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AMEND THE INTERNATIONAL TRAVEL ACT OF 1961

GOVERNMENT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON FOREIGN COMMERCE AND TOURISM

OF THE

COMMITTEE ON COMMERCE UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 2577

TO AMEND THE INTERNATIONAL TRAVEL ACT OF 1961 TO
PROVIDE FOR FEDERAL REGULATION OF THE TRAVEL
AGENCY INDUSTRY

NOVEMBER 17 AND 18, 1971

Serial No. 92-38

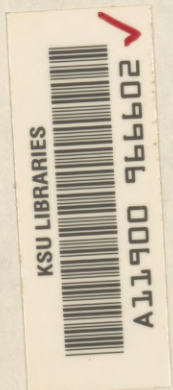
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AMEND THE INTERNATIONAL TRAVEL ACT OF 1961

WEDNESDAY, NOVEMBER 17, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON FOREIGN COMMERCE AND TOURISM,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:02 a.m., in room 5110, New Senate Office Building, Hon. Daniel K. Inouye (chairman of the subcommittee), presiding.

OPENING STATEMENT BY THE CHAIRMAN

Senator INOUE. Today the subcommittee begins hearings on S. 2577, a bill to provide for Federal regulation of those who sell travel, directly or indirectly, to the public.

At the time I introduced this legislation I stressed that the question whether S. 2577 or any proposal was necessary to protect the traveling public was by no means settled.

I, for one, have always believed that the best form of industry regulation is self-regulation, provided the industry is capable and willing to do the job.

On the other hand, I am aware that certain industries, by their very nature, need some form of Government regulation—for their own well-being, and most importantly, for the public's welfare.

The past few years have witnessed a rash of charter strandings of American travelers abroad. Many predict this situation will be even more serious in the coming summer. There have also been reports of an increasing number of failures by wholesale tour operators. And, of course, some retail travel agents have had to close their doors as well.

How often do these events occur, and what are the circumstances surrounding them? Most importantly, what happens to the traveling public when they do?

Do tourists who book individual tours, inclusive charter tours, or participate in affinity charters, assume financial or other risks which those who book their own transportation and accommodations directly with carriers and hotel operators do not assume? And if so, why, and what is the nature of the risk?

What financial and other safeguards exist within the various segments of the travel industry to protect the public? What Federal laws and agency regulations afford protection? And are they being enforced?

Staff member assigned to these hearings: John D. Hardy.

I would hope that these hearings will elicit answers to the foregoing questions, and many others as well. It would be unwise in my judgment to consider seriously legislation as far reaching as S. 2577 without such information.

I reiterate what I have said before—the need for this or similar legislation is, in my judgment, still debatable.

The welfare of the American traveling public, however, is not.

In this vein, the subcommittee will begin hearings on S. 2577 and the problems it is intended to meet.

(The bill follows:)

92^D CONGRESS
1ST SESSION

S. 2577

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 1971

Mr. INOUYE introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To amend the International Travel Act of 1961 to provide for Federal regulation of the travel agency industry.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the International Travel Act of 1961 (22 U.S.C. 2121-
4 2126) is amended (1) by inserting "TITLE I—INTER-
5 NATIONAL TRAVEL; UNITED STATES TRAVEL
6 SERVICE" immediately before the first section thereof;
7 (2) by striking out "this Act" or "This Act" each place
8 where it appears and inserting in lieu thereof "this title" or
9 "This title", respectively; and (3) by adding at the end
10 thereof the following:

1 "TITLE II—TRAVEL AGENTS REGISTRATION

2 "SEC. 21. DECLARATION OF PURPOSE.—Whereas the
3 travel agency industry is interstate and international in
4 scope; and whereas the travel agency industry has become
5 a significant part of the economy of the United States; and
6 whereas the traveling public is becoming increasingly de-
7 pendent on travel agents to make travel arrangements, the
8 Congress finds that it is in the public interest to strengthen
9 the travel agency industry, encourage competition among
10 qualified travel agents, and maintain public confidence in
11 travel agents by regulating travel agents.

12 "The purposes of this title are to protect the convenience,
13 safety, and well-being of persons who patronize travel agen-
14 cies in the United States, the Commonwealth of Puerto Rico,
15 or possessions of the United States by making adequate pro-
16 visions for the granting of registration certificates to travel
17 agents.

18 "SEC. 22. This Act may be cited as the 'Travel Agents
19 Registration Act of 1970'.

20 "SEC. 23. As used in this title—

21 "(1) 'Director' means the Director of Travel Agents
22 Registration.

23 "(2) 'Bureau' means Bureau of Travel Agents Registra-
24 tion.

25 "(3) 'Secretary' means Secretary of Transportation.

1 “(4) ‘Person’ means an individual, partnership, corpora-
2 tion, association, or other form of business enterprise.

3 “(5) ‘Engage in the business of conducting a travel
4 agency’ means and refers to holding out to any person, di-
5 rectly or indirectly, as being able or offering or undertaking
6 by any means or method, whether acting as principal, agent,
7 broker, or otherwise to acquire for a fee, commission, or other
8 valuable consideration, of any sort, travel reservations or ac-
9 commodations, tickets for domestic or foreign travel by air,
10 rail, ship, bus, or other medium of transportation, hotel, or
11 other lodging reservations or accommodations.

12 “(6) ‘Travel agent’ means a person engaged in the busi-
13 ness of conducting a travel agency.

14 “(7) ‘Registered travel agent’ means any person to
15 whom a registration certificate has been issued pursuant to
16 this title.

17 “(8) ‘Carrier’ means a person, firm, or corporation en-
18 gaged in the passenger transportation business.

19 “(9) ‘Conference of air or steamship carriers’ is an as-
20 sociation or organization of such carriers, respectively, regu-
21 lated by the Civil Aeronautics Board or the Federal Mari-
22 time Commission.

23 “(10) ‘Board’ means the Travel Agents Registration
24 Board.

25 “SEC. 24. On and after January 1, 1971, no person

1 shall, directly or indirectly, engage in the business of con-
2 ducting a travel agency, as herein defined, without having
3 first received a registration certificate as hereinafter
4 provided.

5 "SEC. 25. There is hereby established in the Depart-
6 ment of Transportation a Bureau of Travel Agents Regis-
7 tration. The Chief Executive Officer of said Bureau, who
8 shall be appointed by the Secretary, shall be known as
9 the Director of Travel Agents Registration.

10 "SEC. 26. (a) To advise the Director and perform
11 such other duties as may be specified in this title, there
12 shall be a Travel Agents Registration Board consisting of
13 eight members appointed by the Secretary of Transporta-
14 tion. Two members thereof shall actively be engaged in
15 the travel agency business; one member thereof shall be
16 a representative of the general public; and four members
17 thereof shall be representatives from the following agencies:
18 the Federal Maritime Commission, the Civil Aeronautics
19 Board, the Interstate Commerce Commission, and the De-
20 partment of Transportation. The Director or his duly
21 authorized representative shall be an ex officio member
22 of the Board with one vote. The Board shall meet at least
23 once a year at an appropriate time to be fixed by the
24 Director. It shall be the duty of the Board to advise the
25 Director on all matters related to this title and on such

1 other matters as the Director shall request. The Director
2 shall designate an employee of the Bureau to act as Secre-
3 tary of the Board.

4 “(b) The members of the Board, except those em-
5 ployed by the Federal Government, shall be entitled to
6 compensation at a rate not to exceed \$100 per day for
7 each meeting or for each day actually spent on the work of
8 the Board. They shall also be paid their reasonable and
9 necessary traveling and other expenses while engaged in
10 the performance of their duties.

11 “(c) The Director, with the advice of the Board, shall
12 promulgate such rules and regulations, including but not
13 limited to those necessary to require sound financial prac-
14 tices by registered travel agents and those considered nec-
15 essary to carry out the purposes of this title.

16 “(d) The Director, with the advice of the Board, shall
17 promulgate a code of ethics for the travel agency industry
18 which shall be binding on all travel agents registered under
19 the provisions of this Act.

20 “SEC. 27. (a) Any person desiring a registration cer-
21 tificate under this title, may make application therefor to
22 the Director. Except for applications which show the appli-
23 cant to have met the requirements of section 28 herein, the
24 Director shall, along with his recommendation, present the

1 application to the Board for action. The application shall be
2 duly assigned and shall be in such form as may be prescribed
3 by the Director.

4 “(b) An applicant for a registration certificate shall
5 furnish with his application such proof as may be required
6 to show that the applicant has met the requirements of the
7 rules and regulations promulgated by the Director with the
8 advice of the Board.

9 “(c) With the exception of applicants who meet the
10 requirements of section 28 herein, the Director shall require
11 any applicant to submit a showing that he is financially
12 qualified to engage in the travel agency business and to
13 successfully complete a written examination as to com-
14 petency in accordance with standards to be established by
15 the Director with the advice of the Board.

16 “SEC. 28. Any person who is engaged in the business
17 of conducting a travel agency on September 3, 1968, and has
18 engaged in such business for a period of two or more years
19 and who has been approved for appointment as an agent for
20 two or more years by two or more conferences of air or steam-
21 ship carriers shall, upon application, be granted a registra-
22 tion certificate by the Director unless the Director makes a
23 specific determination that the applicant lacks good character
24 or is not financially qualified. In addition, any person pres-

1 ently holding a passenger broker license issued by the In-
2 terstate Commerce Commission pursuant to section 211
3 of the Interstate Commerce Act shall be granted a registra-
4 tion certificate unless the Director makes a specific determi-
5 nation that the application lacks good character or is not
6 financially qualified.

7 "SEC. 29. (a) When an application for a registration
8 certificate under this title shall have been examined by the
9 Director and the Director, with advice of the Board, has de-
10 termined that the applicant has complied with the rules and
11 regulations promulgated by the Director as provided in sec-
12 tion 26 (c) hereof, and such further inquiry and investigation
13 made as the Director shall deem proper, and the Director,
14 with advice of the Board, shall have determined that the ap-
15 plicant, if issued a certificate of authorization, would provide
16 a useful public service, the Director shall issue and deliver a
17 registration certificate to the applicant: *Provided*, That a
18 registration certificate shall not be issued to any person who
19 has been convicted in any State, the District of Columbia, the
20 Commonwealth of Puerto Rico, or possession of the United
21 States, of a felony or a crime concerning activities prohibited
22 by this title.

23 "(b) The issuance of a registration certificate may be
24 withheld by the Director if he makes a specific determination

1 that the applicant lacks good character or is not financially
2 qualified.

3 “(c) The Director shall be entitled to set reasonable fees
4 for processing registration certificates and renewals thereof.

5 “SEC. 30. (a) All registration certificates issued pur-
6 suant to this title shall expire on the 31st day of December
7 of each odd-numbered year.

8 “(b) Registration certificates issued pursuant to this
9 title shall not be assignable or transferable.

10 “(c) A bona fide purchaser or transferee of a travel
11 agency business from the holder, or the legal representative
12 of a deceased holder of a registration certificate issued pur-
13 suant to this title may continue to use such registration cer-
14 tificate for a period of not more than ninety days from the
15 date of the sale, transfer, or death of the holder, under such
16 conditions as may be prescribed by the Director.

17 “(d) On or before the date of its expiration, any reg-
18 istration certificate issued pursuant to this title which has not
19 been suspended or revoked may, upon the payment of a
20 renewal fee prescribed under section 29 of this title, be
21 renewed by the Director for an additional period of two
22 years upon the filing of an application for such renewal
23 on a form to be prescribed by the Director.

24 “(e) If an application for a registration certificate by

1 a person who is engaged in the business of conducting a
2 travel agency on September 2, 1968, or by any person
3 referred to in subsection (c) of this section, has been filed
4 with the Director pursuant to the provisions prescribed
5 herein, the applicant shall be entitled to continue to engage
6 in the travel agency business until action is taken on the
7 application.

8 "SEC. 31. A registration certificate issued pursuant to
9 this title may be suspended or revoked by the Director, and
10 a fine not to exceed \$1,000 may be imposed by the Director,
11 upon a determination after a hearing in the State of the
12 travel agent's principal place of business, that the holder of
13 a registration certificate has engaged in any of the following
14 practices:

15 "(1) Fraud or bribery in securing a registration cer-
16 tificate issued pursuant to this title.

17 "(2) The making of any false statement as to a mate-
18 rial matter in any application or other statement required
19 by or pursuant to this title.

20 "(3) Violation of any provision of this title or any
21 code, rule, or regulation adopted hereunder.

22 "(4) Any fraud or fraudulent practice of the operation
23 and conduct of a travel agency business including but not
24 limited to intentionally misleading advertising.

1 “(5) Activities prohibited by this title leading to con-
2 viction of a misdemeanor.

3 “(6) Activities leading to conviction of a felony.

4 “SEC. 32. In any case where the Director has author-
5 ity, with or without advice of the Board, to suspend or
6 revoke a registration certificate issued pursuant to this
7 title or to impose a fine, in lieu thereof, he may accept
8 from the holder of the certificate assurance of discontinuance
9 of any act or practice for which the certificate may be
10 suspended or revoked.

11 “SEC. 33. (a) In a case of actual controversy as to
12 the validity of any order, affirmative or negative, issued by
13 the Director under this title, any person disclosing a sub-
14 stantial interest in such order may at any time before the
15 sixtieth day after such order is issued file a petition for
16 judicial review of such order by the courts of appeals of
17 the United States for the circuit in which the petitioner
18 resides or has his place of business or the United States
19 Court of Appeals for the District of Columbia Circuit. After
20 the expiration of sixty days, such a petition may be filed
21 only by leave of the court upon the showing of reasonable
22 grounds for failure to file a petition timely.

23 “(b) A copy of the petition shall upon filing be forth-
24 with transmitted to the Director by the clerk of the court
25 and the Director shall thereupon certify and file a copy

1 of the record, if any, upon which the order of the Director
2 was entered.

3 “(c) Upon transmittal of the petition, the court shall
4 have exclusive jurisdiction to affirm, modify, or set aside
5 the order, in whole or in part, and if need be to order
6 further proceedings by the Director.

7 “(d) The findings of fact by the Director, if supported
8 by substantial evidence, shall be conclusive. No objection to
9 an order of the Director shall be considered by the court, un-
10 less such objection shall have been urged before the Director
11 or, if it was not so urged, unless there were reasonable
12 grounds for failure to do so or unless newly discovered facts
13 shall be revealed.

14 “(e) The judgment decree of the court affirming, modi-
15 fying, or setting aside any such order of the Director shall be
16 subject only to review by the Supreme Court of the United
17 States upon certification or certiorari as provided in section
18 1254 of title 28, United States Code.

19 “SEC. 34. Any person who knowingly and willfully vio-
20 lates any provision of this title or any order, rule, or regula-
21 tion issued under any such provision, shall, if it is the first
22 such offense, be fined not more than \$500 or imprisoned not
23 more than six months, or both, and for any subsequent such
24 offense, shall be fined not more than \$2,000 or imprisoned not
25 more than two years, or both. If such violation is a continu-

1 ing one, each day of such violation shall constitute a separate
2 offense.

3 "SEC. 35. If any provision of this title, or the applica-
4 tion of such provision to any person or circumstances, shall
5 be held invalid, the remainder of this title, or the application
6 of such provision to persons or circumstances other than those
7 as to which it is held invalid, shall not be affected thereby."

Senator INOUE. According to our schedule, our first witness is to be Mr. William Dale, Acting Administrator, Bureau of Security and Consular Affairs of the Department of State. However, at the request of Mr. Robert Binder, assistant secretary, Department of Transportation, we will hear from Mr. Binder first in order to accommodate his problems.

So, Mr. Binder, please. I welcome you, sir.

STATEMENT OF ROBERT H. BINDER, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY BERNIE WILBURN, CHIEF, TRAVEL AND TRADE DIVISION; AND FREDERIC SCHWARTZ, SR., LEGISLATIVE COUNSEL

Mr. BINDER. Thank you very much, Mr. Chairman. I appreciate your courtesy in permitting me to appear first. Let me introduce the gentlemen from the Department of Transportation who are with me today at the witness table.

On my right is Mr. Bernie Wilburn, Chief of the Travel and Trade Division of our Office of Facilitation in the Office of the Secretary. On my left is Fred Schwartz, legislative counsel.

If I may, Mr. Chairman, I would like to read the statement which I have.

Senator INOUE. Please proceed, sir.

Mr. BINDER. Mr. Chairman, members of the subcommittee, I appreciate this opportunity to appear before you today to present the views of the Department of Transportation on S. 2577 which provides for Federal regulation of the travel agency industry.

As the committee is aware, the increased affluence of our citizens, together with major improvements in our transportation system, have resulted in a significant increase in interstate and foreign travel over the last decade. Likewise, as travel has increased, so, too, has the role of the professional travel agent and broker.

In fact, over \$5 billion in travel or related services are now being purchased annually through travel agencies. The demands on the travel agent, therefore, have become increasingly complex. Further, in addition to his traditional function of arranging transportation services, the travel agent is now called upon to arrange for a variety of nontransportation services including the booking of hotel space and arranging for sightseeing tours and car rentals.

Unfortunately, the public's increased desire to travel has sometimes resulted in their being deceived by unscrupulous operators. These operators, by the unsound and abusive practices they engage in, not only victimize travelers, but serve to discredit legitimate travel agents as well. We, therefore, welcome, and we are sure the industry will welcome, the full review of practices and operations of the travel industry which these hearings afford.

While S. 2577 is fairly lengthy, the way it would deal with this problem can be summarized briefly. In essence, S. 2577 recognizes that the growth and changing character of the travel industry make unscrupulous or irresponsible practices in this industry a matter of public concern. Because a considerable volume of travel is interstate or international, it is appropriate that this concern be reflected at the Federal level.

The types of undesirable activities which S. 2577 seeks to eliminate have been summarized by the chairman in both his remarks accompanying the introduction of this bill and in the announcement of these hearings. The most highly visible aspect of this problem is, of course, the stranding of air charter passengers because of the dishonesty or financial irresponsibility of their booking agent or tour operator.

S. 2577 would attempt to deal with this and other activities of a similar nature by requiring all persons or firms engaging in the travel agency business, as defined by the bill, to be registered with the Department of Transportation. Registration would be carried out by a departmental Bureau of Travel Agents. To assist the Bureau Director, the bill creates a Travel Agents Registration Board appointed by the Secretary and consisting of the Director, two members engaged in the travel agency business, and a representative of the ICC, the CAB, the FMC, and an additional representative of the Department. Initially, the bill would not affect travel agents already in business unless the Director specifically found that the applicant "lacked good character" or was "not financially qualified."

Persons who could not qualify for a "grandfather" certificate under section 28 would be registered by the Director upon complying with certain standards. Among these, the bill requires a director to consider the good character and financial responsibility of an applicant, and, moreover, requires that the Director, with the advice of the board, determine that the applicant will provide a "useful public service." In the event that all the conditions are met, a certificate of registration would be issued to the individual firm involved. Other features of the bills, specifically sections 31 and 32, specify the grounds for which a certificate of registration may be revoked and monetary penalties assessed for violating any provision of the act, or any rule and regulation issued thereunder.

