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STATEMENT OF WILLARD J. SMITH, ASSISTANT SECRETARY OF
TRANSPORTATION FOR SAFETY AND CONSUMER AFFAIRS, BEFORE
THE SUBCOMMITTEE ON AVIATION OF THE SENATE COMMERCE
COMMITTEE REGARDING SAFETY IN AIR CHARTER OPERATIONS,
TUESDAY, MARCH 9, 1971

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you today to discuss safety in air charter operations.

My Office has recently completed a study of air charter operations which I believe the Committee will find useful in connection with the conduct of these hearings. Before I discuss that particular report, however, I would like briefly to review for you the functions of my Office and its relationship to other elements of the Department in the field of safety.

When I appeared before the Committee last September for confirmation I outlined in a general way the type of role my Office was designed to play. With respect to consumer affairs, my Office serves as a focal point within the Department where consumer problems associated with the conduct of programs managed by our operating administrations can be reviewed and coordinated. In the field of safety, the Office has both an operating, and what you might call an overview function.

There are two areas of safety regulation which sometime ago the Department found should be administered within the Office of the Secretary. These are the pipeline safety and hazardous materials regulatory programs. Upon the formation of my Office last fall those functions were transferred to my Office from the Office of the Assistant Secretary for Systems Development and Technology. The remainder of our safety function like the consumers affairs function, is one of overview and coordination and to a certain extent involves the Office in all the safety programs administered by our operating administrations.

Some of the statutes administered by the Department assign particular safety functions to our various operating administrations. They, in turn, carry out specific modal safety programs, but their primary concern and authority is limited to their own particular mode. The Secretary, as head of the Department, however, has broad interest and responsibility for transportation safety as a whole. To meet this responsibility, he must be able to evaluate and, where necessary, coordinate the individual performance and programs of the operating agencies. It is the principal function of my Office to advise and assist the Secretary in meeting this responsibility.

It is in conjunction with this function of overview and evaluation, and at the specific direction of the Secretary, that my Office undertook the study of chartered aircraft services. The Secretary announced the conduct of the study shortly after the fatal crash last October of the chartered aircraft which carried members of the Wichita State University football team.

I would like to make clear that this study was in no way an attempt to inject the Office of the Secretary into the role vested by statute in the National Transportation Safety Board of investigating aircraft accidents and determining their probable cause. Instead the purpose of the study was to conduct an in-depth investigation of charter operations utilizing large airplanes in private carriage to determine the true condition of such operations.

The investigation encompassed present Federal regulatory policies and practices, but was not simply an evaluation of FAA activities. It covered the adequacy of the current law under which the FAA and CAB operate, as well as their regulations, and also covered the methods and resources available for enforcement of those laws and regulations. In short, we sought to take a fresh look at private carriage for compensation or hire in air commerce, evaluate the total system, and see what should be done to apply an overall, rather than a piecemeal, answer to the problems in that field.

In carrying out the study, we were assisted by a multi-disciplinary task force consisting of representatives from the Office of the Secretary, the FAA, the Coast Guard, and industry. During the course of the study, contact was made with other Federal agencies and with persons throughout the country involved in the airplane charter market and the aircraft industry.

We found a number of serious problems and deficiencies in the air charter field. To understand those problems, however, some background on the problem is necessary.

Under the Federal Aviation Act of 1958, aircraft charter operations involving large airplanes (those over 12,500 pounds) in private carriage by other than certificated scheduled or supplemental air carriers are not a statutory concern of the Civil Aeronautics Board. The FAA, on the other hand, regulates from the safety standpoint air operations both in common and private carriage. The FAA recognizes that charter operations in private carriage do not differ materially in safety aspects from common carriage and, therefore, has imposed essentially the same high safety standards for operations in both areas.

