

Future of Drones is Up in the Air

By Elizabeth Gonzales

On February 1, photojournalist Pedro Rivera heard about a car accident near his home and went to the scene with his video drone, an unmanned aerial vehicle (UAV) equipped with a video camera. He was filming the area from the police perimeter when officers told him to leave. Afterward, the police contacted the TV station where he worked and complained, and Rivera was suspended for a week without pay.

Rivera contacted Norman Pattis, Connecticut trial attorney and author of *Juries & Justice* and *Taking Back the Courts*, who filed a lawsuit claiming unreasonable search and seizure and infringement of free speech rights. “He wasn’t violating any law and they had no right to interfere with him,” said Pattis.

The complaint also stated that Rivera “was not operating a ‘civil aircraft’ within the meaning of any state or federal regulations when the officers stopped him.”

The FAA disagrees.

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— Norm Pattis
Criminal Defense and
Civil Rights Attorney



In 1981, the FAA published operating standards for recreational use of UAVs, which recommended flying under 400 feet and avoiding airports, among other safety guidelines. In 2007, the FAA published rules stipulating that the guidelines applied only to “modelers” and not to civil aircraft used for business. The FAA has since held that using UAVs for commercial purposes requires a permit, and asserts on its website that “[a]nyone who wants to fly an aircraft-manned or unmanned-in U.S. airspace needs some level of FAA approval.”

That contention was tested earlier this month by the National

Transportation Safety Board (NTSB), and it didn't fly. The NTSB threw out a \$10,000 fine levied by the FAA against Raphael Pirker, a videographer who used a drone to shoot a promotional video of the University of Virginia campus in 2011. In his March 6 decision, judge Patrick Geraghty ruled that at the time of the incident, "there was no enforceable FAA rule . . . applicable to model aircraft." He also noted that the FAA's current definition of aircraft is so broad that it would place paper airplanes under FAA oversight.

In a written statement, the FAA announced that it would appeal, citing concerns that the decision "could impact the safe operation of the national airspace system and the safety of people and property on the ground."

Chance Roth, CEO of AirDroids and founder of the San Diego Drone User Group, concedes that some model aircraft are large enough to be a hazard. "When discussing drones, you've got to put them into two primary categories," Roth said. "The first is personal use devices or those around 5 pounds. The other category is commercial use or devices that are heavier than 5 pounds. The former has been around for many, many years without any regulation at all. The latter are the ones I believe the public is more worried about, since when they come down it's not usually with just a thud."

Accidents are rare, but they do happen. In 2013, a teenager was killed by a remote-controlled helicopter in New York, and in 2010, a large remote-controlled plane collided with a regular two-passenger biplane in Colorado, leading to an emergency landing.

"I think drone use will increase in time and the need for regulation is obvious," said Pattis. "It's just what kind of regulation. In Rivera we had beat cops legislating from the streets, which is ridiculous, and in the Pirker decision we have the FAA being told you can't make it up as you go along. You can regulate but you need to do so on a principled basis."

"The FAA should make these rules a priority, but there are many levels of administration and red tape to tackle," said Roth. He would like to see a special accommodation for emergency use of UAVs. "We are already years behind the rest of the world in terms of utilizing these technologies for public safety and search and rescue," he said.

The FAA plans to propose rules for small UAVs (under 55 pounds) in 2014 and a full plan for regulating UAVs by September 2015.

For now, though, the skies are wide open to UAV operators. "The rule in the United States is that unless the law prohibits something, you're permitted to do it," Pattis said. "The [FAA's stance] and the police officers' response in Rivera is you're not permitted to do it unless

the law gives you permission to do it. That's antithetical to everything this country stands for." ■