As I noted, we share with the committee a very deep concern over the existence of unscrupulous and irresponsible operators and practices in the travel industry. There are, however, several major problems we believe the committee should carefully consider before acting upon this legislation.

First, and perhaps most importantly, is that the registration procedures, which are the heart of S. 2577, will not in our judgment deal adequately with the problem. Admittedly, registration requirements of this sort have certainly had a salutary effect in other areas, such as the securities market, in discouraging incompetent, irresponsible or dishonest people from deceiving the public. It should be noted, however, that irresponsibility or dishonesty is punished in this legislation by the imposition of fines and/or penalties which accrue to the government and not the public. Thus, defrauded members of the public are not made whole again.

One possible solution to this problem would be a requirement for either performance bonds or some equivalent device by which the public could recoup travel expenditures for which no service has been provided. Further, transportation carriers should be required to deal only with agents registered under this legislation.

A second and somewhat related problem is that the registration provisions would have undesirable side effects on the travel agency industry because these requirements go beyond the specific problems

to which S. 2577 is addressed. In particular, we are concerned that these requirements could limit new entry into the travel agency business by legitimate operators. Our basic concern is directed at the provision of the bill requiring an applicant to be of "good character," "financially qualified," and able to "provide a useful public service." With respect to the finding of "good character" and "financially qualified," we feel that these terms are overly vague and subjective and require some more precise definition that will clearly and objectively spell out what standards a travel agent is expected to meet. As for the requirement that an applicant "provide a useful public service," we believe this should be deleted. Whether a travel agent provides a useful public service should be determined by the public itself through the workings of the marketplace. It is not the role of the government in our view, or the policy of this administration, to act in an anticompetitive fashion unless absolutely necessary.

We do not believe it necessary for such action has been shown so far as we know, in accordance with the foregoing two points, we believe that the main thrust of this legislation should be confined to: (1) a determination of the basic competency of the applicant, a matter covered by the requirement for a written examination in Section 27(c) of the bill; (2) an objective determination of the applicant's honesty and integrity based upon defined criteria; and (3) reasonable requirements to assure financial responsibility to the public on the part of the operator.

We believe the committee should also concern itself with the potential overlap and possible conflict with several provisions of existing Federal transportation regulatory laws. While the travel industry, as such, is not subject to any comprehensive regulatory system, several provisions of existing regulatory laws do affect certain aspects of this industry. Specifically, sections 208(c) and 211 of the Interstate Commerce Act vest the ICC with considerable authority over motor carrier passenger brokers and tour operators. Similarly, the Civil Aeronautics Board, under section 411 of the Federal Aviation Act, has considerable jurisdiction over the practices of air travel agents, ticket sellers and brokers. And, finally, under Public Law 89-777, the Federal Maritime Commission exercises some regulatory control over the financial responsibility of any person or firm arranging steamship tours of 50 or more passengers.

While S. 2577 appears to recognize this problem, in part, by including representatives of all three regulatory agencies on the Travel Agents Registration Board, we feel that any legislation should avoid requiring the travel agent to comply with a multitude of possibly conflicting regulations. Since we understand that the committee has already requested comments from these three regulatory agencies, we will limit ourselves at this time to pointing out the potential problem. We will, of course, be happy to assist the committee in working out any problems in this area.

A somewhat similar problem is the effect of this legislation on related State legislation. While we are concerned about possible conflicts or inconsistencies between State and Federal legislation and the burden this might place upon the industry, it is not desirable to preempt all State action in this area.

A final concern which we wish to raise is whether this function should be vested in the Department of Transportation. As I have previously noted, the three transportation regulatory agencies already have jurisdiction in this area. We believe it would be wisest if the functions called for in this legislation are added to the existing agency processes.

In conclusion, while we support the objectives of this measure, we believe that without the changes I have suggested, this legislation will not sufficiently benefit either the traveling public or the legitimate travel agent.

This concludes my testimony, Mr. Chairman. I will be happy to answer questions that you or the committee might have.

Thank you.

Senator INOUE. Thank you very much, Mr. Secretary. You have been most helpful. Your suggestions are well taken and I would like to, of course, touch upon the matter of performance bonds.

I would like to call your attention to the bill, on page 5, paragraph (c) :

The Director, with the advice of the Board, shall promulgate such rules and regulations, including but not limited to those necessary to require sound financial practices by registered travel agents and those considered necessary to carry out the purposes of this title.

Do you believe this is broad enough to authorize the Director, with the advice of the Board, to require travel agents to put up a bond?

Mr. BINDER. I would imagine so, Mr. Chairman. However, since, in our view this should be a part of the overall program of regulation, it might be advisable to specify this important provision in the legislation itself, or at least make sure in the legislative history that this is clearly pointed out.

I would prefer the first course.

Senator INOUE. Would you also suggest an amount? I presume you would want that to be left to the discretion of the Board, wouldn't you?

Mr. BINDER. I believe so; yes. Although I would agree with that, the principle I would hope that would be reflected, however, is that the amount be sufficient unto the need. That is obviously a discretionary question involving the group traveling under those circumstances. That should be governed by the discretion of the Board.

Senator INOUE. Do you believe that by regulation we could require carriers to deal only with registered agents?

Mr. BINDER. This is a different question, Mr. Chairman. The success of such a regulatory program might be open to question. The desirability in preparing our testimony the type of punitive measures one might conceive of in an effort to make sure the carriers deal only with registered agents, and I think that is a question which we really have not settled in our own minds. We think it is important that there be pressure on the carriers to do this, otherwise, we are concerned that the competitive pressures that are present in the industry might make a shambles of the objectives of such legislation.

Senator INOUE. I quite agree with you on your concern over the use of certain phrases such as "financially qualified," "good character," "provide a useful public service." I agree with you that they are overly vague and subjective.

How would you make an objective determination of the applicant's "honesty and integrity?"

Mr. BINDER. I am not sure that I sit here before you with an explicit answer to your question, Mr. Chairman. This would be an area in which we would be happy to work with the committee and consider alternative language.

Senator INOUE. It could be helpful if you would submit to this committee suggested language or amendments that would in your view strengthen the bill and take away some of the vagueness. I agree with you these words would be a lot of meat for lawyers in court cases because of this vagueness. I would appreciate some assistance and your ideas as to what an objective determination may be.

Mr. BINDER. I would be happy to comply with your request, Mr. Chairman.

(The following information was subsequently received for the record:)

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., December 13, 1971.

HON. DANIEL K. INOUE,
Chairman, Subcommittee on Foreign Commerce and Tourism, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: When I testified before your committee concerning S. 2577 on November 17, 1971, I agreed to submit to the committee several amendments to the bill which I believe would make it a more effective tool in combating those who would defraud the tourist and traveler. I have enclosed, therefore, statutory definitions for "financially qualified and "good character" to be added to Section 23.

I would also reiterate my belief that the phrase "provide a useful public service" should be deleted as it would tend to be anticompetitive and, in any case, is not susceptible to a rigorous definition.

Sincerely,

ROBERT HENRI BINDER,
Deputy Assistant Secretary for Policy and International Affairs.

Enclosure.

(11) "Financially qualified" means that the travel agent has established, and the Director has approved, his financial responsibility for engaging in the business of conducting a travel agency by meeting the requirements of section 26(c) and by any one of, or a combination of, the following methods of indemnifying passengers for nonperformance:

- (a) Sufficient policies of insurance; or
- (b) Sufficient surety bonds; or
- (c) Qualification as a self-insurer.

(12) "Good character" means that the applicant for registration as a travel agent has not been involved in any proceeding:

(a) Before the Federal Trade Commission in any matter relating to the alleged violation of a statute of the United States whose purpose is to protect the interest of consumers if the proceeding has terminated with a consent to cease and desist signed by the applicant, an order to cease and desist issued by the Commission, or a finding of violation of the statute under which the action is brought:

(b) Before the Civil Aeronautics Board pursuant to section 411 of the Federal Aviation Act (49 U.S.C. 1381) which has terminated with a consent to cease and desist signed by the applicant or an order to cease and desist issued by the Board;

(c) Before the Interstate Commerce Commission pursuant to section 211 of the Interstate Commerce Act (49 U.S.C. 311) which has resulted in the imposition of civil penalties for violation of any provision, rule, regulation, or order issued thereunder or in the revocation of the applicant's motor transportation brokers license;

(d) Before the Federal Maritime Commission pursuant to section 3 of Public Law 89-777 (46 U.S.C. 817e) which has resulted in the assessment of civil

penalties for violation of any provision, rule, regulation, or order issued thereunder;

(e) Before any State or Federal Court of the United States which has resulted in a finding that the applicant engaged in fraudulent practices, including, but not limited to, intentionally misleading advertising, in the operation and conduct of a travel agency or related business.

Senator INOUE. And as to your suggestion that reasonable requirements be made to assure financial responsibility, am I correct to assume this would be performance bonds?

Mr. BINDER. It could take that form, certainly that would be one principal way to be considered, yes.

Senator INOUE. The committee is aware that we have a multitude of laws and regulations regulating travel; regulating the conduct of travel agents; selling tickets for motor tours and ship tours and air tours; but somehow we became concerned whether or not these laws operate properly. We have not helped these hundreds of men and women who are stranded throughout Europe.

Now, do you believe these laws could have been applied properly to assist these unfortunate American tourists or to have prevented the occurrence of such standings?

Mr. BINDER. As I understand the principal cases you are considering, Mr. Chairman, the powers of the CAB in this area are limited to acting after the fact through investigating something that has happened and ordering that practice be ceased, if my understanding is correct. I think you will have the board chairman as a witness this morning and he can address that more clearly.

In that case it's not clear to me that the regulatory power vested in the Board would have been sufficient to prevent the stranding problem. I think the stranding problem comes about because the business operators involved do not have the reliability, perhaps, and the dependability that you want. Consequently, a registration procedure that will seek to establish these characteristics in advance seems to be the appropriate type of advance regulatory actions.

Senator INOUE. The committee has been advised that there are certain operators who have, throughout their business life, carried on a practice of making money with their clients' money. If I may explain: They would receive payments from travelers and since there would be a span of say 30 days or 60 days before payment is due to carriers, they would invest that amount in some speculative venture hoping to make 6 percent, 10 percent, during the 30 or 60 days. We have received word that this has been the cause of some of the failures—these investments have not paid off, resulting in some of these problems.

Would you suggest some sort of regulation be made to control this type of activity?

Mr. BINDER. Yes; I think so, Mr. Chairman. In a sense, such funds are held in a type of fiduciary capacity. Where the agent holds them, I think it would be appropriate to think about limits on their use of such funds or the potential investment of such funds. I think it would be possible to go too far in this area, but I would certainly consider a type of measure that would limit the freedom in which these funds could be applied.

Senator INOUE. Mr. Secretary, as I noted in my opening remarks the committee has some concern with the introduction of the measure itself. We would prefer that the industry regulate itself. But events

have indicated that the industry might have some difficulty in doing so.

Your testimony has indicated that there might be some need for Federal Government regulations. I am very pleased to receive your views this morning. You have been very helpful. You may be assured that your views will be very seriously considered.

As I requested earlier, I would hope that appropriate members of your staff would meet with members of our staff to work out language that would bring about the desired results.

Mr. BINDER. Yes, Mr. Chairman; thank you.

Senator INOUE. Senator Beall?

Senator BEALL. Briefly, Mr. Binder, I apologize for coming in late and not hearing your testimony. But with regard to the question of the chairman on protection of funds, do you think it would be reasonable to ask, as is done in the real estate business at the State level and sometimes in the insurance business at the State level, that any funds collected from customers be held in escrow in a separate account in a bank prior to the time they are transmitted to the agents or business to whom they are owed?

Mr. BINDER. That would be one approach. I see nothing wrong in principle with the person holding these funds trying to earn a return. This is a common business practice provided they are held in such a fashion that there is no risk. That might be the balance that might be struck.

Senator BEALL. Thank you.

Senator INOUE. Thank you very much, Mr. Secretary.

Mr. BINDER. Thank you, Mr. Chairman.

Senator INOUE. Our next witness is Mr. William N. Dale, acting administrator of the Bureau of Security and Consular Affairs, Department of State, accompanied by Mr. William R. Jochimsen, Chief, Protection and Representation Division of the Department.

**STATEMENT OF WILLIAM N. DALE, ACTING ADMINISTRATOR,
BUREAU OF SECURITY AND CONSULAR AFFAIRS, DEPARTMENT
OF STATE; ACCOMPANIED BY WILLIAM R. JOCHIMSEN, CHIEF,
PROTECTION AND REPRESENTATION DIVISION; AND PETER
PFUND, OFFICE OF LEGAL ADVISER**

Mr. DALE. Thank you, Mr. Chairman.

As you say, my name is William Dale. I am the Acting Administrator of the Bureau of Security and Consular Affairs of the Department of State. I would like to introduce William Jochimsen who is Chief of the Protection and Representation office in the Bureau, and also Mr. Peter Pfund from the Office of Legal Adviser of the Department, on my left.

Senator INOUE. Welcome, gentlemen.

Mr. DALE. As you know, consular officers stationed abroad at our more than 200 consulates and embassies have certain responsibilities for the protection of American citizens residing or traveling within their respective consular districts. We are, therefore, concerned when Americans become stranded because their expected charter flight to the United States did not materialize. Although we estimate that only a small percentage of all return charter arrangements actually fail, a large number of persons may be involved when they do break down.

Most of all the stranded Americans turn to our Foreign Service posts abroad for help. It is for this reason that we welcome this opportunity to testify before the committee.

I would like to summarize for you a few case histories out of the many incidents we have had in the past 2 years to illustrate the problems presented to us when a charter flight, usually a return flight, does not depart as scheduled or does not depart at all.

The incident which involved the greatest number of stranded American citizens occurred in 1970 when the organization "World Academy Tours" of Cincinnati filed for bankruptcy while approximately 3,200 students under their sponsorship ranging in age from 14 to 20 were touring in most of the countries of Western Europe.

The students and their traveling leaders became aware of the bankruptcy when the hotels and guest houses where they were scheduled to stay informed them that their reservations were canceled unless they arranged immediate alternative funding. Most of these persons either telephoned or appeared in person at the nearest American consular office to seek advice and assistance.

Several of our offices were overwhelmed with groups numbering several hundred each and our staffs attempted to cope with this situation as best they could. Parents who could afford it provided funds so that their children could continue their tour, and the airline, Capital Airways, provided earlier extra flights to return to the United States those students who could not afford to remain abroad longer.

I understand that the Civil Aeronautics Board has published regulations after this incident which have reduced to some extent the likelihood of such situations in the future. However, during the peak travel period last summer, we again experienced problems.

More than 200 students were stranded at London as a result of financial difficulties encountered by the American Union of Students of Dearborn, Mich. The students were issued one-way tickets to Europe on several different charter flights and were given vouchers to be presented to a designated travel agent in London for a return flight ticket. When they presented the travel voucher in London they were informed that the return flight had not been paid for by the American Union of Students.

Overseas National Airways kindly offered to return these students on a space available basis at no charge. Other airlines, Pan American and TWA, also requested CAB permission to provide transportation for stranded students on an extremely reduced rate basis.

Before these arrangements were approved by the CAB, however, the staff of our consular section at the American Embassy in London was deluged with requests for financial assistance to pay for food, shelter, and return transportation by those who had expended their funds during their European tour. All available personnel in the Embassy turned to in this emergency. As a result, action on the daily requests for other consular services, such as notariats, visas, passports, Federal benefit payments and so on had to be postponed.

A somewhat different type of incident occurred at Accra, Ghana, this summer which illustrates how complicated some of these charter arrangements can become. It involved the default of charter arrangements made by the African Commentator Club of Accra with a German charter flight organization called Air Commerz.

The original arrangements anticipated a flight beginning at Frankfurt, Germany, to bring German tourists to Accra, then load Ghanaian tourists for Germany and New York and pick up U.S. tourists in New York for travel to Accra with the return flights.

I hope that is clear.

This process was expected to proceed in a reverse manner on the way back, returning the tourists to their respective places of origin. The first flight apparently was performed as anticipated but with insufficient passengers to cover costs for the complete roundtrip as scheduled. In addition, some checks for group payments were returned by the bank for insufficient funds.

After approximately 2 weeks of negotiations, Ghana Airways, a government airline, provided transportation for the stranded tourists including the Americans. In the interim, however, our Embassy at Accra furnished funds for accommodations and subsistence for those Americans who were unable to provide for themselves and furnished communication facilities for the stranded persons and their relatives in the United States.

Incidentally, some of the stranded passengers held a demonstration demanding immediate return to the United States at U.S. Government expense. This, of course, resulted in adverse publicity in Ghana.

The Department of State would not be directly concerned with the administration of any legislation or regulations to control travel agents and private chartering organizations. This is primarily a matter for the regulatory agencies, such as the Civil Aeronautics Board. Moreover, we cannot judge the extent to which overseas travel comes under Federal or State control.

We are, however, very much concerned that a way be found to avoid the future stranding of U.S. citizens traveling abroad and will be most happy to cooperate with the committee in its efforts to seek a solution to this problem.

Senate bill 2577 seeks to attack this problem through a broad licensing requirement for persons and groups wishing to charter any and all forms of transportation and not just air transportation. It would not, however, bar carriers from dealing with unlicensed travel agents.

It appears to us that the bill's provisions apply only to persons involved in making such arrangements as a business, that is, for a "fee, commission, or other valuable consideration." The bill does not seem to be designed to cover professional, church, cultural, and student groups organizing a charter flight as a sideline and on a nonprofit basis.

On the other hand, this Department would not wish to see regulatory measures instituted which would have the effect of discouraging bona fide organizations and groups with adequate financial resources from seeking to make arrangements for inexpensive charter travel and thereby reduce the opportunities for many persons to travel abroad.

The State Department suggests that regulations or, if necessary, legislation be considered which would require an airline to provide return passage for any U.S. charter passenger carried abroad by it unless the passenger was notified before departure that he was entitled to one-way passage only. This would place on the airline the responsibility to satisfy itself that it has been or will be paid and, in the

case of one-way arrangements only, that the passengers have received the required notification.

Additional or alternate measures might be considered to require that a chartering enterprise or group be bonded. Another possibility would be that sufficient funds be placed in an escrow account to insure not just the payment of the promised group return flight but payment for the total costs of single return flights by individual passengers in the event that the chartered return flight fails to materialize within a short period after its scheduled departure.

I am sure that these suggestions by no means exhaust the possible measures for alleviating the situation and we look forward to studying others from the regulatory agencies that will be testifying on this bill. We are hopeful that the solutions can be found which will protect the charter flight passenger without diminishing his opportunities for travel abroad.

Mr. Chairman, I have prepared a statement describing the duties of our consular officers in connection with stranded American passengers which I would be pleased to leave with the committee for inclusion in the record.

That concludes my statement, Mr. Chairman.

