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STATEMENT OF KENNETH M. SMITH, DEPUTY ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON AVIATION OF THE SENATE COMMITTEE ON COMMERCE ON MARCH 9, 1971, RESPECTING SAFETY IN AIR CHARTER OPERATIONS.

Mr. Chairman and Members of the Committee:

I welcome this opportunity to join Admiral Smith in meeting with you today. The views I express here are also those of the Administrator, Mr. Jack Shaffer. With me are Mr. George Moore, the FAA Associate Administrator for Operations; Mr. George U. Carneal, the FAA General Counsel; and Mr. James F. Rudolph, Director of the FAA Flight Standards Service.

The subject of air charter operations is of vital concern to all of us. We in the Department of Transportation, Federal Aviation Administration, have a solemn obligation to promote safety in all elements of air transportation.

The recently-completed study of charter aircraft operations undertaken by Admiral Smith at Secretary Volpe's direction certainly represents a major step forward in this area. I am very proud of the role played by FAA experts in this investigation. The report of the study group has given us a sound working blueprint for cracking down on illegal charter operators and for improving the overall quality and reliability of the air charter services.

We believe this report is unique in that it not only is the first investigation of illegal operations on a national scale, but also clearly

points up the economic factors which generate the need for charter services. In addition, the report very succinctly covers the many devious schemes used by the illegal operators to avoid or evade compliance with the existing regulation governing the operation of air carriers and commercial operators of large aircraft. It recommends the promulgation of new regulations designed to more tightly control this segment of the industry.

To understand the present situation with regard to air charter operations, it might be helpful to review briefly the historical background of the industry as outlined in the report of Admiral Smith's task group. It shows that the FAA and its predecessor agencies have taken a succession of regulatory actions in an effort to ensure that the growth of air charter operations occurred in a safe and orderly manner. And yet the shady and illegal operators who either evade or ignore present regulations remain a continuing problem for the agency.

In the years of its infancy before World War II, aviation offered few alternatives to the prospective air traveller. He could take an air carrier when a scheduled flight was available at an accessible airport, or he could try the services of so-called fixed-base operators who offered both "non-scheduled" ("irregular") flights and charter services.

The end of World War II opened a new era in air transportation. Thousands of military-trained pilots were released from the services intent on starting their own airline with converted transports.

In general, these operators split into two categories. One offered air transportation to all comers on a non-scheduled basis, and by 1947 these "irregular" air carriers totalled 700. The other group became commercial operators offering private carriage "for compensation or hire" to select groups. The experience was disappointing for most operators. The failure rate was high and the safety record poor.

To improve the safety record of these operators, new regulations were adopted by the Civil Aeronautics Board (CAB) for non-scheduled air carrier operations in 1946 and for commercial operators in 1949. These regulations, together with economic considerations, had the effect of forcing many of the marginal operators out of business with a resulting upgrading in both the quality and reliability of non-scheduled and air charter services.

The safety record of the surviving non-scheduled air carriers continued to improve through the 1950's. Today, 14 supplemental air carriers hold Certificates of Public Convenience and Necessity issued by the Civil Aeronautics Board, as well as Air Carrier Operating Certificates issued under Part 121 of the Federal Aviation Regulations. As Part 121 operators, they must follow the same operating rules as domestic and flag air carriers when they conduct charter operations.

Commercial operators, those engaged in private carriage for compensation or hire, followed a pattern of development similar to that

for the non-scheduled operators during the 1950's. Following the enactment of new safety standards in 1949, many were forced out of business and the effect of this was reflected in an improving safety record for that segment of the industry. At the same time, however, some operators "took to the shade" and continued to circumvent the regulations.

Introduction of the jet aircraft into the airline inventory beginning in 1958 brought a new dimension to the problem. As the carriers took delivery of the more efficient jets, they sold or leased their older equipment to commercial operators. In 1963, the FAA issued tough new administrative, financial and organizational standards and other rules governing commercial operators. These rules were needed to ensure the requisite level of fiscal responsibility. Followup enforcement activity confirmed an often repeated saying among our field personnel, "When money's tight, safety slips." About this same time, an even more significant conclusion was reached: Safety standards for air carriers and commercial operators of large aircraft should be the same standards. Since 1966, this has been the case and today, both must comply with the same, high standards in Part 121.

In the middle 1960 s, agency regulatory action dealt with two more groups of operators: (1) Air taxis and commercial operators of small aircraft, and (2) Air travel clubs. Once again, another leap

in the public demand for travel by air during this period generated another market to which these operators responded.