Persons engaged in common carrier operations must have an FAA air carrier operating certificate, while those engaged only in operations in private carriage "for compensation or hire" must have a commercial operator's certificate. Under circumstances where it is doubtful whether the operations are for compensation or hire, the test used to determine whether a commercial operator's certificate is necessary has been whether the air carriage is merely incidental to the operator's other businesses or is in itself, a major enterprise for profit.

Because of the high safety standards imposed and the expense of certification, many operators use various subterfuges in conducting air charter operations to avoid or evade the stringent FAA regulations applicable to operations for compensation or hire, and attempt to conduct their operations under the less stringent requirements applicable to other operations. As a result, the oftentimes difficult economic determination of whether an operation is for compensation or hire must be made on a case-by-case basis before the FAA can determine whether a particular operation is illegal.

Among the subterfuges used by unscrupulous operators to evade FAA requirements are the establishment of dummy corporations, leasing arrangements which place unsuspecting lessees of large aircraft in the role of an operator under FAA regulations, and the operation of aircraft carrying goods or persons for compensation or hire to and from the United States under foreign registration or ownership to avoid compliance with U. S. requirements.

These subterfuges often signal the existence of some very fundamental safety deficiencies in the charter operations involved. These include the operation of overloaded or unairworthy aircraft, poor flight planning and the use of improperly rated pilots or inadequate airports.

Among the factors complicating the enforcement of violations committed by such operators are:

- The failure of civil penalties to act as a deterrent because of statutory limitations as to their amount. Some "shady"

operators merely assume this cost as a part of the cost of doing business.

- The large number of manhours by FAA inspectors and legal personnel required to determine and prove whether a specific operation is for compensation or hire which could be more profitably spent on safety matters.
- Heavy workload of U. S. Attorneys, court congestion, and the relatively small amounts involved in civil penalties - all of which mitigate toward inaction or easy compromise in enforcing the penalties in the courts.
- Problems in the enforcement of the terms of the CAB permits issued to foreign operators for operations in the United States for compensation or hire, and a lack of effective coordination between the FAA and CAB with respect to potential illegal common carriage.

The report contains eight specific recommendations for action to bring better order to air charter operations in private carriage, and the regulatory systems applicable to those operations. The key recommendation is that the FAA issue a new regulation bringing all large airplanes under safety and maintenance standards comparable to those applicable to certificated air carriers but with fewer administrative, financial, and organizational requirements.

A follow-up to that recommendation is that the FAA eliminate the requirement for the certification of commercial operators who engage only in private carriage for compensation or hire, if after an appropriate time for evaluation of the above equalization process, such a step proves feasible. This would eliminate the necessity of FAA personnel (essentially safety inspectors and legal personnel) having to make economic determinations regarding compensation or hire before determining which regulations they are to apply. It would also enable them to devote their major activities to purely safety matters.

Looking further into the future, the report recommends an inter-agency study involving DOT elements and the CAB to determine the public interest and economic need for aircraft operations in private carriage, and more definitively clarify the statutory difference between common carriage in air transportation and private carriage in air commerce.

Other recommendations contained in the report are:

- Continue the stepped-up type of FAA surveillance over these air charter operations conducted last November and December.
- Develop and distribute additional materials explaining to the public the potential liabilities and responsibilities involving the charter or leasing of large aircraft.
- Incorporate into or make mandatory as an attachment for each charter or lease of a large airplane a "truth in leasing" clause.

- Require the filing of flight plans for all flights of large airplanes, except those on local, ferry, or test flights.
- Establish procedures to insure that foreign airplanes (other than air carriers) flying in the United States for compensation or hire have the required permit to operate in the United States.

We are pleased to say that the FAA already has taken some steps to implement some of the recommendations contained in the report. We recognize that implementation of some of the other recommendations will require time for implementation. We look forward to working with FAA personnel to implement the report in other respects and hold high hopes for bringing about major safety improvements in this field of air operations.

Mr. Chairman, this concludes my prepared statement. Now I will be pleased to answer any questions you may have.