Senator INOUYE. Thank you very much, Mr. Dale. Your testimony was most essential to lay the groundwork for consideration of this measure. We wanted to have some documentation as to some of the problems our travelers have been facing in other parts of the world.

I will be asking the CAB as to how present regulations would regulate or control the activity described in the Ghana situation where we played Chinese checkers all over the world.

But you have brought up one matter that has been concerning several of our members here, and that is the possibility that this bill if it became law in its present form might somehow discourage or make it impossible for church groups, fraternal organizations, veterans' organizations who may be desiring to go to the old battlegrounds, to charter their own tours on a nonprofit basis.

This is not in your area of expertise, but if you have any ideas as a private citizen on this point we would appreciate it, sir. You see the tour groups that have been involved in standings, were for profit. Would you still feel that veterans' organizations, fraternal groups, church organizations, teachers clubs, and similar organizations should be required to put up performance bonds and have some method for registering?

Mr. DALE. We have given thought to that, Mr. Chairman, and I think there is a problem about expense in connection with bonds. We suggest that the committee might like to investigate whether it would be practical to extend bonding arrangements to such groups, if it can be done at a reasonable cost, of course.

I think that on bonding we cannot really in the State Department offer a concrete suggestion as to what type of bonding arrangement would be best, but we do have in mind that criteria which it should meet. There should be sufficient funds to carry passengers back in the way we described, and second, the money should be available fast enough to meet the crisis situation abroad where you may have individuals who do not have enough money to buy food for even the next day.

So it means that we have to have a bonding arrangement that can make funds available on very short notice. I do not know how practical that will be.

Senator INOUE. Sir, I note in some cases—I presume isolated cases—we have required the foreign visitors before being issued a visitor's visa, to furnish the American consular office with some tangible evidence of a return ticket or some assurance that in the United States they will have people who will care for them. Do other countries require American tourists to provide evidence of return ticket, or assurance that they will be cared for?

Mr. DALE. Mr. Chairman, the practice varies on that a great deal. Many countries do not require any such proof; in others, however, particularly where there has been difficulty with Americans becoming destitute there, they do require Americans to show that they have means of supporting themselves or returning to the United States.

Senator INOUE. What is the standard that we apply in the requirement of showing of proof of return tickets? Because this is not required for all visitors.

Mr. DALE. No; it is not, Mr. Chairman.

Senator INOUE. How do you decide whether Mr. X or Mr. Y should show the return ticket?

Mr. DALE. This is very much in the consul's own sphere of judgment. He makes a judgment as to whether the individual applicant has the funds or financial resources necessary to return to the country on the basis of evidence which is appropriate to that particular case. It may be an invitation from someone in this country; it may be that the individual is already very well known and the consul knows he has no problems in which case he will not ask for any evidence. It may be that the consul will ask for a bank statement or for a return trip ticket.

Senator INOUE. As to your request that a statement describing the duties of the officers be made a part of the record, without objection it will be done.

Mr. DALE. May I add something to the statement about the consuls?

Senator INOUE. Yes; proceed.

Mr. DALE. What we are suggesting is that this system be managed by the airlines, that the airlines should assure themselves that the chartering organization has funds for a return trip before they make final arrangements to take on a charter group. So in a sense we are applying to this problem the kind of procedure we use with people coming to the United States and receiving visas.

Senator INOUE. The question I am about to ask is not related to this measure. But since this opportunity presents itself, if I may, I would like to inquire in behalf of our many visitors who have written to me. I have received numerous letters suggesting that it is extremely difficult to visit the United States, that the procedure involved in applying for visas at times could be insulting. There are some countries that do not require Americans to have visas. We can go to Bermuda, for example, by getting on a flight here. When you arrive there you tell the receptionist there, "I am an American citizen," and he says, "Welcome."

This is not in your jurisdiction, but we have had lines of foreign visitors at the New York Airport, Honolulu Airport, San Francisco Airport waiting to be examined. Many of them stripped nude, having their bags ripped open. These letters have suggested that if we are seek-

ing our share of the tourist dollar why do we go out of our way to make some of our visitors feel unwelcome?

I was wondering if at times our policy does make it difficult or insulting for foreigners to apply for visas. What is your response to that, sir?

Mr. DALE. Mr. Chairman, our consular offices and the State Department, too, have made the process of obtaining a visa for a visit to the United States about as simple and easy as is possible under the existing legislation which requires visas on an almost universal basis. Many visas in the large issuing posts such as London are now done by mail. Usually the travel agent will take care of the process once he gets the passport of the individual who wishes to travel and the individual may not and usually does not have to appear in the embassy or the consulate at all—in the big countries from which we draw the bulk of our tourist travel, that it.

However, Mr. Chairman, I think this point which your constituents or friends have written about is an excellent one. I think basically it is a matter of image that the United States creates. On the one hand we wish to have visitors come here either for business or pleasure. We want to encourage them. This is particularly true as our Bicentennial approaches and we hope to have attractions here which will bring more tourists to the United States than have come before.

As you say, in many other countries, such as all those in Western Europe, but in many other cases as well, they no longer require visas of Americans who are visiting their nations for a short period of time. The fact that we do, that we stand out in contrast to these countries by requiring visas for short visits for business or pleasure naturally gives the impression we do not really welcome them.

I think, in effect, we say something like this, "We want you to come here, but we have to be pretty sure about you first." It does not give an impression of confidence or trust.

For that reason the State Department has proposed a bill which would eliminate the visa requirement for visitors coming to this country for periods of up to 90 days for business or pleasure. The bill would apply only to selected countries in order to avoid the situation where many people have a history of coming here and staying illegally.

We are most anxious that the Congress have a chance to consider this bill and take action on it.

Senator INOUYE. Yes, I am most grateful for the sentiment of the State Department but my question is under the existing rules is it not possible to make our visitors feel a bit more welcome and I will be more specific. In the case of London, it is true that you have now visa application by mail. This is not true in other parts of the world outside Western Europe. For example, I have had countless letters from visitors asking me why is it necessary for the American Consul Office to ask me an insulting question such as do you intend to marry in the United States and thereby become a resident there before I could get a visitor's visa? Why is this type of questioning necessary?

Mr. DALE. The type of questions which are asked come from two sources. There are the provisions of the legislation which is in existence which provides numerous grounds for exclusion as you know, Mr. Chairman. The bulk of them are listed on the visa form. In the average case of a visitor when he signs the application form it has questions

such as whether he has been a member of the Communist Party and other personal types of questions. Once he signs it in the negative that is usually considered sufficient evidence. If there are personal questions of the type which you ask in interviews, the consular officer may have some questions as to the bona fides of the applicant. The usual problem that we face in this, Mr. Chairman, is distinguishing between people who genuinely wish to come here to visit or conduct business and those who are actually intending to be immigrants and will stay if they get here.

Senator INOUE. I can understand that. There are many people in this world who would like very much to live here. But what is wrong with some young lady from New Zealand or the Philippines or from Pakistan wanting to visit here and finding an American husband? Is that against the law?

Mr. DALE. No, it certainly isn't, Mr. Chairman. I would have to know more about the individual case in order to give a guess as to why such an individual would have been asked that particular question.

As you know the law that we apply assumes that you are an immigrant unless you can show you are not. And it is on that basis that the visa procedure has been designed.

Senator INOUE. Like you, I would hope that this Congress would adopt some measure that would liberalize our laws and make people feel welcome here and so that the words on the base of the Statue of Liberty would not be hollow words.

I thank you very much, sir, you have been most helpful.

Senator Beall?

Senator BEALL. Not altogether on that subject but a matter of concern to me, I had a constituent who lost his daughter in a train wreck in Belgium, and he told me that at the time his daughter was killed in order to get her back he went through correspondence with the State Department. I don't know whether this is your department or not, but during this trying time, he had to present the Department with a sum of money or guarantee, I think a check for \$500 to get his daughter back prior to the time the Department would commit itself to bring his daughter back.

This seems to me a rather cold-blooded attitude to take at the time an American citizen had lost a member of his family. I am wondering about the reasons for this treatment and if it is necessary some changes could be made that would make—provide for a method of doing this that would be a little warmer and more considerate of the circumstances in which the individual in this case found himself.

Mr. DALE. Senator, that is a problem we have given considerable attention to. We know that it appears somewhat, as you say, cold-blooded to have to ask for the money in advance so that we can finalize the arrangements abroad for transporting the remains back to the United States. We have expended considerable effort in trying to make our dealings in this matter as tactful and as sympathetic as possible. We emphasize to our consular offices that they should try to treat each individual very much as a human being in trouble. We don't always succeed in that, Senator, I can only say that I will take your words back with me and we will undertake further efforts to make our handling of these cases as sympathetic as we possibly can.

Senator BEALL. I appreciate that. The Department has some words from me on this matter.

What happens if the individual doesn't have the money? Suppose this constituent of mine hadn't been able to come up with \$500? What would have happened?

Mr. DALE. I am sorry, Senator, there are no funds appropriated by the Congress at all for this kind of thing.

Senator BEALL. Until he could raise the appropriate amount of money he couldn't get his daughter's body back.

Mr. DALE. I am afraid that is right.

Senator INOUE. If the strandeer were alive instead of dead, would the consular office provide transportation back to the United States?

Mr. DALE. Well—

Senator INOUE. Assuming he has no funds, no family, he was stranded by a study-tour operator?

Mr. DALE. I will explain that, Mr. Chairman.

First, the consular officer does everything he can to assist the—we call him strandeer for this purpose—in finding funds from friends, relatives, any source that he might have. If it turns out that he is destitute, utterly broke, then the consular officer contacts the State Department, they make further inquiries, being on the scene here, to find the money. Then if there are no other ways at all, the man is repatriated at government expense. In that case however he is asked to sign a promissory note assuring that the money will be repaid and until that happens, his passport is limited for travel back to the United States only. Once the money has been repaid then the passport is corrected so he can travel any place.

Senator INOUE. I suppose the policy is that as described by Senator Beall, since the dead person cannot sign the promissory note he is stuck there?

Mr. DALE. That is one aspect of it, yes, sir, Mr. Chairman. Exactly. (The statement follows:)

STATEMENT ON WHAT THE CONSULAR OFFICE DOES FOR STRANDED AMERICAN CITIZENS AND HOW IT IS DONE

The Department of State and its consular offices have no authority or funds specifically to provide for subsistence and alternate transportation for American tourist groups stranded abroad by the failure of their return charter flight arrangements. The consular office involved is able to provide essentially the normal consular assistance which it offers to individual Americans who find themselves abroad with insufficient funds to return to the United States.

The immediate problem is usually the need for temporary shelter and subsistence while new transportation arrangements are made. The consular officer can usually recommend suitable accommodations and furnish instructions on how to get there.

If the caller is completely destitute, the consular officer will recommend he telephone collect to his relatives and ask that they telegraph funds for his emergency use. In some countries it will be necessary for such calls to be placed from the consular office because of language complications or because only certain telephones may be utilized for collect overseas calls. The consular officers will explain the best method for receiving funds expeditiously so that relatives will be informed correctly. While waiting for the funds to arrive, which may take several days, the consular officer can recommend a reasonably priced guest house, youth hostel or other accommodation and acquire the approval of the manager for the caller to receive room and board until the funds arrive.

The consular officer will investigate the reasons for the lack of transportation for the stranded passenger and recommend actions that he can take. These are usually: wait for the delayed flight; change the ticket to another airline (usually not possible with charter flights); or pay for a new ticket on another flight. Additional funds for these actions may be requested during the collect telephone calls mentioned above.

If a stranded American desires to return to the U.S. but is destitute and all efforts to obtain funds for him have proved futile, the consular officer will report his situation to the Department and recommend that he be repatriated. The Department will contact his relatives, friends, and any other possible sources of private funds and if its efforts are also fruitless will authorize the consular officer to arrange transportation to the U.S. The stranded American will be expected to sign a promissory note for the full cost of this transportation and subsistence and subsequently to repay the amount expended. His passport will be amended to be valid for return to the U.S. only and this restriction will remain until he has reimbursed the U.S. Government for the cost of his repatriation.

Other complications arise when a stranded person becomes ill or refuses the assistance offered. If the destitute person requires medical attention, the consular officer notifies the appropriate local authorities since no USG funds are available for medical assistance or hospitalization. If he refuses the assistance offered, the consular officer will inform him regarding local laws and customs relevant to his situation.

In carrying out the above duties, our Consular personnel must expend considerable time and effort to (1) convince the individual concerned that the U.S. Government has no funds or facilities to provide lodging and maintenance pending arrangements for return passage (except where repatriation is indicated), (2) locate accommodations, frequently during the peak tourist season, (3) arrange credit for lodging and maintenance for the individual, if he has no funds, pending receipt of financial assistance from home; (4) ascertain who are the responsible people connected with the charter in order to determine what action if any can be taken to straighten out the situation; and (5) communicate with the Department or family in the U.S. to obtain assistance.

NOVEMBER 17, 1971.

Senator INOUE. I thank you very much again. I am sorry, but I have been notified there is a vote going on. We would like to excuse ourselves for 10 minutes and we will be right back.

(Recess.)

Senator INOUE. The subcommittee will please come to order.

Our next witness is Hon. John Houlihan, member of the Illinois House of Representatives and cochairman of the Illinois Travel Arranger and Passenger Carrier Study Commission. He will be accompanied by Mr. Malden Jones, Executive Director of the Illinois Travel Arranger and Passenger Carrier Study Commission.

Mr. Houlihan, I welcome you to this committee, sir.

STATEMENT OF HON. JOHN HOULIHAN, MEMBER, ILLINOIS HOUSE OF REPRESENTATIVES, AND COCHAIRMAN, ILLINOIS TRAVEL ARRANGER AND PASSENGER CARRIER STUDY COMMISSION; ACCOMPANIED BY MALDEN JONES, EXECUTIVE DIRECTOR, ILLINOIS TRAVEL ARRANGER AND PASSENGER CARRIER STUDY COMMISSION

Mr. HOULIHAN. Thank you sir.

First I would like to tell the Chairman and the members of the subcommittee that we didn't prepare a statement. I had some telephone

discussions with your staff, Mr. Hardy and as I am aware this morning I am the only one that didn't have a prepared statement.

Senator INOUE. Before proceeding, I would like to place into the record a letter from the Senator from Illinois, Hon. Adlai Stevenson III, addressed to me as chairman of the subcommittee. It says:

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
Washington, D.C., November 17, 1971.

HON. DANIEL K. INOUE,
Chairman, Subcommittee on Foreign Commerce and Tourism,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I had hoped to be present to introduce to you and the members of your subcommittee Representative John Houlihan. I had the privilege of serving with Mr. Houlihan as a member of the Illinois House of Representatives where John is now completing his fourth term in office. He has served that body with distinction and I know you will find his views on the problems facing our tourist industry informed and enlightening.

With best wishes,
Sincerely,

ADLAI E. STEVENSON III.

Mr. HOULIHAN. First, I would like to introduce the executive director of the Illinois Travel Arranger and Passenger Carrier Study Commission, Malden Jones, who covered the legislature for more than 25 years for the Chicago papers, Illinois State Journal, Chicago American and Chicago Today.

The State of Illinois as well as our country should take, I feel, proper steps by means of regulatory legislation to afford the traveling public sound financial safeguards in dealing with the travel agencies. Millions of dollars are involved in daily transactions with reputable travel agents and travel agencies.

Immediate legislative action at the State level as well as the Federal level is warranted in view of recent incidents of abuse. The record shows an apparent lack of supervision over persons engaged in both charter and individual travel arrangements.

The State should promulgate licensing requirements coupled with the provision of adequate financial safeguards in form of binding and/or trust arrangements. This should be accomplished notwithstanding steps taken by or planned within the industry by scheduled air carriers and intraindustry conference agreements or CAB, and Federal regulatory agencies.

Provisions in a bill that we introduced in Illinois we felt were all encompassing—and first I would like to state that we were not trying to put people out of business but we were trying to protect the traveling public. We had some very, very bad situations happen in Illinois. We have some—I would like to cite one or two examples. Some 271 complaints were actually filed with the Illinois attorney general on travel agencies or travel agents between the years 1961 and 1969. The only way, Senator, I could get this type of information was if I would not reveal the names of the persons who were involved. One instance was a travel agency that had gone out of business wanting to buy roundtrip tickets to and through Europe. All this money was lost. The travel

agent absconded with \$2,900 and I will quote what the person said. "I paid a total of \$1,961 to a travel agent for airline tickets and I can't get my money back."

Another couple contracted with a travel agent for European accommodations at \$40 a day. They then received third-class accommodations and had extreme difficulty in getting the refund. Another agency told a customer and his wife that they could cancel their trip up to 10 days in advance at no charge. They later said it was 30 days in which to cancel at a charge of \$50. The contract itself showed no cancellation penalty.

Another group booked a tour and paid the agency \$22,500. They had to fight for tickets valued at 6,000 and got no more for their money. When they went to complain the agent was out of business.

We had one agency in Illinois, the Rochford Agency who went bankrupt and owed some \$2¼ million.

In the bill that we had—and I would like to leave a copy of our bill with your committee—

Senator INOUE. Without objection, it will be made a part of the record.¹

Mr. HOULIHAN. I felt it was—maybe I will explain a little about the bill.

It would have prohibited persons from acting as travel agents or travel salesmen unless they were registered. It exempted certain people in this business, and they were agents and employees of carriers already regulated by the Federal Government and the State government such as in Illinois we have the ICC for example. It would exempt employees of railroads because that would have been in conflict with Federal regulations. It exempted clerical employees of persons who were registered. It exempted persons in motels, who help their customers get on a sightseeing tour bus. We didn't feel this was overly relevant and it was more of a courtesy than anything else.

The meat of our bill was that it required travel salesmen, the people who do business with the general public and work for a travel agent to be tied to that travel agent. In other words, when he was—his license was only legitimate while he was working for that travel agent. Once he left that employ he was no longer licensed. It was similar to, in Illinois, it was similar to people who are real estate salesmen, people who are insurance salesmen. They are tied to the agent, not—once they leave Prudential or Metropolitan, they are no longer licensed until they apply at the new firm and they are licensed through them.

We, in Illinois, also were quite similar to the Federal bill. We created a board of examiners at least three of which were to be people that were travel agents. The general requirements for registration under the act did have a grandfather clause and I don't feel, Senator, that any legislation, State or Federal, can be passed in the Congress or in the State without a grandfather clause.

I do think you have to have broad language in it. The purpose was—we had a financial responsibility and reliability provision in the bill

¹ See p. 34.

to protect the public from underfinanced applicants for licenses. We hear much talk about bonding, performance bond, in this business and I don't know that the performance bond concept would be a proper one and in my opinion it probably should be more of a surety bond than a performance bond because its cost ultimately to the public but immediately to the people in the travel business, I think, would be prohibitive.

We also provided in our bill that—which was House bill 1707, if I didn't mention it before—that if a person whose trip was canceled or did not get what he contracted for, he would get the part of the service that he didn't receive—his money would be refunded for only this part.