Travel clubs were membership groups. Members banded together, bought a large aircraft (often from an air carrier), planned trips and paid low prices for their travels. Travel clubs claimed that they engaged in neither common carriage nor private carriage for compensation or hire, and most did not. After careful study, the agency concluded that the character of travel club operations required closer safety regulation in the public interest. Following public rule-making procedures, the agency in 1968 adopted Part 123 of the Federal Aviation Regulations setting safety standards for travel clubs quite similar to standards in Part 121.

Air taxis and commercial operators conducted more operations with small aircraft, but small aircraft became increasingly sophisticated, and there were some large aircraft operations. There were few of these operators in the early 1960's, but they became the fastest growing segment of aviation in that decade. In 1964, the agency set safety standards for the operations of air taxis and small commercial operators with the adoption of Part 135 of the Federal Aviation Regulations. In 1969 and 1970, we issued a series of amendments to Part 135 upgrading the safety standards for these operators, their aircraft, their flight crews, and their maintenance programs. Also, these operators now are required to meet the requirements of Part 121 when they operate large

aircraft. Another series of amendments improved the airworthiness standards for small aircraft operated by air taxi-commercial operators.

Mr. Chairman, this historical background is a perspective for the problem we face today. Aviation is anything but simple. Aviation is a challenging, growing, changing, problem-solving business that has faced challenge after challenge successfully. Admiral Smith's Report represents a flight plan to meet yet another challenge in aviation. But the Report is more than that, it is a definition of that challenge.

The immediate challenge is the illegal "shade tree" operator. They are out to "slip through" and to make a fast buck in aviation; they callously direct their efforts toward evasion, subterfuge and clever legal maneuvering. They do not meet the standards that apply to them, and many fail to meet even the most basic operating safety standards in our Part 91.

Today our surveillance and enforcement duties involve some 135,000 aircraft, over 1 million pilots and airmen, nearly 4,000 air taxi and small commercial operators, 3,500 repair stations, 2,100 pilot schools, plus the many air carriers and commercial operators. Mr. Chairman, we have approximately 1,600 FAA air carrier and general aviation inspectors in the field to accomplish this task. In other words, this is our surveillance and enforcement program (Exhibit 1).

A longer range problem is now rearing its head. As air carriers phase in the wide-bodied airplanes, the older turbine aircraft will

become available to the commercial operator. We again face problems much like the ones which arose following World War II and as we entered the jet age. Our regulatory functions must anticipate and be tightened to meet future safety requirements. The CAB and the FAA should in our judgment and in keeping with recommendations of the report, strengthen our regulations governing the entry of foreign registered charter aircraft operations.

The FAA's detailed comments on Admiral Smith's Report are attached to this statement (Exhibit 2). I will not take time now to repeat them. I will be happy to discuss our comments with you and to answer any questions you may have. We endorse the report and its recommendations. Many of the recommendations are being implemented today. Others will take more time and study, but we are moving to implement them at the earliest moment.

I'm pleased to report that the air carriers have had an excellent safety record over the past two years (Exhibit 3). After an outstanding year in 1969, the airlines had the best safety record in their history in 1970. There wasn't a single fatality in scheduled domestic operations, and only two fatalities in international. Regrettably, the only smudge on the safety record of commercial aviation last year resulted from accidents involving charter flights.

General aviation also has shown improvement over the past two years in terms of accident fatalities. This was accomplished while the

number of aircraft and airmen and the volume of flight activity continued to increase.

But let me assure you that we have not been lulled into a sense of complacency by trends. We do not take our challenge lightly, and we will continue to utilize our available resources as efficiently and effectively as humanly possible. Safety is not a matter of happenstance or luck, but rather the result of dedication, imagination, initiative, training and just plain hard work and devotion to duty.

The agency has initiated a number of programs designed to further advance the cause of air safety such as the general aviation accident prevention program, which seeks to improve the flying habits of the general aviation community through persuasion rather than coercion, and many other programs too numerous to mention here.

In conclusion, may I again commend this Committee for its continued interest in aviation safety. We know we will be able to rely on your continued assistance and support as we plan and implement required improvements in the entire national aviation system.

Thank you, Mr. Chairman, that concludes my prepared statement. My associates and I will be pleased now to join Admiral Smith in responding to any questions you may have.

