the Partly-Trained Student Pilot on the Solo Flight in Question.*

"If it's solo the instructor tells him what he is going to do and where he is going to fly the airplane, and starts him. . ." (White.)<sup>46</sup>

"Q. It was entirely up to him when he started and when he quit?  
A. Well, not entirely. When you send a man out for instruction he generally stays the amount of time that you instruct him to stay up, but then there is nothing that says he can't come down before that time is up." (Lenerville.)<sup>47</sup>

## VI. Conclusion.

The foregoing factual testimony seems abundantly to evidence that these two flying school operators in ordinary course of student pilot training actually did send student pilot solo flights aloft. It is my understanding that as to this particular a substantially identical practice is followed by most other flying school operators. Indeed, it is hard to see how flying school operators can carry student pilot training into its advanced stages without sending student pilot solo flights aloft.

The great importance of this factual aspect of flying school operations has been pointed out in Part III above. Being active participators who send student pilot solo flights aloft, flying school operators are not mere bailors of planes to others. As participators, they are subject to strict liability for damage to ground victims by crashes or forced landings in course of pilot training of the planes they send aloft.<sup>48</sup>

<sup>43</sup>Boyd v. White, Reporter's Transcript, p. 108, lines 10-15.

<sup>44</sup>White v. Lenerville, Reporter's Transcript, p. 18, lines 18-20.

<sup>45</sup>White v. Lenerville, Reporter's Transcript, p. 15, lines 2-4.

<sup>46</sup>Boyd v. White, Reporter's Transcript, p. 48, lines 11-13.

<sup>47</sup>White v. Lenerville, Reporter's Transcript, p. 50, lines 10-14.

<sup>48</sup>See notes 1, 2 and 3 *supra*.