We also had a provision in the law that the money would have to be kept in a trust account similar to the Illinois insurance law. The only portion of that that he could utilize would be his commission. For example, if it was 5 percent he could take this out. He didn't have to put that in the trust account. But the balance of the money could only be paid for the services he was selling to his customer.

We also required \$5,000 bond because we felt that the bonding company would help us cull the bad people—that is the people who shouldn't be in the travel industry—out.

We also required a lot of—people are misled here on these tours, Senator, by well-meaning teachers who get a group of young people together from Illinois and maybe take them to Washington. They don't know who they are doing business with, really. I think this is one of the needs of this type of legislation. This is one of the reasons for this type of legislation. They get a nice brochure from the World Academy, from fly-by-night outfits who spend a lot of money on printing and when you check them out they don't have an office. It is a boilerroom-type operation and they wind up—they are ready to come home and there is no transportation home. Really the teachers and the students are the losers.

Our bill passed both Houses almost unanimously in the House and I am fairly certain it was unanimous in the Senate. Our Governor saw fit to veto that bill not because I was the sponsor because this was a commission bill. But we gave our Governor in the last constitutional convention a mandatory veto power and I thought he was in error when he vetoed because he could have struck some of the provisions that he deemed improper.

Senator INOUE. Do you happen to have that in your files?

Mr. HOULIHAN. Yes. I will leave that, too.²

Part of this reads:

The interstate commerce clause of the United States Constitution would preclude the State from effectively regulating a travel arranger who operates in Illinois by mail or other instrumentality of interstate commerce and who does not establish an office within the State. The lure of low cost travel through membership in groups which exist solely to provide such benefits is so great that many people willingly join knowing nothing about the organization. They fail

² See p. 38.

to determine if there are any assurances that the money which they pay in advance will ever be used to pay the cost of their travel. World Academy, Inc. was such an organization formed solely to supply cheap air transportation for its "members" through charter rates. The CAB regulations clearly prohibit an organization being formed for this purpose, but operations like World Academy are found throughout the country often operating by mail with no branch offices. The Department of Registration and Education would be powerless to reach these groups if they only operate in interstate commerce.

I also would like to quote from the last paragraph of his veto message.

I have signed House Bill 1471—

That was to continue the Commission for another year—

which will authorize the Travel Arrangers and Passenger Carrier Study Commission to continue for an additional year and I urge the Commission to reconsider this bill and to study the entire field of travel arranging with a view toward enacting legislation which will be compatible with Federal regulations and one that may be more easily enforced.

Now I don't agree with all of our Governor's veto. The Governor failed to note I feel that a licensing bill is preventive in nature as opposed to the fraud laws and other regulations which come into operation after the harm has been done. I do not agree with the statement that the grandfather clause would permit licensing of anyone who has been in the business, even the people from World Academy. There is a requirement that people under the grandfather clause be of good moral character. I think this would justify denial of licenses to known fraudulent operators.

As to the interstate commerce clause objection, I agree this bill may not cover every possible method of bilking the people of our State, including solicitors operating exclusively by mail. But I think it would make it more difficult for them to cheat the public. I think that a direct mail solicitation is less effective than face-to-face contact.

This bill would force salesmen on rating in Illinois and elsewhere to be licensed.

We were particularly hurt by the World Academy in Illinois and later this year with other charters. We have a Chicago paper here in 1970, and 1971, also, stories where the families had saved money to send their offspring to Europe on an educational trip, and they get over there and they had no money to bring them back and they had to borrow and all, and they testified before our Commission on this. They gave testimony and that was in the 1970. That was one of the reasons for this bill.

I would like at this time to thank you for letting me appear and I would hope before I close, Senator, I would hope that we could communicate with your committee and we in turn would send any information we have from our study to you. We would exchange our minutes of our meetings.

Senator INOUE. You have been most helpful, Mr. Houlihan.

Once again I thank you for your participation in this hearing and I assure you that the bill and the Governor's veto message will be given very serious consideration.

Mr. HOULIHAN. Our next meeting is in Chicago, December 7, at the Bismarck Hotel and anyone interested is cordially invited.

Senator INOUYE. We very likely will be in session here and as much as we would like to be in the Bismarck Hotel, December 7, we will have to be in Washington at that time.

Thank you very much.

(The bill and letter follow:)

77TH GENERAL ASSEMBLY, HOUSE BILL 1707

Synopsis: Creates The Travel Arrangers Registration Act under the Department of Registration and Education. Establishes the State Board of Examiners of Travel Agents and Salesmen, to provide penalties for the violation thereof and to make an appropriation in connection therewith. Empowers Department to revoke or suspend licenses upon certain grounds. Provides penalties for the violation of this Act and make an appropriation of \$60,000 therefor.

AMENDED

Introduced April 15, 1971, by Houlihan, Pappas, Hall, Hanahan and Giorgi. Read first and ordered printed.

AN ACT To license and regulate travel agents and travel salesmen, to establish a Board of Travel Agents and Salesmen, to provide penalties for the violation thereof and to make an appropriation in connection therewith

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. This Act shall be known and may be cited as "The Travel Arrangers Registration Act".

SECTION 2. As used in this Act:

"Board" means the Board of Examiners of Travel Agents and Salesmen;

"Department" means the Department of Registration and Education, and "Director" means the Director of that Department;

"group travel" means the simultaneous travel by 8 or more persons, unrelated by blood or marriage with a common destination, a common schedule and under an agreement where the group as a whole is one party. It specifically includes charter transportation and tours;

"travel agent" means a person who arranges or reserves transportation, accommodations or other services incidental to the travel of another person;

"travel salesman" means any person who acts or aids in any manner in the solicitation or negotiation, for or on behalf of any travel agent, for compensation of any transportation, accommodations or other services incidental to the travel of another person.

SECTION 3. No person may engage in the business or act in the capacity of a travel agent or travel salesman within this State without having a certificate of registration issued in his name by the Department.

SECTION 4. This Act shall not apply to:

(a) an employee or agent of a public transportation utility or transportation company subject to control by some regulatory agency of the State or Federal government, while actually engaged in the business of such company or public transportation utility;

(b) the clerical employees of a travel agent or salesman registered under this Act, when acting under the supervision and control of such agent or salesman;

(c) the owner or employee of a hotel, motel, inn or other such establishment offering accommodations to travelers, when making arrangements for accommodations in his own or other such establishments or when making arrangements for local sight-seeing tours.

SECTION 5. A travel salesman may only be registered under this Act if his certificate of registration is endorsed by a registered travel agent by whom he is employed. If such employment terminates, the travel salesman's certificate of

registration is suspended and shall be forwarded to the Director and shall be held by him. Such certificate of registration shall be reissued upon application made by the salesman and proof that he is employed by a registered travel agent.

SECTION 6. There is created a Board of Examiners of Travel Agents and Salesmen composed of 7 members appointed by the Governor, at least 3 of whom must be travel agents.

The travel agents first appointed to the Board shall be persons qualified to hold a certificate of registration under this Act and their successors must hold certificates of registration as travel agents.

Initially, 3 members shall be appointed for terms of 3 years, 2 for 2 years and 2 for one year. Thereafter the terms of all appointive members shall be 3 years. Any vacancy occurring in the position of an appointive member shall be filled by the Governor for the unexpired term. Appointive members may be removed by the Director for cause after due notice and hearing.

The Board shall meet initially at the call of the Director as soon as may be following appointment and shall organize by the selection of a chairman and a secretary from among its members. Thereafter it shall meet at the call of the chairman.

Members of the Board shall receive a per diem allowance of \$15 for each day or part of a day spent on Board work, and shall be entitled to their expenses actually and necessarily incurred in the performance of their duties.

Section 7. The Board shall aid the Director and the Department by:

- (a) Preparing subject matter for examinations as provided in this Act,
- (b) Suggesting rules to govern examinations and hearings for suspensions, revocation or reinstatement of certificates of registration as provided in this Act,
- (c) Holding hearings for the suspension, revocation or reinstatement of certificates of registrations,
- (d) Submitting recommendations to the Director from time to time for the efficient administration of this Act,
- (e) Grading all tests and examinations for licenses and promptly reporting the results to the Department, and
- (f) Performing such other duties as are from time to time prescribed by the Director.

Section 8. In addition to any other powers conferred by this Act, the Director shall have the following functions, powers and duties:

- 1. To issue or refuse to issue or refuse to renew any registration certificate provided for in this Act;
- 2. To revoke, cancel or suspend for cause any registration certificate issued under this Act;
- 3. To keep records of all registration certificates issued, revoked, cancelled or renewed, which records shall be kept to provide ready information as to the identity of all registrants;
- 4. To receive, consider, investigate and act upon written complaints made by any person in connection with the performance in this State of the services of a travel agent
- 5. To receive, consider, investigate and act upon written complaints that any person not registered as required by this Act is representing or holding himself out to be or is performing the services of a travel agent or travel salesman;
- 6. To prescribe the forms of and receive applications for certificates of registration and all reports required to be made by a person registered under this Act;
- 7. To adopt rules and regulations necessary and proper for the administration of this Act;
- 8. To subpoena witnesses, compel their attendance, administer oaths and in connection therewith, to require the production of any books, papers or other materials relevant to the inquiry.

Section 9. A person shall be qualified to receive a certificate as a registered travel agent or a travel salesman who:

- (1) Is of good moral character and of sound physical and mental health;
- (2) has satisfactorily passed a written examination conducted by the Department to determine his fitness to conduct the business of travel arranging;
- (3) has paid the required fees;
- (4) Is financially reliable.

Certificates of registration may be issued, upon application and payment of the required fee, without examination to applicants who are of good moral character and who have been engaged in the business of travel agent or travel salesman for at least 2 years prior to the effective date of this Act.

Section 10. All registration certificates under this Act are valid for terms of one year and expire on December 31st of each year. Licenses may be renewed by making application to the Department by November 1st, accompanied by the required fee. The application forms for renewal shall be mailed to each licensee by the Department before October 1st of each year.

Section 11. The Department shall suspend, revoke or refuse to renew a registration if the Board finds the holder to be guilty of the performance or attempt to perform any of the following prohibited acts or conduct :

- (1) knowingly making any substantial misrepresentation ; or
- (2) knowingly making any false promise of a character likely to influence, persuade or induce ; or
- (3) a continued or flagrant course of misrepresentation or making of false promises through agents or otherwise ; or
- (4) A conviction in a court of competent jurisdiction of this or any other state of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud or other like offense or offenses ; or
- (5) Any failure to account for or to pay over moneys belonging to others which have come into his possession arising out of the arrangement of travel services for another ; or
- (6) Any misleading or untruthful advertising ; or
- (7) Any willful failure to file reports or information as required by this Act ; or
- (8) Any willful failure to return moneys on cancellation of travel arrangements when such return is clearly dictated under this Act ; or
- (9) Any act or conduct in connection with the sale or arrangement of travel services which demonstrates incompetency, bad faith or dishonesty ; or
- (10) Failure to file a bond and failure to keep such bond in force as required by this Act.

Section 12. All proceedings under this Act to revoke, suspend or refuse to renew a license shall be conducted in the manner prescribed by Sections 60b through 60g of "The Civil Administrative Code of Illinois".

Section 13. A certificate of registration as a travel agent shall not be granted to any person until the applicant files with the Department a bond signed by the applicant as principal and by a responsible company authorized to execute surety bonds within this state, or other good and sufficient bond to be approved by the Department, and conditioned upon the faithful performance by the applicant of the duties of a travel arranger or travel agent. Such bond shall be in a principal amount of \$5,000.

Such bond shall be made payable to the people of the State of Illinois for the use and benefit of any person who pays for travel services through a travel agent and does not receive such services through some fault of the travel agent and such bond shall not be cancelled during the period for which the license shall be issued, except upon 60 days notice in writing to the Department. If a bond other than a surety bond or cash bond is filed it shall be secured by real estate, stocks, bonds or other personal property approved by the Department having a value of not less than double the amount of such bond over and above all exemptions and liens thereon. A bond secured by real estate shall be recorded and shall be a lien on the real estate for the amount thereof and the recording fees therefor shall be paid by the applicant.

Section 14. Every travel agent registered under this Act shall file a report of his financial condition as required by the Department. If the registered travel agent is a member or employee of a partnership, the report required by this Section shall include a statement of the financial condition of such partnership. If the registered travel agent is a director or employee of a corporation which arranges or provides travel services, the report required by this Section shall cover the financial condition of such corporation.

The reports required by this Section shall be in a form prescribed by the Department and shall be filed as often as the Director considers necessary, but in no event more frequently than once a year.

Section 15. If through the fault or negligence of the travel agent, a contract involving travel services is cancelled or the services contracted for are not available substantially as represented by such travel agent, the person arranging for such travel services must, at the option of the person whose trip was cancelled, make a full refund of all moneys paid to him for the omitted or misrepresented services.

Section 16. The moneys which a travel agent or salesman collects from persons arranging group travel through such travel agent or salesman shall be held by the agent or salesman in a fiduciary capacity and shall not be misappropriated or converted to his own use or illegally withheld by the travel agent or salesman. Moneys paid to a travel agent or salesman for group travel shall be held separately by the agent or salesman and shall not be commingled or used for any purpose other than paying for the group travel or for the commissions due such travel agent.

Section 17. No travel agent or salesman may make or cause to be made in his behalf, any solicitation for travel services on the grounds of any school or university without having first received written permission from the principal or dean of such school. Before giving permission the principal or dean shall ascertain if the travel agent is licensed under this Act.

Every person other than a registered travel agent or registered travel salesman who receives any consideration, including payment in money, travel, or a discount in travel cost, must disclose such consideration in writing prior to such group travel.

Section 18. The knowing use of misleading advertisements or other solicitations is prohibited. Any advertisement or other solicitation which shows transportation fares must show the amount of the round-trip fare, or if the amount shown is the one-way fare, the advertisement shall so state in print at least $\frac{1}{3}$ as large as the figure showing the fare.

Section 19. All final administrative decisions under this Act are subject to judicial review under the "Administrative Review Act", approved May 8, 1945, and all amendments and modifications thereto and the rules adopted pursuant to such Act. The term "administrative decision" is defined as in Section 1 of the "Administrative Review Act".

Proceedings for judicial review shall be commenced in the circuit court of the county in which the party applying for review resides; but if such party is not a resident of this State the venue shall be in Sangamon County.

Section 20. The following fees shall be paid to the Department:

- (a) for registration as a travel agent, \$50;
- (b) for renewal of registration as a travel agent, \$20;
- (c) for registration as a travel salesman, \$50;
- (d) for renewal of registration as a travel salesman, \$20;
- (e) for examination for license, \$25.

Section 21. Any person who violates any provision of this Act shall be fined not less than \$100 nor more than \$500 or be imprisoned in a penal institution other than a penitentiary for not more than one year or both.

Section 22. The sum of \$60,000, or so much thereof as may be necessary, is appropriated to the Department of Registration and Education for the purposes of this Act.

AMENDMENT TO HOUSE BILL 1707

Amendment No. 2. Amend House Bill 1707, on page 1, line 30, by striking "No" and inserting in lieu thereof the following: "After January 1, 1972, no".

AMENDMENT TO HOUSE BILL 1707

Amendment No. —. Amend House Bill 1707 on page 2, by striking line 11 and inserting in lieu thereof the following: "or when making arrangements for local sight-seeing tours;

- (d) a person, or an employee of a person, association, partnership or corporation who arranges or reserves transportation, accommodations or other services incidental to his travel or the travel of another employee of the same person, partnership, association or corporation."; and

on page 8, by striking lines 15 through 17 and inserting in lieu thereof the following:

- "(c) for registration as a travel salesman, \$20;
 (d) for renewal of registration as a travel salesman, \$10;"

STATE OF ILLINOIS,
 OFFICE OF THE GOVERNOR,
 Springfield, September 23, 1971.

*To the Honorable—, The Members of the House of Representatives,
 77th General Assembly:*

I herewith return, without my approval, House Bill 1707, entitled "An Act to license and regulate travel agents and travel salesmen, to establish a Board of Travel Agent Examiners, to provide penalties for the violation thereof and to make an appropriation in connection therewith."

House Bill 1707 would create a licensing act for travel arrangers in the State of Illinois setting up a Board of Examiners of Travel Agents and Salesmen in the Department of Registration and Education which will administer the act. The bill was the product of the Illinois Travel Agency and Passenger Carrier Study Commission which held hearings and on the basis of the information elicited, formulated House Bill 1707. According to the Commission the major wrong that the bill was designed to cure is misrepresentation and fraud worked upon the traveling public by travel arrangers, including tour promoters who provide cut-rate air fares by forming groups to take advantage of the low charter rates authorized by the Civil Aeronautics Board. In their report, the Commission cited as the prime example of the wrong they are trying to remedy, the case of World Academy, Inc. of Cincinnati, Ohio, which failed last year to provide return transportation for over 5000 students who as a result were stranded in Europe. These students had paid in advance for a round trip ticket but due to World Academy's financial failure found that they had to pay another return fare at the higher commercial rates. Unfortunately, the bill fails to solve this problem.

The interstate commerce clause of the United States Constitution would preclude the State from effectively regulating a travel arranger who operates in Illinois by mail or other instrumentality of interstate commerce and who does not establish an office within the State. The lure of low cost travel through membership in groups which exist solely to provide such benefits is so great that many people willingly join knowing nothing about the organization. They fail to determine if there are any assurances that the money which they pay in advance will ever be used to pay the cost of their travel. World Academy, Inc. was such an organization formed solely to supply cheap air transportation for its "members" through charter rates. The C.A.B. regulations clearly prohibit an organization being formed for this purpose, but operations like World Academy are found throughout the country often operating by mail with no branch offices. The Department of Registration and Education would be powerless to reach these groups if they only operate in interstate commerce.

The commerce clause would also prohibit the effective regulation of the travel wholesaler. Almost all of the travel wholesalers are located outside the state and it is they who arrange tour packages which are then sold nationwide to retail travel agents and large organizations. Many of these wholesalers have failed financially in recent months and have not applied the payments from retail travel agents or large organizations to pay for the services which have been sold. Due to the overwhelming problems arising from the interstate commerce nature of arranging interstate and international travel, the answer must lie in stronger Federal control over the entire field.

The bill is also deficient in that it provides in Section 9 that a certificate of registration may be issued without examination to anyone who is of good moral character and who has been engaged in the business of being a travel agent or travel salesman for two years prior to the effective date of the Act. Under this broad grandfather clause even the principals of World Academy, Inc. could be granted a license. A grandfather clause which grants a license to anyone who has been in the field for two years prior to the effective date of the Act would not furnish any meaningful protection to the people of the State of Illinois.

As has been noted, the main purpose of this legislation is to prevent fraud and misrepresentation upon the people of the State of Illinois. The citizens of the State of Illinois are already protected under the provisions of the Consumer Fraud Act administered by the Attorney General's office, and the provisions of the Criminal Code pertaining to criminal fraud. An individual would also have his full common law remedies for fraud and could complain to the C.A.B. for violations of their regulations pertaining to charter group and common carriers.