SUMMARY OF ENFORCEMENT ACTIONS (1967-1970)Civil Penalty Cases Completed

| <u>Calendar Year</u> | <u>By FAA</u> | <u>By Dept. of Justice</u> | <u>Totals</u> |
|----------------------|---------------|----------------------------|---------------|
| 1970 Air Carrier | 152 | 23 | 175 |
| General Aviation | <u>744</u> | <u>62</u> | <u>806</u> |
| Totals | 896 | 85 | 981 |
| 1969 Air Carrier | 168 | 7 | 175 |
| General Aviation | <u>610</u> | <u>58</u> | <u>668</u> |
| Totals | 778 | 65 | 843 |
| 1968 Air Carrier | 156 | 3 | 159 |
| General Aviation | <u>745</u> | <u>68</u> | <u>813</u> |
| Totals | 901 | 71 | 972 |
| 1967 Air Carrier | 148 | 15 | 163 |
| General Aviation | <u>643</u> | <u>56</u> | <u>699</u> |
| Totals | 791 | 71 | 862 |

Comparative Collections

| | <u>By FAA</u> | <u>By Dept. of Justice</u> | <u>Totals</u> |
|------|---------------|----------------------------|---------------|
| 1970 | \$282,183.00 | \$28,176.85 | \$310,359.85 |
| 1969 | 216,145.00 | 23,098.64 | 239,243.64 |
| 1968 | 148,275.00 | 21,453.14 | 169,728.14 |
| 1967 | 163,265.00 | 16,413.24 | 179,678.74 |

Certificate Actions Taken

| <u>Calendar Year</u> | <u>Air Carrier</u> | <u>General Aviation</u> | <u>Totals</u> |
|----------------------|--------------------|-------------------------|---------------|
| 1970 | 66 | 1463 | 1529 |
| 1969 | 111 | 1306 | 1417 |
| 1968 | 67 | 1514 | 1581 |
| 1967 | <u>81</u> | <u>1322</u> | <u>1403</u> |
| TOTALS | 325 | 5605 | 5930 |

25 February 1971

FAA COMMENTS - REPORT TO THE SECRETARY
ON INVESTIGATION OF AIR CHARTER SERVICES

1. General Comments on the Report. Our review of the report indicates that an indepth investigation was conducted, particularly in the area concerning illegal charter operations. The report shows that charter operations by uncertificated operators are rather widespread, with much of it concentrated in the Southwest and Southern Regions. We note in the report that these Regions had a good handle on the number and location of the illegal operators, together with a fairly complete inventory of large aircraft registered to them. In the other Regions where these operations are perhaps not so widespread or concentrated, this kind of information did not appear to be as readily available to the Task Force. We agree that a lot of these operations are probably occurring in geographical areas under the jurisdiction of General Aviation District Offices. The general aviation inspectors are naturally not as well versed in the FAR 121 requirements as are the air carrier inspectors and thus would be an incentive for illegal operators to base their operations where their activities are less apt to be closely monitored. Of particular concern is the very likely possibility of the purchase of surplus airline jets by the illegal operators.

We believe this report is unique in that it is not only the first investigation of illegal operations on a national scale, but also clearly points up the economic factors which generate the need for the services of the illegal operators. The report also points up the consensus of FAA inspectors most experienced in the surveillance of illegal operators that if more stringent rules are imposed on them, many will register their aircraft in foreign countries in Central and South America and do business as usual with the same used-up airplanes. Accordingly, the action recommended with respect to the issuance of 1108(b) permits by the Civil Aeronautics Board needs to be accomplished without undue delay.

The report very succinctly covers the many devious schemes used by the illegal operators to avoid or evade compliance with FAR 121. It also points up variations in FAA's enforcement program with respect to sanctions as well as varying interpretations of the same rules and regulations between FAA offices and individual inspectors. This same observation was made by the Department's Office of Audits and is a subject that requires further discussion leading towards a solution by Flight Standards Service and the Office of the General Counsel. In conclusion, the main thrust of the report is that the drain on FAA manpower, necessary to monitor the illegal operators, will continue until such time as the regulatory scheme is changed to eliminate from the safety rules economic requirements which necessitate inspectors to determine whether a particular operation is for compensation or hire.

Notwithstanding the need for a change in the regulatory scheme, many of the past accidents in this area could have been prevented had the general operating safety rules of the existing FAR 91 been followed.

2. Comments on the Task Force Recommendations. We have repeated each of the Task Force recommendations as presented in the report and have commented under each.

a. Institute a continuous surveillance program of large airplanes, pressurized airplanes, and turbine powered airplanes similar to that conducted by the FAA in November and December 1970. This program should be extended to include closer surveillance of authorized inspectors who inspect these airplanes.