In addition to not correcting abuses this legislation was designed to correct, it would also put a burden on the local travel agent who would bear the brunt of regulation under House Bill 1707. The local travel agent has a good reputation in most communities. These individuals are primarily small businessmen who are closely controlled by either the Air Traffic Conference or the International Air Transport Association and are required to submit regular reports of all air transportation tickets sold. These individuals would be needlessly burdened by the provisions of this bill since it would require considerably more paper work, lack of freedom of recruiting of personnel and the normal restraints that go with any governmental regulation. All of this will come at a time when there will hopefully be increasing federal supervision over the entire field of travel arrangements.

The tour promoters who are located outside the State of Illinois and who offer cut-rate fares under an illegal use of charter flights or the fly-by-night operators who sell in Illinois for a short period of time will not voluntarily register. The only remedy that the State will have will be to bring costly and time-consuming lawsuits attempting to force those individuals who actually set offices in the State of Illinois to be registered. As pointed out above, the Interstate Commerce clause will protect those operating from outside the state.

I have signed House Bill 1471 which will authorize the Travel Arrangers and Passenger Carrier Study Commission to continue for an additional year and I urge the Commission to reconsider this bill and to study the entire field of travel arranging with a view toward enacting legislation which will be compatible with Federal regulations and one that may be more easily enforced.

For these reasons, I veto and withhold my approval from House Bill 1707.

Respectfully submitted.

RICHARD B. OGILVIE, *Governor.*

Senator INOUE. Our next next witness is Mr. Thomas G. Krattenmaker, Assistant Director for Evaluation, Bureau of Consumer Protection, Federal Trade Commission.

STATEMENT OF THOMAS G. KRATTENMAKER, ASSISTANT DIRECTOR FOR EVALUATION, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Mr. KRATTENMAKER. Thank you.

The Commission Chairman, Miles Kirtpatrick, asked me at the outset to tell you he wished to be here himself, but it was only a prior calendar conflict that forced him to send me instead.

If I might, Mr. Chairman, I believe that the first two pages of my prepared testimony are old hat to you. The first two pages summarize the bill and basis behind it.

As I understand it, my principal purpose in being here is to provide the subcommittee with information concerning the Federal Trade Commission's jurisdiction over business practices of the travel agency industry and the extent of our activity in this area.

The Chairman of the Commission designated me to provide this information because, as Assistant Director for Evaluation of the Bureau of Consumer Protection, my principal duty is to recommend to the Bureau Director and the Commission the relative priorities and scope of various law enforcement activities undertaken within our Bureau of Consumer Protection.

That the Commission has extensive powers over the practices of travel agents seems clear. Section 5 of the Federal Trade Commission Act directs the FTC to "prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

There can be no doubt, I should think, that both arranging interstate or foreign commercial transportation and advertising one's availability to do so are "methods of competition," "acts," or "practices" that occur "in commerce."

The Commission, therefore, has authority to prevent either false or misleading advertising concerning a travel agent's business practices or those nonpromotional business practices themselves that are unfair or deceptive. Such ends can be attained both through litigation of individual complaints against particular agents and via promulgation of trade regulation rules, definitive interpretations of the act, issued after public notice and hearing, that proscribe certain practices on an industrywide basis.

Once an individual has been found in violation of the act, the Commission's principal current remedial authority is the power to issue an order to cease and desist from engaging in the illegal conduct.

While our authority is broad, the Commission has not been especially active in this area. During the past 5 years, the Commission has either taken final action or initiated proceedings in nine cases of alleged deceptive advertising by travel agencies.

No formal proceedings looking toward the issuance of trade regulation rules have been instituted during that period. Within the past 3½ months, however, the Commission has received an increasing number of consumer complaints regarding this industry.

Specifically, 45 complaints have been received in this short time period. Partially in reaction to apparent increasing consumer interest and concern, the Commission in September commenced investigations of three large sellers of packaged vacation tours to determine whether these agencies are operating in violation of section 5 of the act.

But none of the 45 complaints or nine formal Commission matters referred to above involve the principal concern of S. 2577, the dilemma of Americans stranded abroad.

In fact, the 45 complaints and the three investigations still open all relate to alleged failures by travel agencies to provide accommodations in accordance with promises contained in their representational material. Not until the current investigations are concluded will we be in a position to assess the validity of these allegations.

Moving on the merits of the bill, as distinguished from the information we could provide you about what the FTC has done in the area and can do in the area, in sum, the Commission is simply not presently sufficiently knowledgeable about the nature and extent of abuses in this particular industry to be in a position confidently to value the particular regulatory mechanism proposed in the bill.

Certainly, the reports of stranded students and the increase in our flow of complaints concerning travel agencies suggest that your subcommittee's reassessment of the extent of Federal control over this industry, and the adequacy of State, private, and public laws to give full protection to consumer interests, is fully appropriate and most timely.

Further, given the Federal Trade Commission's limited resources, coupled with the fact that our remedial authority generally looks to the future and the reality that as the chairman has stated when introducing the bill, these irresponsible acts were apparently perpetrated by, as you call it, "fly-by-night operators," it is the Commission's

view that the Federal Trade Commission will not be able to play an effective major regulatory role in this area.

Assuming that the subcommittee determines that general State contract and tort law, when combined with local business codes, are inadequate to cope with potential abuses, two courses seem feasible.

First, the system of Federal licensing proposed by S. 2577 might be erected. Alternately, the subcommittee might recommend a less comprehensive step: the provision of a Federal private right of action for specific abuses, perhaps supplemented by allowance of attorney's fees and multiple damages.

The potential benefits and risks attendant upon a Federal licensing system seem fairly obvious. The principal benefit of a licensing scheme is that it permits one to revoke or suspend a malefactor's authority to do business. Consequently, the remedy for misconduct is not typically an admonition to cease and desist, a fine, or a brief jail term, but a bar to engaging in the business at all.

In short, violation of the law cannot be treated as a mere cost of doing business. Further, the licensing technique permits the often invaluable regulation of recordkeeping and the requirement that certain crucial information be divulged to the public.

The risks, of course, are that the costs of the regulatory scheme may outweigh the benefits gained. This may be particularly true here where we do not know the extent to which the deceptive practices are endemic among the thousands of travel agencies who would be subject to the licensing control or are only engaged in by a handful of agencies. Moreover, the imposition of Federal licensing could be regarded as representing an official national determination that the States have failed to fulfill a duty expected of them when, again, we are uncertain as to the dimensions of the problem.

Creation of a Federal direct cause of action, then, would seem to merit consideration, although I am in no position to advocate it as ultimately superior to the approach of S. 2577.

Providing an effective Federal forum would leave with consumers themselves the responsibility and authority for vindicating their established legal rights. It would mitigate the potential risks discussed above. But, assuredly, such an approach would not retain the benefits of more pervasive, flexible, and definitive regulation that S. 2577 promises.

Given the Commission's present state of knowledge, we are not in a position to resolve these cost-benefit tradeoffs. I am hopeful that these hearings will provide the requisite basis for an informed judgment on these matters.

Commissioner Dixon asked me to add the final statement on this paper. Commissioner Dixon's position is that the Commission's authority in this field has always been after the act, which to a traveler is too late. Under a licensing procedure, this could be cured. Commissioner Dixon is for the bill.

Thank you.

Senator INOUE. Mr. Krattenmaker, am I correct to assume this is an official statement of the Federal Trade Commission?

Mr. KRATTENMAKER. Yes, sir, Mr. Chairman; it is.

Senator INOUE. I gather your Commission has extensive powers over travel agents.

Mr. KRATTENMAKER. Yes, sir.

Senator INOUE. You cited section 5 of the FTC Act?

Mr. KRATTENMAKER. Yes.

Senator INOUE. In the practice of your Commission, do you always wait for the fact to occur before acting?

Mr. KRATTENMAKER. If you are talking about suing an individual, yes, it is generally the case. It is just difficult to bring an anticipatory relief suit.

As I point out, we do have additional authority and have exercised it, the rulemaking authority.

Senator INOUE. It says you have the authority, the legal authority to prevent.

Mr. KRATTENMAKER. Yes, sir; it does.

Senator INOUE. This is something—you are a very important witness here, believe me.

Our staff has gone through the lawbooks, and we have noted especially in the Federal Trade Commission Act several sections, primarily section 5, which make it very clear that we do have in our Government an agency with appropriate authority to make necessary rules and regulations to regulate some of the activities of those in the travel industry.

Mr. KRATTENMAKER. Yes, sir.

Senator INOUE. Therefore it comes to me as a surprise when you have issued this as an official statement suggesting that the Commission was unaware of the 3,000 plus people who were stranded in 1970, and these who were stranded this summer.

If you picked up the Washington Post this past summer or the Evening Star or the Washington Daily News or the New York Times or the Wall Street Journal or any one of these papers that are readily available in this area, I am certain you would have noted on page 1 or the travel section about some of the problems we are having.

Mr. KRATTENMAKER. I am sorry. I didn't mean to state or imply that we were unaware of it. The fact of the matter is we don't have formal investigation proceeding into it.

Senator INOUE. In other words, someone must officially come to you and say, I am one of the strandeers before you investigate?

Mr. KRATTENMAKER. No, sir; that is not right. What I mean is that we don't require a complainant in order to begin.

Senator INOUE. Then you are not carrying out the mandate of the law where it says you will prevent deceptive advertising.

I am asking this because I have some concern that we will set up, if we are successful, a new law creating a new agency to hopefully protect the public. And 5 years from now we may be having a similar hearing and the agency will be before us and say, yes in section so-and-so you have given us authority but no one has complained so we haven't investigated.

Mr. KRATTENMAKER. I see. I didn't mean to say we are not doing anything because no one has complained. The recent revitalization of the FTC, as you well know, was preceded by reports by study groups headed by Ralph Nader and subsequently by the American Bar Association.

Both of these were very severely critical in that we were criticized for using the mailbag approach, waiting for complaints. In spite of this situation, though, we haven't initiated any rulemaking procedures

or any formal complaint actions against the people who perpetrated the acts or to promulgate general rules for the industry.

I might say that really there are probably several reasons for that, Mr. Chairman. I think it would be unfair to say that the Commission, the five Commissioners made what could be called a programmatic decision to abstain from this area. Certainly, they are in the process of attempting to engage in more comprehensive and informed policy planning and direction of the staff, but simply haven't been able to touch all bases at once in light of the changes that have occurred at the Commission in the past years. More thought has been given to those problems in the Bureau than probably what appears, Mr. Chairman.

As you and I both know, we cannot fulfill the plain meaning of the statutory mandate. You cannot prevent all unfair or deceptive acts with a \$20 million a year budget. Nobody could do that.

I think the fact that we have not any formal investigations going, therefore, is not a reflection that we think the problem is not there or is unimportant, but that as a matter of relative priority that is where we come out at this time.

That may be a mistake in judgment. If it would help, I could give you several factors that have influenced my thinking in it, but frankly, I don't think it would be fair to say I would be summarizing the Commission's—

Senator INOUE. I am glad you brought up the word "priority." I have a question relating to priorities. I don't expect the Commission to prevent all of the abuses, but would it be unreasonable to request the Commission to prevent at least one?

Mr. KRATTENMAKER. No, sir.

Senator INOUE. Well, we have received testimony from other Government agencies clearly indicating that we should with good reason anticipate the repeat of what happened in 1970 and 1971 where we had affinity tour groups, so-called study groups, study tours, where thousands of Americans were once again defrauded. Now, you know about it now.

Mr. KRATTENMAKER. Yes, sir.

Senator INOUE. Will you conduct a study of this or isn't this important enough?

Mr. KRATTENMAKER. Certainly, we will. I am frankly worried about our remedial authority at present. We have never tested our ability to impose licenses and so on—

Senator INOUE. Right now I gather that you are studying or investigating several tour agencies who are providing package tours?

Mr. KRATTENMAKER. Yes, sir.

Senator INOUE. Isn't that right?

Mr. KRATTENMAKER. Yes, sir.

Senator INOUE. And you feel that this is important? But how did you determine that the investigation in this specific area of package tours was a bit more appropriate or have higher priority than false advertising which falls directly in your jurisdiction?

Mr. KRATTENMAKER. Yes, sir.

Senator INOUE. False and deceptive advertising.

Mr. KRATTENMAKER. This is related to the stranding problem because the investigations that are going on also have advertising of a

different sort. That is, the description of the accommodations and the claim that they don't measure up in fact.

The differences are slight, but maybe they illustrate where our current remedial authority falls short. One is that the people who are under investigation are established tour agencies. As you pointed out in your introductory statements of the bill, so far the people who have been involved in the stranding problem seem to be fly-by-night people.

Oftentimes the problem comes up where it is somebody who is not really a businessman arranging the tour—he shouldn't be described as a fly-by-night operator but—

Senator INOUE. Say he is a fly-by-night operator and you were made aware of this through the Washington Daily News. Take that example. You have been told by this committee and we will show you later examples of what we consider to be deceptive and fraudulent advertising. Would you now conduct an investigation even after the fact?

What concerns me is why didn't the Commission find it necessary to at least inquire into the operations of this World Academy Tours? Everyone else seems to be concerned. We have a bill introduced; we are going to have a large number of witnesses, and your Commission now has direct authority under the law. And yet you come before us and say that you don't know anything about it.

Mr. KRATTENMAKER. First of all, I have to say that insofar as I speak for the Commissioners, I simply don't know why the staff weren't given a directive to investigate this particular agency, or to open a formal investigation.

In terms of staff thinking about it the first thing we will do is study the record of these hearings and try to make resource allocation judgments in light of that—but our thinking was in addition to the fact we were apparently dealing with fly-by-night operators, someone to whom a cease and desist order was not likely to protect in the future—

Senator INOUE. I grant you this is a fly-by-night operator. He makes a few deals and gets out. Why can't you expose this? Why can't you study this so that the unknowing public would be made aware that the agency that has a fancy title does not mean that it is legitimate? Read the fine print. I think this is a responsibility of the Commission. It is a very important Commission. You ought to protect us.

Mr. KRATTENMAKER. Absolutely. I couldn't agree more. However, it is a matter of priority.

At this point we are talking about an investigation designed to lead to enhanced consumer awareness of how they can protect themselves and the difficulties with these organizations.

Frankly, when you line it up against our other law enforcement responsibilities, I would think that we couldn't by the fact of having an investigation gain that much more publicity than has been given to this by Newsweek magazine, the New York Times, by your committee's hearings, and so on.

In other words, the purpose of the investigation is to expose, alert consumers—and I agree personally that that is a fully appropriate role for the Commission occasionally to play—I think—

Senator INOUE. That is an unfortunate argument that you are putting up that although the law mandates certain responsibilities, you would wish to delegate it to the U.S. Senate, to Time magazine, Newsweek.

Mr. KRATTENMAKER. No, sir; but only to exercise it in light of what they have done.

Senator INOUE. I think we ought to make the record clear and take away section 5.

Mr. KRATTENMAKER. Please don't do that.

Senator INOUE. As I say, you are a very important witness because I would hate to be an author of a measure which becomes a law to find that in later years that it is a nice piece of paper, like section 5 of the Federal Trade Commission Act.

Mr. KRATTENMAKER. I don't think section 5 is a piece of paper.

Senator INOUE. As far as 3,200 strandeers are concerned it was a nice piece of paper.

Mr. KRATTENMAKER. Yes, sir.

Senator INOUE. So I am not being argumentative with you personally, but we have been quite disturbed with the attitude of the Commission in this specific area.

Mr. KRATTENMAKER. I can only say personally—I am sorry that has been the case. I do think that it is not a matter of indifference, Mr. Chairman, but a matter of determination that there were other matters where we could be more effective for more people.

I think we are small enough that the fact that we have not done something about a practice honestly can't be said to reflect indifference. I think the fact that we have these investigations going on, although they are in a different aspect of the industry, shows that we are by no means indifferent to the practices of the industry.

I described in the statement what my job is, and quite frankly this is the exact problem I deal with on a daily basis. It is very distressing to confront problems where I think the Commission could make a contribution and there is nobody to work on it.

We have one lawyer for every 2 million people in this country.

Senator INOUE. It is unfortunate that it comes necessary for this Congress to suggest legislation like the bill being considered at this time in view of the fact that we do have provisions in our law today, that if properly applied and executed, could prevent some of the problems that we are facing. But I realize that your workload is immense.

Mr. KRATTENMAKER. That is certainly no answer, Mr. Chairman, I understand that.

Senator INOUE. We will try to share that with a new agency. But you should know that when these things happen, when mandated authority is slowly taken away from you, you may find in a few years that the total authority is taken away from you.

Mr. KRATTENMAKER. Yes, sir, I understand that.

Senator INOUE. The Commission is desirous of continuing its existence, it should not delegate its duties to the Senate or Mr. Nader or Time magazine or to Newsweek.

Mr. KRATTENMAKER. No, I agree. And we certainly, as I say, we certainly make every effort not to, and maybe there is not much more that I can say, except that we are making every effort to be as responsibly active as we possibly can. I really think that is an honest representation to you, and it may be, Mr. Chairman, that we made a mistake in not giving high priority to this matter and if so, certainly, I am going to give it further study.

Senator INOUE. I would appreciate it if the FTC would just look over this problem and give it another consideration.

Mr. KRATTENMAKER. I can assure you of that, absolutely.

Senator INOUE. I thank you very much for your contribution, Mr. Krattenmaker.

Senator INOUE. Our next witness is the Deputy Assistant Secretary for Tourism, Department of Commerce, Mr. James Hamilton.

The secretary will show that the vote is proceeding at this time but the Chair considers the plight of strandeers to be sufficiently important so that the Senate records will show that I was absent.

STATEMENT OF JAMES L. HAMILTON, DEPUTY ASSISTANT SECRETARY FOR TOURISM, DEPARTMENT OF COMMERCE

Mr. HAMILTON. Thank you, Mr. Chairman.

I believe you have already discussed this bill with Assistant Secretary Washburn and I have talked with him this morning. He is in Dallas. His interest is such that he would have been here himself, as you know, sir, if he was in town.

In his absence, I thank you, Mr. Chairman, for the opportunity of commenting on S. 2577 and to provide the subcommittee with the position of the U.S. Travel Service.

S. 2577 would establish in the Department of Transportation a Bureau of Travel Agents Registration with the authority to regulate the travel agency industry by licensing those who engage in the business of conducting a travel agency. The bill apparently has grown out of certain widely publicized instances where travelers from the United States, usually younger travelers, have been stranded abroad because of the failure by travel agents to meet their contractual obligations.

Under the International Travel Act of 1961, the U.S. Travel Service is vested with the responsibility to promote the understanding and appreciation of the United States by encouraging foreign residents to visit the United States for the purpose of study, culture, recreation, business, and other activities.

Although our activities are not directly related to the problem which S. 2577 is apparently aimed at; that is, U.S. travelers stranded abroad, we are familiar with many of the problems of the U.S. tourism industry and are concerned that the action of a few irresponsible and unethical travel agents may cause a decline of confidence in the travel trade as a whole.

The tourism industry of today ranges far beyond the traditional concepts of simply providing transportation arrangements; rather, today's "travel agent" books hotel space, makes car rental reservations, provides theater tickets, arranges for interpreter services, contracts for sightseeing tours, and performs a myriad of functions which go far beyond the furnishing of transportation.

In fact, these corollary services constitute not only an important aspect of his dealings with the public, but are also an ever-growing source of his income. Furthermore, with the advent of packaged tours, a whole new class of so-called tour wholesalers or tour operators, which may never sell an individual airline or steamship ticket, have come into being.

We are concerned about the problems that have occurred with travelers being stranded abroad, but without going into the details of the proposed legislation we think that it might be more extensive than is needed to correct the problem. We in the administration are

examining various possible courses of action and suggest that the subcommittee may wish to consider such possibilities as increased regulation by the CAB, industry self-regulation, and mandatory bonding of all travel agents as methods to control the problem.

At this time we are not sufficiently knowledgeable as to the possible advantages and disadvantages of the above so as to endorse them and we would welcome exploration of these and other possible solutions by the subcommittee.

Finally, we wish to call two somewhat technical points to the attention of the subcommittee. First, we note that the bill would establish a regulatory system of registration of travel agents by amending the International Travel Act of 1961. If there is to be Federal regulation, we are of the opinion that its solution should not be effected by an amendment to the Travel Act.

The reason for this is that the International Travel Act of 1961 is basically a promotional statute to encourage foreign residents to visit the United States. We believe it would be unwise to combine an essentially promotional mandate with a regulatory function, and therefore recommend that any statutory action not be made by amendment to the International Travel Act of 1961.

Second, we note that the bill provides for the regulation of travel agents by the Department of Transportation. If there is to be a new program for Federal regulation of travel agents, it may be that another Federal agency would be more appropriate to administer the program, and we suggest that at this time the decision as to the agency to act in this area be deferred.

Senator INOUE. Thank you very much.

What agency would you suggest as being more appropriate?

Mr. HAMILTON. There has been much discussion already this morning with regard to agencies that might have existing authority to act in this area. As we said in our statement, we have not fully explored the advantages or disadvantages of existing authority being focused on the problem. But there may exist authority which could be used to correct this problem that faces our traveling public.

Senator INOUE. You brought up a very pertinent point. I quote here "that the actions of a few irresponsible and unethical travel agents may cause a decline of confidence in the travel trade as a whole." This is a very important observation. It is within the general mandate of your organization to see that the confidence of the public be uplifted in the trade and anything that endangers this confidence should be of concern to you.

We have felt, if letters mean anything, that the problems we have seen in the summers of 1970 and 1971, that these problems cause a decline in confidence in the travel trade.

Mr. HAMILTON. Yes, sir.

Senator INOUE. Which moved us to introduce this measure.

As I indicated in my opening remarks, we are not wedded to any provision. It is a vehicle that we hope would serve here as a means to discuss and hopefully come up with legislation.

Mr. HAMILTON. We wholeheartedly support that effort. I think that while we all share the concern that the travel agent industry as a whole should be cleared, if that is the proper word, in the eyes of the public from the actions of a few, at the same time I think if we take remedial action to try to protect the public from the actions of a few,

we should do it in such a manner that would not handicap or cause the vast majority of honest agents more difficulties in carrying out their important responsibilities than they now have to work with.

Senator INOUE. It just happens that this measure—and I should make it public—was conceived by a travel organization, the American Society for Travel Agents. It is not an official document of that society, but responsible members of that organization after much study drafted this and requested consideration by the subcommittee.

I decided that the events of the past two summers justified introduction of this measure, and justified serious consideration. That is why we are here today.

Now, you have suggested that there are provisions in our existing laws and there is authority vested in existing agencies which should be sufficient to protect the interests of our traveling Americans. I agree with you. But the history shows that their interests were not protected.

We could have hearings every fall after the fiasco of the summer is concluded; we can have hearings again in the fall to say this is what happened in the summer of 1972, and the summer of 1973, but it will not help your agency. It will make some of the most important members of the industry, the travel agents, look bad.

Mr. HAMILTON. That we would like to certainly prevent. It is my understanding that in Sydney the ASTA convention did endorse your efforts to bring this problem to the attention of the various Federal agencies that could possibly have some authority to bring about a solution to the problem.

I think one of the—you wrote a letter to Mr. Washburn, Mr. Chairman, to the effect that hopefully through the conduct of this subcommittee hearing, proper attention would be focused on this problem so that possibly the industry itself could take corrective action or that those agencies within the Federal establishment that have the authority to act in this area might take another look at their programs to see what they could do to help alleviate the situation.

Senator INOUE. My final question: I am certain your agency was aware of some of the problems we faced in Europe during the summer of 1970 and 1971.

Mr. HAMILTON. Yes, sir.

Senator INOUE. Did you communicate your concern to the FTC or to the CAB? Or to the Attorney General's Office?

Mr. HAMILTON. I do not think we officially communicated those concerns. I think we should have. Since that time, probably as a result of this bill, we have talked with some of those agencies and I think this is the value of this bill. This does initiate discussions and it does focus attention on the problem. Hopefully, if there is existing authority of a regulatory nature it can be exercised to relieve the problem.

Senator INOUE. I would prefer to have the industry regulate itself. I somehow feel that they are regulated enough. All of us have too many numbers. We have social security numbers, area code numbers, military numbers, and I hate to add another number, a certification number for travel agents. But if these problems continue to persist, this committee might be compelled to take legislative action to assist some of our constituents.

Your statements this morning have been most helpful, and may I say once again for the record that I am pleased in my working relationship with your office and with your superior, Mr. Washburn. I wish to commend him for the good work he is doing to bring about a greater balance in the tourist business. We have a long ways to go, but I think of all the areas of bringing about a balance in our trade balance, tourism has the greatest potential.

Mr. HAMILTON. Thank you, Mr. Chairman.

Senator INOUE. Thank you very much, sir.

Senator INOUE. We will take a short recess while we wait the arrival of Chairman Browne. He is at another hearing.

(Recess.)

Senator INOUE. Our final witness this morning is chairman of the Civil Aeronautics Board, the Honorable Secor Browne. I welcome you to the committee, sir.

STATEMENT OF HON. SECOR BROWNE, CHAIRMAN, CIVIL AERONAUTICS BOARD

Senator INOUE. Because of the unforeseen problems brought about by scheduling of hearings and such as I indicated to you in private, Mr. Browne, if it is your wish we will be very pleased to receive your testimony and make that part of the record.

Also we will place in the record the excellent memo that you have prepared for use of this committee describing some of the problems and duties of your agency.

We will submit to you in writing several questions, many of a very technical nature, which we hope will be responded to by you. Since this is an open meeting our questions and your responses, if requested, will be made available to the public. In any event, they will be published as part of the hearing record.

Mr. BROWNE. Thank you, Mr. Chairman. On behalf of my colleagues and staff of the Board, we thank you for your very kind words. The Board is fortunate in its staff and I am fortunate to work with them, and I am proud of the job that they have tried to do for you and the committee.

I would like to put my statement into the record without reading it and we will respond to your questions, or I will read the statement as you desire.

Senator INOUE. I will accept your statement as though read and it will be made a part of the record, sir, without objection. And I thank you very much, and we will submit to you this afternoon written questions.

Mr. BROWNE. Thank you.

Senator INOUE. Thank you very much.

(The material referred to follows:)

STATEMENT OF HON. SECOR BROWNE, CHAIRMAN OF THE CIVIL AERONAUTICS BOARD

Mr. Chairman and Members of the Committee:

The Board appreciates the opportunity to discuss S. 2577, a bill which would create a comprehensive Federal regulation of the travel agency industry. The question of how best to regulate the travel agency industry surely needs discussion, and I am submitting a separate statement for the record that outlines the relationship between the traveling public, the travel agency industry and the Board, insofar as air transportation is concerned. In my testimony today, I will

touch on what seems to us to be the crucial points and deal particularly with strandings of U.S. passengers abroad, a subject in which the Committee has expressed particular interest.

Strandings began to be a significant problem in the summer of 1969 and have grown over the past two years. Most of the strandings take place in London during the months of August and September and involve students. In 1970, the principal cause for the strandings was the financial failure of World Academy Tours, an organization sponsoring study group tours abroad. This past summer the strandings generally were the result of activities that were in clear violation of Board rules.

Two organizations, the American Union of Students and the University Students Association, were created, but in name only. Persons purporting to be representatives of these groups then chartered a considerable number of flights on a number of different carriers. According to reports reaching us, all of those carriers were recently licensed foreign flag charter airlines. No U.S. scheduled or supplemental carrier was involved. Advertisements were placed in major newspapers telling of transatlantic transportation at a very low fares. A prospective passenger responding to the advertisements was asked to sign an affidavit that he had been a member of the American Union of Students or the University Students Association for more than six months. Those affidavits were in all cases absolutely false, of course, and it appears fair to say that most if not all of the passengers knew this to be so.

For the advertised round-trip fare, the passenger then got a ticket on a flight from New York to London, plus a voucher that the passenger was told to exchange for a London-New York ticket at a given location abroad. The ticket to London worked out all right, but the return voucher was worthless. In London, worried passengers were told by the carrier that took them there that it had been paid only for one-way transportation. As a result, the passengers could have been very much out of luck. Fortunately, Pan American, Overseas National Airlines, TWA, and National Airlines offered to take the strandeers back to the United States either at no charge or at reduced rates. The Board authorized them to do so in an order issued late in August, and ultimately several thousand passengers were returned to the United States under that exemption authority.

Mr. Chairman, the money lost by those stranded passengers, and what we think is more important, the anguish and inconvenience they must have suffered, are deeply troubling. But in the Board's view, the bill being considered by the Committee is not the answer to the problem. We have two reasons for that position. One is that S. 2577 probably would not be effective in preventing the kinds of strandings that happened last summer. The important point here is that the activities of the organizers of the University Students Association and the American Union of Students were clearly illegal under the Board's rules and under the Federal Aviation Act. Persons willing to violate the Federal Aviation Act would be just as willing to violate travel agent registration legislation.

The second reason is that we think we will be able to make sure that there will not be a repetition of this year's kind of strandings. This is primarily because the Board will be acting on several fronts. For instance, one of the things we are actively considering now is a requirement that when a carrier is asked to provide one-way charter transportation, before the charter can be accepted the carrier must make sure that the participants will have some sort of return transportation to the United States.

Another approach we are considering focuses on the fact that most of the strandings have involved students. Under this plan, organizers of student charters would be required to obtain authorization from school officials and to place all the advance payments they receive in an escrow account. Carriers would not be permitted to accept student charters until they were assured these requirements had been met.

Finally, the Board will, of course, undertake enforcement action if the facts show that the carriers that provided the one-way transportation knew or should have known that the charters violated Board regulations.

The Board has prevented repetition of earlier kinds of strandings through the adoption of new regulations as the need arose. Thus, Board regulations establishing a variety of reporting and escrow or bonding requirements for study group charters largely preclude recurrence of strandings like the ones caused in 1970 by World Academy's insolvency. We think we can have the same success in preventing the kinds of circumstances that led to the 1971 strandings.

We cannot guarantee that there will not be any more strandings, of course. It probably will always be possible for the unwary to suffer at the hands of a scoundrel. But I assure you that the Board has the power to deal with the problem, and will deal with it.

I would now like to turn to a different kind of problem. This involves the impact of bankruptcy of tour wholesalers. Tour wholesalers are persons who put together a package consisting of hotel and other land accommodations, plus the transportation there and back. They sell the tours through retail travel agents or to the public directly.

Mainly because of Board rules on the subject and interairline agreements that the Board has approved, the bankruptcy of a tour wholesaler generally will not affect a prospective passenger's rights to the air transportation he paid for; but a bankruptcy of that kind can easily result in the loss of money paid out for hotel reservations and other land accommodations. In addition, bankruptcies of tour wholesalers can cause severe losses to the retail travel agents with whom the wholesalers did business.

One possible means of dealing with this kind of problem is to require escrow arrangements under which tour wholesalers could use the advance payments they receive from customers only to pay for the transportation and accommodations that their customers want reserved.

We are looking into the matter further to determine whether we can solve it without the need for new legislation.

One final point, before I conclude. The Board's interest is limited to air transportation, of course, and Congress, with its broader concerns, may determine that legislation providing for the licensing of travel agents is in order. In that event, we have two recommendations about the language of the legislation.

First, in past proceedings before the Board, we have had occasion to consider whether entry into the travel agent business ought to be artificially restricted. We concluded that it should *not* be. No facts have been brought to our attention to lead us to change our views. Accordingly, the Board would recommend that the "useful public service" requirement of S. 2577 be deleted in favor of some standard that could not be used to restrict the entry of fit applicants into the industry.

Secondly, we strongly urge that the language of any proposed legislation make it clear that there is no intention to lessen the scope of the Board's jurisdiction. The Board has undertaken a variety of actions that have as their purpose the protection of the public in its dealings with persons that S. 2577 would define as travel agents. We think that those actions have served their intended purpose well, and that the public could be hurt by new legislation that could be interpreted as withdrawing existing Board authority in the area.

STATEMENT OF THE CIVIL AERONAUTICS BOARD ON REGULATION OF TRAVEL AGENTS
PURSUANT TO A REQUEST FROM THE CHAIRMAN, SUBCOMMITTEE ON FOREIGN
COMMERCE AND TOURISM OF THE COMMITTEE ON COMMERCE, U.S. SENATE

INTRODUCTION

The Chairman, Subcommittee on Foreign Commerce and Tourism of the Committee on Commerce, United States Senate, has advised the Board that the Subcommittee intends to explore the trade practices and related activities of all segments of the travel agency industry, in order to determine what, if any, legislation is necessary. In that regard, the Board was asked to discuss the nature of travel agency related problems that have caused injury to the traveling public, with particular emphasis on strandings and similar incidents; the existing authority of the Board to remedy them; what specific actions the Board has taken, or contemplates taking, in this area; and to what extent S. 2577 or other legislation would protect the traveling public.

Very briefly, it is the Board's position that S. 2577 is not needed to prevent overseas strandings, and, as a remedy to problems stemming from travel agent insolvencies, is overly broad.

The purpose of this statement is to discuss why the Board has taken this position, and to respond to the important and broad-ranging interests and questions of the Subcommittee.

THE BASES OF THE BOARD'S AUTHORITY

If "travel agent" is defined broadly, as it is in S. 2577, the Board has three bases of authority to regulate the dealings of travel agents with the public. The first is specific—but limited—authority to regulate certain practices of "ticket agents." The second is the Board's broad authority over air carriers and, in turn, the air carriers' dealings with their agents. The third basis of Board authority in this area is its power to regulate "indirect air carriers."

The Board Authority Over "Ticket Agents"

The Federal Aviation Act nowhere refers specifically to travel agents. However, under a 1952 amendment to the Federal Aviation Act, the Board is empowered to take action against any "ticket agent" who "has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof." (The Federal Aviation Act's definition of "ticket agent" is similar to S. 2577's definition of "travel agent.")

The same 1952 amendment to the Federal Aviation Act also made it a crime for any ticket agent to grant any rebate.

Except for those provisions, the Federal Aviation Act does not refer to ticket agents.

Board Authority Over Airlines

To the extent that a travel agent acts as an agent of an air carrier, the travel agent's actions can be attributed to the carrier. If that travel agent takes actions that are forbidden to air carriers, the Board can proceed against the airline, for the acts of its agent, and against the travel agent, as an agent of the carrier.

In addition, the Board has jurisdiction over agreements between air carriers. Under that authority, the Board has investigated and, upon certain conditions, approved agreements between air carriers relating to travel agents. There are two basic agreements in this regard. One is between the members of the International Air Transport Association. The other is between all the certificated domestic airlines that operate scheduled service. Both agreements specify in great detail the mutual obligations of the airlines, on the one hand, and travel agents, on the other. And both agreements are intended to make sure that travel agents authorized to sell tickets on the flights of the carrier parties to the agreement are financially responsible and otherwise capable of properly performing as travel agents. For instance, both agreements ensure that the finances of authorized travel agents get periodic review.

From time to time revisions in the airlines' agreements relating to travel agents are proposed by the airlines, either at their own behest or at Board urging. Currently pending amendments proposed by the domestic carriers to their agreement would alter the financial standards that travel agents must meet in order to be authorized to sell tickets on domestic flights. The Board has the matter under consideration.

Authority Over Indirect Air Carriers.

The Board has authority not only over direct air carriers (that is, companies that offer transportation on aircraft they operate), but also over persons who "indirectly" undertake to provide air transportation to the public. For instance, the Board regulates air freight forwarders under its authority over "indirect air carriers."

Air freight forwarders have their counterparts in the passenger transportation area. For example, a travel agent who undertakes to charter an aircraft for a trip, sell tickets for that trip, and assume responsibility for the performance of the trip is an indirect air carrier. The panoply of Board powers over air carriers is equally applicable to indirect air carriers, although the Federal Aviation Act authorizes the Board to relieve certain indirect air carriers from the requirements of the Federal Aviation Act to the extent that that may be in the public interest. That means, among other things, that no U.S. citizen may act as an indirect air carrier without first obtaining a certificate of public convenience and necessity authorizing him to do so, unless the Board specifically exempts the activity in question from that licensing requirement. Foreign citizens in all cases have to get foreign air carrier permits.

FINANCIAL PROTECTION ACCORDED AIRLINE PASSENGERS

Scheduled Service

As noted earlier, pursuant to inter-airline agreements that have been approved by the Board, only travel agents that have passed muster under a series of financial and other standards can be authorized by a scheduled carrier to sell transportation on the carrier's flights. For that reason alone, a prospective passenger buying a ticket on a scheduled flight from a travel agent can be reasonably assured that the travel agent will perform as he promises.

Further, since a travel agent acts as an agent of the carrier when he accepts a payment for an airline ticket, the passenger can consider the payment to the travel agent for all practical purposes as payment to the carrier. Thus, even should the travel agent fail to pass the passenger's payment on to the carrier, the carrier nonetheless would be obligated to provide the transportation service the passenger paid for.

That is not necessarily the case in regard to land arrangements. That is, if the travel agent fails to make payment to a hotel, the passenger who had paid the agent for the hotel booking might not get it and would have to proceed against the agent upon return home. But to reiterate, the agents of scheduled carriers do go through a selection process, so that the chances of this sort of circumstance occurring are reasonably small.

Charter Service

The Board has authorized air carriers to provide a variety of types of charter transportation. We need focus here on only three types of charters: "inclusive tour"; "study group"; and affinity group.

Inclusive Tour. Any citizen of the United States, other than certain air carriers, is authorized, under specified conditions, to act as a "tour operator" for the purposes of selling "inclusive tours" to the public. The regulations defining an inclusive tour are detailed, but basically an inclusive tour involves round-trip transportation aboard a supplemental or foreign charter air carrier, together with hotel and other land accommodations at a minimum of three places other than the point of origin. The tour operator has to charter the entire aircraft. (A tour operator is an indirect air carrier, but by Board regulation is exempted from the Federal Aviation Act's economic regulation provisions to the extent he adheres to the inclusive tour requirements.)