COMMENT: We concur that the surveillance of illegal operators must be given greater emphasis by the Regions and must continue as long as the safety regulations require inspectors to make economic determinations. We do not believe that this surveillance can be as concentrated and as intense as the one completed last December because we simply cannot afford the manpower. However, implementation of the recommendations that can be accomplished in the immediate future should, along with the surveillance program, assist the agency in coping with the problem. Instructions to the field directing this effort will be issued immediately and comprehensive guidelines to all field offices are now under development and we plan to issue them during the latter part of next month.

b. Develop and issue an educational flyer on the hazards which may exist in the lease or charter of large airplanes under the present regulations. This information should receive the widest possible distribution by the Government, the airlines, the aviation community, and other affected organizations.

COMMENT: We agree that this recommendation will serve to alert the public to the existing problem and should deter those potential charter groups that are aware of the educational flyer from entering into lease agreements which make them the legal operator of the airplane. Flight Standards Service will work with the Office of Public Affairs in developing material and giving the flyer wide-spread dissemination, particularly to colleges and universities. Additionally, we plan to solicit the aid of the airport operators so that the flyer can be posted in airport waiting rooms and the ticket counters.

c. Under the emergency authority contained in FAR 11.21b, amend FAR 49 to require recordation of any lease or conditional sales contract involving a large airplane, pressurized airplane, or turbine powered airplane, and require a "truth in leasing" clause to be incorporated in

each lease or conditional sales contract, or be made a distinct attachment thereto; except for airplanes leased or sold to a certificated operator. The clause should appear in large type as a concluding paragraph immediately preceding the space for the signatures of the parties. The clause should contain (1) a certification by the lessor or seller that the airplane is airworthy in accordance with the appropriate FARs for the operation contemplated, (2) the fact that the lessee or buyer will be an operator of the airplane and must operate and maintain it in accordance with the appropriate FARs, (3) the fact that a further explanation of all of the pertinent FARs can be obtained from the nearest FAA facility, and (4) that a copy of the executed contract be mailed by the lessee to the FAA Aircraft Registry, Oklahoma City, Oklahoma.

COMMENT: We agree with the objective of this recommendation but we are not certain that there is sufficient legal justification to issue an emergency amendment to Part 49 of the Federal Aviation Regulations. We will pursue this aspect further with the General Counsel. In any case, this recommendation should serve to alert potential lessees of large aircraft of the responsibilities that they would assume by becoming the operator of the aircraft. Further, implementation of this recommendation should preclude charter groups from unwittingly becoming the legal operator. A rulemaking project in this regard has been initiated.

d. The FAA should, with all possible speed, require all (except military) large airplanes, pressurized airplanes and turbine powered airplanes to be operated on a flight plan at all times except for local, ferry, and test flights.

COMMENT: Adoption of this recommendation will assist the agency in tracking down illegal charter operations. However, it will be necessary to study the matter further to determine the impact on the ATC system. Action in this regard by Flight Standards and the Air Traffic Service should be initiated immediately.

e. Promulgate a new part of the Federal Aviation Regulations governing the operation of all (1) large airplanes, (2) pressurized airplanes, and (3) turbine powered airplanes, engaged in private carriage. This regulation should provide that those airplanes be operated and maintained in the condition for safe operation appropriate for transport category airplanes. The regulation should include requirements for crew proficiency, operations, and continued airworthiness consistent with the terms of original airworthiness certification of transport airplanes. It should be written so as to provide

a level of safety comparable to FAR 121, but without the detailed administrative, financial, and organizational requirements for the issuance of a commercial operator certificate prescribed in that part. This new part should be written in such a way that it provides the flexibility necessary for the operation and maintenance of the individual airplane.

COMMENT: Adoption of this recommendation will serve to upgrade the safety standards applicable to all operators of large aircraft. It does not eliminate the need to determine whether a particular operation is for compensation or hire and will, of itself, require additional surveillance to assure compliance with the new rules. We do not believe that a separate new part is necessary but rather a new subpart to FAR 91 applicable to the operation and maintenance of large aircraft should be developed.

The agency has recently amended FAR 91 to:

- (1) establish a requirement for an altitude alerting system or device in turbojet airplanes by 31 August 1971; and,
- (2) require pilots, before beginning a flight, to familiarize themselves with all available information concerning the runway takeoff and landing distances at the airport to be used.