With the protection of tour participants very much in mind, the Board's regulations provide that tour operators must submit tour prospectuses to the Board prior to selling the tour. In addition, tour operators must furnish surety bonds in an amount up to three times the charter price for the air transportation (depending upon the length of the tour), or undertake other plans, including escrow arrangements, that would offer comparable security for the tour participants.

The financial protection accorded participants in inclusive tours, in other words, is fairly complete. And indeed, the Board has received no complaints of strandings or other such difficulties from inclusive tour participants.

Study Group Charters. Any U.S. citizen, other than direct air carriers, can undertake to sell "study group charter" arrangements to the public. But the "study group charterer" must adhere to the Board rules that closely regulate such charters.

A study group (other than one operated by a U.S. educational institution) means a group composed solely of *bona fide* participants in a formal academic course of study at a foreign educational institution lasting at least four weeks, with certain other restrictions. The operator charters an aircraft, and sells to the participants a package that include round-trip transportation, tuition, sleeping accommodations, and at least two meals per day. (Again, a study group charterer operating in accordance with Board rules is an indirect air carrier exempted by Board regulation from the economic regulation requirements of the Federal Aviation Act.)

Among the various Board rules intended to assure, to the maximum practicable extent, that study group charter participants get what they pay for, perhaps the most important is a bonding requirement by which the study group charterer must furnish a surety bond of three times the charter price for the air transportation, or undertake a combination of bonding and escrow arrangements providing comparable protection.

As will be discussed later, prior to the adoption in May 1971 of the study group regulations here described, a number of study group participants found that land

accommodations they had paid the charterer for were not forthcoming due to a major charterer's sudden insolvency. (The round-trip air transportation had been paid for by the charterer, and was provided by the carrier.) The 1971 regulations are intended to prevent such inconveniences to passengers in the future.

The Board has not heard of any strandings in regard to study group charters since the new rules became effective.

Affinity Group Charters. A carrier authorized to operate charter flights may charter, on a pro rata basis, an aircraft or a substantial part of one (at least 40 seats) to a club, association or other organization (*i.e.*, affinity group) that meets various Board requirements. Members of, say, a local Kiwanis Club, bar association, or fraternal organization, or a group made up of persons employed at one factory or in a government agency, would qualify. (Pro rata basis means that the cost of the charter is divided equally among the passengers transported.)

The organization then may offer transportation on the chartered flights to its *bona fide* members and their immediate families, but cannot do so in such a way that the offer amounts to a solicitation of the general public.

Affinity group charters are often arranged through travel agents. Typically the travel agent suggests a tour abroad to a group. If the group finds the suggestion attractive, the agent arranges the land accommodations, and brings the group and a carrier together. In such cases the travel agent gets a commission from the air carrier.

In affinity group charter situations, the relations between the travel agent and the group, and between the travel agent and the carrier, are regulated in a number of ways. First of all, the regulations ensure that a group's payment for a charter flight to a travel agent who in turn is getting a commission from the carrier must be treated by the carrier as payment to it. Thus, should the travel agent fail to turn over the group's payment to the carrier, the carrier would nonetheless be required to provide the transportation (Board regulations do not cover payment by the group to the travel agent in regard to land arrangements because the travel agent is not an agent of the carrier for these purposes.)

Board regulations also cover, among other things, the contract between the carrier and the group, the contract between the carrier and the travel agent, and prohibit carriers from treating travel agents as agents of groups in the groups' contractual arrangements with the carrier.

SPECIFIC PROBLEMS ARISING FROM "TRAVEL AGENT" DEFAULT

Strandings of U.S. Citizens Abroad, 1967-1971

1971. Perhaps 1,500 or 2,000 of the strandings in Europe in 1971 involved participants in charters arranged by the "American Union of Students" (AUS) and the "University Students Association" (USA). Both AUS and USA sold what they claimed was round-trip charter transportation to members of the general public, and placed advertisements in newspapers to that effect. Prospective passengers answering the ads were asked to sign affidavits that falsely stated that such passengers had been members of AUS or USA for more than six months.

Persons purchasing tickets from AUS and USA were given a New York-London ticket and a voucher the passengers were told was to be exchanged in London for a ticket to the United States. The flights to London were operated. Insofar as the Board is aware, all those flights were by recently licensed foreign charter carriers. However, the vouchers turned out to be worthless because, according to the carriers concerned, AUS and USA had paid the carriers only for one-way transportation (even though the passengers had paid the round-trip price to AUS and USA).

Pan American, Overseas National Airlines, and TWA offered to carry strandeers back to the United States at no charge or at reduced rates. The Board authorized the three carriers to do so in Order 71-8-127.

Insolvency apparently has shut AUS's doors. According to one report, the operators of USA simply absconded.

A somewhat similar situation involving Associated Cultural Clubs, Inc. (ACCI) resulted in the strandings of another 200 passengers in London. ACCI purports to be a charter worthy affinity group, but is not. The principal of ACCI, Miss Rita Bopp, was sued under section 1007 of the Federal Aviation Act and under the provisions of a California statute for, among other things, operating as an indirect air carrier without authority to do so. On the motion of the State Attorney General, a court impounded Miss Bopp's funds in order to insure that Miss Bopp could make appropriate refunds where required to do so. According to Miss Bopp

that prevented her from paying a charter carrier for the flight from Great Britain to the United States.

We believe that the ACCI strandeers were returned to the United States under the exemption authority of the Board order noted above.

Other U.S. travelers were stranded in Accra, Ghana. It appears that the strandings resulted from a travel agent charging charter passengers for round-trip transportation, but paying the charter carrier for a one-way trip only. That group reportedly was returned to the United States by a foreign carrier, Pom Air.

The foregoing are the only specific situations of which the Board is aware that resulted in strandings. However, the Board recently contacted various U.S. Embassies abroad for information on strandings. Those Embassies gave the following counts of stranded U.S. citizens during 1971:

	<i>Passengers</i>
Athens -----	26
Bonn -----	5
Brussels -----	35
The Hague -----	20
London -----	1,500-2,000
Paris -----	120
Rome -----	100-300

U.S. carriers provided the following figures on strandeers they carried to the United States pursuant to Board exemption orders:

<i>Carrier:</i>	<i>Approximate number of passengers</i>
Pan American -----	¹ 4,000
TWA -----	225
National -----	3
Overseas National -----	50

¹In view of the discrepancy between the known numbers of persons stranded as a result of the activities of AUS and USA on the one hand, and Pan American's figures, on the other, it appears that considerable numbers of persons to whom the Board's exemption order was not applicable nonetheless may have been returned to the United States at the terms authorized in the order.

1970. In the summer of 1970, a study tour operator named World Academy went bankrupt. At the time, 3,371 participants in World Academy study tours were overseas. Although World Academy had paid the carrier for round-trip transportation, it had not paid for land arrangements. As a result, many of the participants had no means by which to live abroad between the time they arrived and the date on which they were to be accorded transportation back to the United States. Fortunately, Capitol International Airways, the carrier that had contracted to provide the transportation, provided early transportation back to the United States to those participants who could not stay the full term. Another 2,000 persons in the United States had paid World Academy for charters to Europe, but received no part of their trip.

The following are 1970 Embassy figures on strandings:

	<i>Passengers</i>
Athens -----	169
Brussels -----	59
London -----	800-1,200
Paris -----	350

1969. When International Tours, a California tour operator, filed for bankruptcy, several hundred passengers were stranded in Hawaii without return transportation to the mainland. Many others lost deposits and payments in a combined amount estimated at nearly \$1,000,000. The owner of the company left the country.

It is our understanding that United Air Lines provided free transportation back to the mainland for many of the persons stranded in Hawaii as a result of the bankruptcy.

The Board has received the following figures from European Embassies for 1969 strandings:

	<i>Passengers</i>
Brussels -----	3
London -----	600
Paris -----	75
Rome -----	100-200

1968. Capitol International Airways (a charter carrier) failed to provide return transportation to the U.S. from the Bahamas for 142 passengers as contracted. A formal complaint was filed by the Board's Bureau of Enforcement and a Cease and Desist Order issued on December 4, 1968 restraining the carrier from, among other things, undertaking to provide transportation for passengers when it knows or should know that it will not have equipment available to perform such transportation.

1967. No strandings recorded.

Bankruptcies of Tour Wholesalers

We have noted with concern a number of recent business failures by wholesalers of package tours, and the resulting adverse financial effect upon air carriers, retail travel agents, and the traveling public. The wholesaler, in contrast to the inclusive tour operator, does not assemble people but instead packages air transportation and ground arrangements into a single tour for sale by air carriers and travel agents to consumers. Tour wholesalers are not indirect air carriers and generally are not subject to the Federal Aviation Act.

The problem arises in situations where the wholesaler defaults after receiving funds from the customer (through a travel agent or an air carrier) for a tour. If the wholesaler defaults before he has paid the provider of the services (such as a hotel) several persons stand to lose—the consumer, the travel retail agent and the provider of the services.

ACTIONS BEING TAKEN BY THE BOARD

Court Action. The Board has brought action against 16 individuals and organizations that the Board believes have been unlawfully acting as indirect air carriers of passengers without authorization from the Board to do so. Board investigations indicate that all 16 sold air transportation to the public through the medium of bogus affinity group charters. The case is pending in the federal district court for the Eastern District of New York.

Non-Affinity Charters.—Sometime ago the Board issued an advance notice of proposed rulemaking on the subject of non-affinity charters. Under the proposal, any 40 or more persons, whether or not they were otherwise part of a group, would be permitted to utilize pro rata charter transportation, subject to various restrictions. The major one is that the charter would have to be arranged at least six months before the date of the flight. Presumably travel agents would organize the groups, but the Board could ensure that the money paid by the participants to the travel agents would be safeguarded.

A non-affinity rule would probably make the offerings of illicit affinity group operators considerably less attractive on a comparative basis.

The Board received numerous comments in response to the advance notice, and many raise important legal, technical and policy questions. The Board currently has the matter under study.

Round-trip Requirements. The Board staff is considering the possibility of amending Board regulations to require that when a carrier is asked to provide one-way charter transportation, before the charter can be accepted the carrier must determine that the participants either will have some sort of return transportation to the United States or that they are specifically seeking one-way transportation.

Student Charter Requirements. A large percentage of strandings have involved students. With this in mind, the Board is considering requiring that organizers of student charters obtain authorization from school officials and execute an escrow agreement that would place all advance payments by the charter participants in escrow accounts. Carriers would not be permitted to accept student charters until they could determine that such requirements had in fact been met.

Escrow Requirements for Tour Wholesalers. The problems resulting from bankruptcies of tour wholesalers have no immediately obvious practicable solution. However, the Board's staff is looking into this matter in an effort to determine what the Board can do, either under existing law, or with a view toward prospective legislative recommendations.

Possibly some kind of escrow requirement will have to be considered under which payments made to tour operators would be required to be escrowed and released only to carriers or providers of ground services. As a corollary, it may be desirable to require that any advertisement for the sale of a package tour indicate that such an escrow account does or does not exist.

Of course the costs of that sort of requirement would also have to be considered, since an escrow requirement might create a serious cash flow problem for wholesalers, possibly driving the smaller ones out of business and ultimately adding the cost of the escrow arrangements to the prices of the package tours.

COMMENTS ON S. 2577

The Board's position is that the regulation of the travel agent industry contemplated by S. 2577 on the one hand goes too far, and on the other would not be effective in preventing the kind of circumstances that led to most of the strandings this past summer.

Ineffectiveness. The activities of the organizers of the charter operations that led to most of this summer's stranding were in violation of section 401 of the Federal Aviation Act and a variety of Board regulations. It seems likely that if the organizers of those charters were willing to risk prosecution under the Federal Aviation Act, they would not hesitate at violating the travel agent licensing requirements of S. 2577 as well.

As indicated earlier, we believe that the most effective way to prevent the 1971 type of strandings is to impose requirements on the carriers that would prevent them from accepting charter contracts in such circumstances. The Federal Aviation Act as it stands now gives the Board the power to do that.

The Bill goes too far. Most retail travel agents, about 7,000 in all, undergo checks of their financial stability and professional knowledge. For instance under an inter-airline agreement that has been approved by the Board, before travel agents can be authorized to sell tickets of IATA members, they must pass an IATA screening process. And domestic airlines, again under a Board approved agreement, require travel agents authorized to sell their tickets to be bonded. Bonding companies, in turn, require periodic audits of the travel agents they have bonded.

The result is that for the great majority of all retail travel agents, the screening procedures that would be established by S. 2577 would be in addition to, or a replacement for, similar existing arrangements.

Further, should it develop that the screening procedures under the existing carrier agreement are faulty in some way, the Board under its existing authority could require the carriers to make appropriate changes.

If Congress should determine that legislation such as S. 2577 is needed, the Board would recommend deletion of the requirement that in order for an applicant to enter the industry, a determination be made that the applicant will provide a "useful public service." Some years ago, in the course of proceedings involving inter-carrier agreements relating to travel agents, the Board had an opportunity to examine the question of whether entry into the travel agency industry should be artificially limited. The Board concluded that such a limitation would be contrary to the public interest. No facts have since been brought forward that would lead the Board to change that view. Accordingly, since the "useful public service" requirement could readily receive a restrictive interpretation that would prevent fit applicants from entering the travel agent industry, we believe it should be deleted.

Lastly, in order to prevent any possible ambiguity we strongly urge that in the event that Congress enacts legislation regulating travel agents, the legislation provide that no lessening of Board authority is intended. A number of provisions of the Federal Aviation Act are applicable to certain activities of travel agents. And many of the Board's charter regulations and several inter-carrier agreements on which the Board has acted relate to the activities of travel agents. We believe that Board activity in this area has served to protect the public in its dealings with travel agents, and that the public could be hurt by new legislation that could be interpreted as lessening the scope of Board authority in the area.

(The following information was subsequently received for the record:)

CIVIL AERONAUTICS BOARD,
Washington, D.C., December 17, 1971.

HON. DANIEL K. INOUE,
Chairman, Subcommittee on Foreign Commerce and Tourism, Committee on
Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to your request, there are enclosed the Board's answers to the written questions attached to your November 18 letter relating to

charters and S. 2577, providing for Federal regulation of the travel agency industry.

There also is enclosed for your information a copy of a report on the Board's enforcement activities for the Fiscal Year 1971.

If I can be of further assistance, please do not hesitate to let me know.

Sincerely,

Enclosures.

SECOR BROWNE,
Chairman.

ANSWERS OF THE CIVIL AERONAUTICS BOARD TO QUESTIONS SUBMITTED BY THE
SUBCOMMITTEE ON FOREIGN COMMERCE AND TOURISM

Question. Does the Board expect an increase in the number of illegal charters in the coming summer?

Answer. The Board has instituted enforcement measures designed to put a stop to the widespread charter violations experienced in the past few years. These measures, including systematic surveillances and investigation of suspected violations, informal efforts to achieve compliance, and formal proceedings against flagrant violations should bring about a substantial reduction in violations. There are a number of other factors that should contribute to this improvement: (i) The Board's Regulations have been clarified and amended during this year to correct misinterpretations and prevent major abuses; (ii) court actions have been brought against some of the principal offenders; (iii) the air line industry is more keenly aware of the Board's vigorous enforcement and surveillance program and is strengthening its self-policing efforts; (iv) the travelling public is being educated to avoid unreliable and unscrupulous charter operators; and (v) some foreign governments are tightening their own regulations and procedures to discourage illegal charter activities. Despite these elements, of course, new and unanticipated illegal charter schemes may arise in the future, but present indications point to a diminution of charter irregularities.

Question. Was the World Academy, Inc. which stranded a number of American students abroad in the summer of 1970 subject to the Board's jurisdiction as an indirect air carrier?

Answer. On the basis of facts now known to us, it appears that World Academy was an indirect air carrier and thus subject to the Board's jurisdiction. In 1970 the Board's regulations made no provision for indirect air carriers operating as study group charterers. While Board regulations did provide for study group charters, the regulations required that the charters were to be conducted on a pro rata basis. World Academy's charters were not. The difficulties resulting from World Academy's financial collapse, and the facts that came to light in its aftermath, led to a reexamination of the Board's study group regulations. As the Board's testimony* and Statement* note, at pages 4 and 6-7, respectively, more comprehensive regulations on study group charters were adopted in 1971.

Question. Suppose a study-tour operator takes students to Europe for a two-month study tour. They arrive without incident but at the end of the first month, they are turned out of their accommodations because the study-tour operator has failed to meet his financial commitments. Is the air carrier obligated to bring the students home one month early?

Answer. The air carrier is not so obligated.

Question. What remedies are available to the Board when they have reason to believe that a proposed charter is not "charter-worthy?" (a) Against the consolidator or charter organizer? Before and after the event? (b) Against the air carrier? Before and after the event?

Answer. When the Board has reason to believe that a proposed charter is not charterworthy, the Board has the following remedies:

(a) Before the flight, the Board's Bureau of Enforcement may seek an injunction in the federal district court against the air carrier and/or against the consolidator as defined in the answer to question 8(a), whose activities in operating such flight would constitute unauthorized air transportation in violation of section 401(a) of the Federal Aviation Act [49 U.S.C. 1371(a)]. Injunctive relief, however, requires more than "reason to believe" a flight is not charterworthy. An injunction action requires substantial admissible evidence of illegality and is not possible against a charterer or a charter flight promoter whose activities do not rise to the level of a "consolidator" as defined in the answer to question 8(a).

*The Board has submitted two documents to the subcommittee: A seven page "Statement of Secor Browne" and an 18 page "Statement of the Civil Aeronautics Board on Regulation of Travel Agents." In these answers the statement of Secor Browne will be cited as "the Board's testimony." The statement of the Civil Aeronautics Board will be referred to as "the Board Statement."

In such cases, the Bureau of Enforcement notifies the air carrier, charterer and/or consolidator of the suspected violation, requests compliance, and advises such person(s) of the remedial penalties for violations of the charter requirements, as set forth in the answer to question 25(d). In many cases such notification is sufficient and the flight is either cancelled or conformed to the charter requirements for the flight operation.

(b) After the flight, the Board's Bureau of Enforcement may seek any one or more of the sanctions set forth in the answer to question 25(d) against the air carrier, charterer and/or consolidator, if any, involved in operation of the flight. The normal course of action would involve seeking a cease and desist order and also civil penalties against the air carrier and consolidator, if any, and a cease and desist order against the charterer itself.

Question. (a) What are the Board's surety requirements for direct and indirect air carriers with respect to charters? (b) Do surety requirements extend to all carriers, foreign as well as U.S.?

Answer. (a) The Board does not have surety requirements for direct air carriers generally with regard to charters. However, the Board has adopted rules governing the U.S. supplemental air carriers to insure that their customers' charter deposits are protected. These rules become effective for a supplemental when the amount of customers' deposits for unperformed charter air transportation exceeds 25 percent of the supplemental's net worth. When this happens the supplemental must either put all such monies over 25 percent of its net worth in an escrow account, or provide a performance bond equal to that amount.