A Notice of Proposed Rule Making was issued on 4 January 1971 proposing to make the IFR takeoff minima applicable to FAR 121, 123, or 135 operators, also applicable to general aviation operators. The close-out date for public comment is 10 March 1971.

Additionally, the following rulemaking proposals are under development:

- (1) It is proposed to specify a limitation common to all users of instrument approach procedures that would prohibit them from beginning the final approach segment of an instrument approach unless the reported visibility is at or above the prescribed landing minima.
- (2) It is proposed that additional qualification requirements be established for copilots and to require annual proficiency checks for pilots-in-command of aircraft that require more than one pilot.

Additional regulations designed to upgrade the operations of large airplanes under FAR 91 are being considered. We also have considered public comment on Notice 70-41 and plan to issue soon a rule providing a better definition of commercial operations.

f. Upon implementing the requirement that all large airplanes, pressurized airplanes, and turbine powered airplanes be raised to an acceptable level of safety, commercial operator certification should no longer be required. The regulations should then require that only scheduled and supplemental air carriers engaged in common carriage will be governed by FAR 121 and meet the highest possible degree of safety as required by Section 601(b) of the Federal Aviation Act of 1958. Operators of large or complex airplanes engaged in private carriage should no longer be burdened with economic requirements, but could continue to meet under the new part an acceptable level of safety. FAA field inspectors would no longer be required to make an economic determination of what constitutes operation "for compensation or hire." As air travel club airplanes would also be required by the new regulation to meet the acceptable level of safety, there would no longer be a requirement for FAR 123.

COMMENT: We believe this to be a wise approach since before we eliminate the compensation or hire provisions from FAR 121, we must be absolutely certain that the necessary action of removing commercial operators from FAR 121 does not result in any lowering of the safety standards applicable to them. FAR 121 is tailored to operations by airlines having large fleets of airplanes with the attendant management and organizational requirements. The small fleet commercial operator as a rule has great difficulty in meeting these management and organizational requirements which has resulted in a large turnover of these operators. Frequently, where they do make a profit, the CAB has stepped in and determined that the particular operator was engaging in common carriage resulting in cease and desist orders. A lot of the investigation and surveillance for the CAB is accomplished by FAA inspectors per an agency/CAB agreement entered into around 1962. We feel the time has come for the agency to no longer concern itself with making economic determinations so that we can concentrate on our primary concern -- safety.

g. Amend necessary Federal Regulations to require production, by the pilot in command, of the CAB issued Section 1108(b) permit upon each entry into the United States. Each flight authorized by an 1108(b) permit should be enumerated and the form utilized should provide a measure of accountability.

COMMENT: This recommendation is directed to the Civil Aeronautics Board who issue 1108(b) permits for the operation of foreign civil aircraft in the U.S. Oftentimes such foreign aircraft are operated by the hard-core U.S. illegal charter operators who use foreign registration as another method of avoiding the requirements of FAR 121. This problem is particularly acute in the Miami and San Juan areas. Bureau of Customs personnel in San Juan have an informal working agreement with FAA to determine if the 1108(b) permit is on board the aircraft. However, in other areas, foreign civil aircraft are entering the U.S. with no permit while others exceed the number of flights specified in the permit. At this time, no one is really enforcing the provisions of Section 1108(b) of the Act as well as the Board's Regulation Part 375. We plan to discuss this matter further with personnel of the Civil Aeronautics Board and the Bureau of Customs.

h. A joint agency study be conducted to determine the public interest in the operation of large or complex airplanes in the private carriage of passengers and cargo to and from and within the United States and its territories, and the correlation of this type of carriage with air transportation. This analysis should look to airplane size, capability, and suitability for inclusion and promotion in private carriage, and should clarify the distinctions between air commerce and air transportation, and those between common, contract, and private carriage. Any imbalance in the statutory responsibilities of Sections 102 and 103 of the Federal Aviation Act of 1958 to promote all classes of carriage commensurate with the needs of the public should then be corrected by legislation.

COMMENT: This recommendation is also directed to the Civil Aeronautics Board which exclusively concerns itself with the provisions of the Act pertaining to common carriage. The mere fact that illegal operations are so extensive indicates an economic need that is not now under the cognizance of the Civil Aeronautics Board. Much of the charter business which gravitates to the illegal operators is that which the scheduled and supplemental airlines either cannot or will not handle. We believe that this is a void into which the Civil Aeronautics Board must move. We believe the agency should also participate.

ACCIDENT RATE TRENDS U. S. AIR CARRIERS & COMMERCIAL OPER. 1964-1970