The Board has surety requirements which apply to the only two types of indirect air carriers of passengers that are presently authorized, study group charterers and inclusive tour operators. These requirements provide for either a surety bond, or a combination surety bond/depository agreement. These requirements are detailed in Appendix A hereto.

The Board has no surety requirements for indirect air carriers of cargo, i.e., air freight forwarders and cooperative shippers association.

(b) In general, no; the surety requirements are specifically applicable only to U.S. air carriers. The Board does not assert jurisdiction over foreign tour operators (ITC's) for tours originating abroad. However, such tour operators (indirect air carriers) organizing tours originating in the U.S. must obtain a permit under section 402 of the Act, and a condition in all such permits makes them subject to the security requirements of Parts 378 and 378a of the Board's ITC Regulations.

Question. (a) Does the Board know where, geographically speaking, unlawful passenger consolidator and illegal charter operations are concentrated?

(b) Can you describe the customary way these operators solicit business, i.e., the mails, the newspapers, etc.

(c) What liaison is maintained by the Board with the FTC, the U.S. Attorney, State Attorney Generals, and the industry to police abuses?

Answer. (a) Principally in New York, Los Angeles and San Francisco. However, these operations are widespread in Eastern, Midwest and Far-west areas of the United States, particularly around large urban areas or areas having sizeable student populations. Moreover, periodically the problem has shifted from one area to another.

(b) Primarily by advertising in mass media, particularly in newspapers with large circulations such as the New York Times and the Village Voice, and magazines. However, in a number of areas, Los Angeles as an example, solicitation is done predominantly by direct mail. Direct mailing is used both with mailing lists of existing organizations and with mailings to large segments of the public to promote new organizations. Finally, a substantial part of solicitation is disseminated by word of mouth.

(c) Our most fruitful liaison is with the industry itself, including both scheduled and non-scheduled carriers, travel agents, and trade associations such as the American Society of Travel Agents (ASTA), the Association of Retail Travel Agents (ARTA), NACA and ATA. Over 1000 pieces of information a year come to our attention from these sources. We do maintain liaison in New York with the Consumer Fraud Office of the State Attorney General in New York and also with the Department of Consumer Affairs of the City of New York. In Los Angeles we have had contact with the U.S. Attorney and through his office have been able to issue notices, as a public service, regarding illegal activities in charter flight operations. Also, we have had some contact with the State Attorney General's Office in California because of the recent adoption of state laws governing charter flights. The above is in addition to the contact between this Bureau and the U.S. Department of Justice in the prosecution of enforcement cases.

We have also worked closely with U.S. Postal Inspections Office in enforcement charter cases in California and New York. No continuing liaison has been maintained with FTC, but there are available channels for the exchange of information and views between the two agencies. The Port of New York Authority has also been a source of vital information concerning illegal charter activities.

Question. The term "illegal charter operation" is often used in connection with charter flights. Would you give the Committee examples of illegal charter operations?

Answer. There are three basic types of illegal charter operations. The most prevalent type is one operated as a *pro rata* affinity charter, but whose members in whole or in part are in fact not *bona fide* members (i.e., for six months) of the chartering organization. The second type is one in which the charterer is not a charterworthy organization (e.g., a phony paper organization created merely to obtain cheap charter travel). Third, in recent years illegal charter operations have also resulted from individuals or organizations acting unlawfully and without authorization as "passenger consolidators." These so-called consolidators have illegally solicited members of the general public for transatlantic charter passage, have defrauded and stranded passengers, charged excess fares, and have misrepresented organizations they created for quick money-making schemes. There are, of course, many variations and combinations of these three basic types of violations, but essentially either the members of the charter group are not eligible, the chartering group is itself uncharterworthy, or the travel organizer is acting as an indirect air carrier without authorization.

Question. (a) In connection with various types of charter flights, the term "passenger or tour consolidator" is often used. Generally, what does this mean, and are individuals who act in this capacity operating within the law and the Board regulations?

(b) How many enforcement actions have been initiated by the Board through the Bureau of Enforcement in the Federal Courts and what disposition has been made of those actions?

Answer. (a) The term "passenger consolidator" as it is generally used means a person who: (1) charters an aircraft for his own account; (2) directly solicits persons for transportation on the chartered aircraft; (3) offers to provide transportation, as a principal, on the chartered aircrafts; and (4) receives consideration from the passengers for the transportation: see Supplemental Notice of Proposed Rule Making, EDR-173C, 36 Federal Register 17655 (1971). A person who engages in activities of this nature would be an indirect air carrier within the meaning of the Federal Aviation Act (see *Id.* and pages 3-4 of the Board's Statement).

A passenger consolidator's activities would be unlawful unless they were limited to those of a "study group charterer" or "inclusive tour operator" (see below), or unless they were specifically authorized by the Board. (No such specific authority has been granted.) The Board rules which relate to "inclusive tour operators" and "study group charterers" are discussed at pages 5-7 of the Board's Statement and in the answer to question 11, below.

If the activities of a "tour consolidator" include those of a "passenger consolidator" as discussed above, and the tour consolidator did not comply with the inclusive tour or study group regulations, his activities would be unlawful.

(b) The Board's Bureau of Enforcement has been involved in four federal court actions during 1971:

1. AEROMATIC TRAVEL CORP., ET AL.

The biggest court effort in which the Bureau of Enforcement is presently involved is the "New York Consolidators" case pending before the U.S. District Court for the Eastern District of New York. This case, filed in September, involves five named organizations and eight named individual respondents against whom the Board is seeking injunctions against unauthorized indirect air carriage (consolidation of passengers). The case survived a motion to dismiss, denied November 26, 1971, but has been further complicated by the court's order to join six direct air carriers as indispensable party- respondents. After completion of various discovery procedures, a hearing will be held on whether the requested preliminary injunction should be issued.

2. KIMON MAKRIS/PETERS TOURS

The Bureau of Enforcement is presently seeking enforcement of a subpoena for production of a travel agent's books and records with respect to charter flights. The case is vital to the Board's future charter enforcement cases and is awaiting decision on appeal before the U.S. Court of Appeals for the District of Columbia.

3. ASSOCIATED CULTURAL CLUBS, ET AL.

The Bureau of Enforcement submitted an *amicus curiae* memorandum of law to the U.S. District Court for the Central District of California in support of a private plaintiff's efforts to obtain injunctive relief from the unlawful charter activities of the named respondents. A preliminary injunction has been issued.

4. ALITALIA

Although not involving charter flights, the Bureau sought an injunction against Alitalia in the U.S. District Court for the Eastern District of New York for the sale of youth fare tickets prior to the effective date of a lawfully filed tariff covering the fares. Upon respondent's commitment to discontinue the complained of activities, the court declined to issue the injunction, although finding Alitalia in violation of section 403 of the Federal Aviation Act (49 U.S.C. 1373).

Question. Suppose that a retail travel agent sells a charter tour and the air carrier is a supplemental rather than a scheduled airline. Are members of the charter group guaranteed passage on the supplemental air carrier if they have paid the travel agent, irrespective of whether he in turn has paid the air carrier?

Answer. That would depend on the facts. For example, here are two hypothetical situations:

(1) A travel agent brings a group and supplemental air carrier together in connection with a proposed charter flight. The airline contracts with the group and agrees to pay the travel agents a commission. The group pays to the travel agent the contract price for the chartered flight, but the travel agent fails to pay over that money to the carrier.

Under those circumstances, the carrier would be obligated to provide the contracted transportation to the group even though it never received any payment for the flight.

(2) A travel agent having no connection with any carrier tells a group that he will get them a charter flight on an unnamed supplemental air carrier. He has made no arrangements with any carrier in regard to such transportation. The group pays the money to the travel agent who absconds.

In that case, no carrier would be obligated to provide the transportation for which the group had paid the travel agent.

Question. (a) Assuming that the Board does not have the facilities to closely supervise charter flights, could it not require any carrier, scheduled or supplemental, to [obtain] a certificate from the representative of an affinity charter to the effect that the Board had found this group charter-worthy. The duty would be on the charter organizer to procure such a certificate from the Board pursuant to regulations which the agency would adopt.

(b) Why should not the chartering group or charter organizer of affinity charters be required to post a bond or maintain an escrow account?

Answer. (a) We believe that the Board could require each carrier to obtain prior approval from the Board on whether the participants in a pro rata charter the carrier planned to operate were members of a group that was charter-worthy. We believe that the Board could also adopt rules providing for variants of this arrangement. For instance, the carriers might not be required to get Board approval in regard to groups the Board had said were charter-worthy in response to earlier requests. Or prior approval could be required only in regard to groups having—or not having—specific characteristics.

However, the question of the authority of the Board to adopt a rule that would require any organization seeking to charter an aircraft for its members first to obtain a Board certificate involves other considerations and has not yet been fully resolved.

(b) Since we have no jurisdiction over chartering groups as such, the only way we could impose surety or escrow requirements on them would be to prohibit air carriers from chartering to any groups which did not have satisfactory bonds or escrow accounts to protect monies deposited for the flight.

The cost of obtaining a surety bond is about \$10-\$15 per year per thousand dollars. While it is not possible to accurately list the cost of an escrow account, such costs would include opening and maintaining an account, loss of the use of the monies escrowed, and loss of interest. Thus, to require a surety bond or an escrow account of a chartering group would involve an additional cost to that group, which in turn would increase the cost of the charter flight to its members. The purpose of such a bond or escrow account would be to protect the monies of charter participants. We do not believe this is necessary for legitimate chartering groups since the members of such groups know the people who will be receiving and handling their money. The real problem is with those illegal charters where the charter participant has no idea to whom he is giving his money. Thus, to require a bond or escrow account would impose an unnecessary and burdensome requirement on legitimate groups, in an attempt to solve a problem created by a minority of illegal operators. Also, we have no reason to believe that illegal operators would comply with such a requirement any more than they now comply with the Board's charter rules.

Question. (a) Under the Board's regulations, are tour operators who sell "inclusive tours" to the public required to furnish surety bonds?

(b) Does this mean that a person buying an inclusive tour package from a travel agent is completely secure in his financial arrangements for the air transportation and the ground accommodations?

(c) Would the surety requirements with respect to study group charters provide the same sort of financial security for the student?

Answer. (a) Yes; see Appendix A for details.

(b) In terms of eventually receiving money back from a canceled trip, the tour participant is basically secure. The Board's surety requirements are designed to reflect the cost of the package being sold. That is, under the pure surety option (see Appendix A, Alternative A) the longer the trip the greater the surety bond. However, there is no guarantee that all monies would be covered under this option. For instance, tour participants' payments for a trip with a high land accommodations price could exceed the total amount of the bond.

The surety bond/depository agreement option provides more security since all monies paid are escrowed and may only be paid out for expenses in connection with the actual tour.

A word of caution should be added. We are not aware of any claims that have been filed by tour participants against surety companies, and hence we have no practical information about how settlement would be made and the time involved. However, settlement would probably not be concluded in time for the tour participant to make alternative vacation plans.

(c) The surety requirements are virtually identical; see Appendix A.

Question. It has been suggested that regulations or legislation, if any, be adopted requiring an airline to provide return passage for any U.S. charter passenger carried abroad by it unless the passenger was notified before departure that he was entitled to one-way passage only. Would the Board comment on this suggestion?

Answer. Legislation along such lines would appear to be unnecessary in view of the Board's present powers under the Federal Aviation Act. For instance, we believe that the Board could prohibit carriers from performing pro rata charters to Europe unless the carriers had already received payment for the return flight back to the United States. As indicated in the Board's testimony, we have been studying this general approach.

One possible problem with the rule suggested by this question, is that in at least some cases groups apparently choose to use one carrier to take them to Europe, and another to bring them home, presumably because of aircraft availability matters or because round-trip transportation costs may in some cases be lower if two carriers are used than if one provided the transportation in both directions.

Question. (a) Should the registration provision of S. 2577 include any groups who do not arrange travel as a business, e.g., a fraternal order or ethnic club which may arrange for an affinity charter?

(b) Is the Board aware of any groups, religious or otherwise, which have income tax exempt status and arrange charter operations for their members for profit?

Answer. (a) Registration presumably would result in bonding and/or other requirements designed to protect monies paid to the chartering organization. As we explained in the answer to Question 10(b), we do not believe that this would be desirable.

(b) Yes. Entirely legitimate non-profit organizations of all kinds have engaged in these charters. Many of these organizations apparently are of the opinion that such profits are permissible so long as they are for charitable or altruistic purposes, but this is contrary to the Board's regulations.

The crucial problem has been the advertising of fixed prices instead of *pro rata* charges, thereby permitting a profit through the spread between the actual charge and the *pro rata* cost of the cost of the flight. In order to reduce the margin for realizing profits contrary to the conditions of the charter rules, conditions have been added to the regulations to require that announcements to prospective charter participants give the price per seat and state that this seat price is a *pro rata* share of the total charter cost, subject to increase or decrease depending on the number of charter participants.

Also the charter regulations now require that an official of the chartering organization warrant that all charter participants have been informed of the cost requirements of the charter regulations. Therefore, the participants are aware that profits on the charter are not permissible.

Question. The Committee has heard testimony about a stranding which occurred this summer in Accra, Ghana. Apparently it involved the default of charter arrangements made by the African Commentator Club of Accra with a German Charter Flight Organization called Air Commerz. As I understand it, the original arrangements anticipated a flight beginning at Frankfurt, Germany to bring German tourists to Accra, then load Ghanaian tourists for Germany and New York and pick up U.S. tourists in New York for travel to Accra with the return flight. This process was expected to proceed in a reverse manner on the way back, returning the tourists to their respective places of origin.

(a) Is the jurisdiction of the Board involved in this type of charter operation?

(b) Is the Board aware of many similar types of operations?

Answer. (a) The Board's authority over international flights covers the carriage by aircraft of persons or property for compensation in commerce between a place in the United States and any place outside the United States. Accordingly, the Board would have jurisdiction over the Air Commerz flight from Accra to New York, to the extent that passengers who boarded in Accra (or in Germany) were bound for the U.S., and the flight from New York to Accra. However, if all persons who had boarded at Accra ended their transportation in Germany, then the Board would not have had jurisdiction over the Accra-Germany flight, only over the Germany/New York (if there were any Germany-New York passengers) and New York/Accra flights.

(b) The operations described above, involving the carriage of different groups on return-legs and intermediate legs of charter flights are commonly conducted by United States and foreign scheduled and non-scheduled air carriers. The purpose of these operations is to make maximum efficient use of aircraft by avoiding flying empty aircraft on ferry legs. When such operations involve carriage between foreign-points, particularly by foreign-flag carriers, it is difficult for the Board to obtain full and specific information, but it is aware of these charter arrangements and attempts to monitor them whenever possible. It should be noted, however, that this type of operation does not necessarily involve strandings. Strandings are primarily the result of inadequate financing or careless scheduling, and can take place even if the type of operation described in this question is not in issue.

Question. Is it correct to say that the British government, for example, requires American supplemental carriers to file in advance documents which support the charter worthiness of any group the carrier intends to bring into Great Britain.

(a) Does the Board determine the charter worthiness of every organization that participates in a charter program?

(b) Does the Board have a requirement similar to the British government's requirement with respect to foreign supplementals conducting charter operations in the U.S.?

Answer. Although exact requirements vary by country, many countries, including Great Britain, require U.S. supplementals to obtain advance approval of all charter flights. U.S. supplementals must demonstrate to the satisfaction of the aviation authorities of the country in question that the group is constituted in ac-

cordance with the requirements of that country. The charterworthiness of the group need not be demonstrated in all cases.

(a) The Board does not generally determine the charterworthiness of groups. The Board's charter regulations provide that persons may seek an advisory opinion as to the charterworthiness of a group, but this is not required. The primary responsibility for determination of charterworthiness has been given to the air carrier performing the flight. The Board has held that the carrier has a duty to take reasonable steps to determine whether the group is eligible to charter under the Board's charter regulations.

(b) No. However, the Board does require foreign scheduled route carriers to certify to the charterworthiness of the groups carried on off-route charters (that is, charters over routes other than those for which the carrier is authorized to provide scheduled service).

Question. Assuming S. 2577 were enacted into law, should it be necessary for a travel agent who met the qualifications set by the Bureau of Travel Agents' registration to meet other qualifications in order to be appointed by the Air Traffic Conference and therefore eligible to be an agent of the carriers? Would the Board's answer to this question differ if the financial qualifications and other standards set by the Bureau of Travel Agents' registration were stricter than the qualifications for membership in the ATC?

Answer. It is our view that legislation such as S. 2577 should not impinge on the right of air carriers to enter into agreements affecting travel agents, and should leave unimpaired the Board's power under section 412 of the Federal Aviation Act to approve or disapprove such agreements in the public interest.

If it developed, for example, that the carriers' standards for the appointment of agents were less strict than those of the Bureau of Travel Agents' Registration, the carriers might choose to leave to the Bureau the administration of such qualifications. However, should the carriers feel that the Bureau's standards were inadequate, they ought to be free to adopt stricter ones. The carriers' rules, of course, would have to be evaluated by the Board under section 412 of the Act.

The present fabric of air carrier-travel agent relationships is a complex one, and is comprised only in part of resolutions directly pertaining to entry standards. Thus, the airlines also have adopted resolutions dealing with such matters as the commissions to be paid to agents, standardization of ticket stock, reporting and remittance procedures, responsibility for lost or stolen tickets, and the bonding of agents for the benefit of the carriers. Accordingly, a person's ability to act as an agent of the carriers may well continue to be affected by carrier rules on various aspects of carrier-agent relationships irrespective of whether S. 2577 is enacted.

Question. What sanctions can the Board effectively impose on a foreign supplemental carrier who violates the Board's regulations? What, if any of these sanctions, has the Board ever invoked?

Answer. The Board is empowered to impose the same penalties on a foreign supplemental carrier as on a U.S. supplemental or route air carrier. These penalties or sanctions are set forth in the answer to question 25(d). The Board has issued numerous cease and desist orders and has obtained civil penalties on nine occasions from foreign air carriers. The Bureau of Enforcement is negotiating such penalties with certain foreign supplemental carriers at this time.

The Board may also suspend or revoke any carrier's operating authority. In the case of any foreign carrier, however, supplemental or route, suspension or revocation of operating authority requires approval of the President and involves the risk of retaliation against U.S. carriers. This power has never been exercised.

Finally, it should be noted that with respect to foreign carriers the Board has a more limited right to inspect flight documents and financial records than it has with respect to U.S. carriers. This makes successful prosecution of the foreign carriers difficult.

Question. (a) In the case of charter flights, is it accurate to say that the contractual obligations for air transportation are not between the carrier and the chartering group?

(b) *Is it also accurate to say that in most cases, there is a middle man, so to speak, who brings the chartering group and the air carrier together? What is the middle man's obligations and to what extent is he now under the jurisdiction of the Board?*

Answer. (a) No. Under Board regulations, a pro rata charter contract must be between the air carrier and a representative or agent of the chartering

group. Moreover, the representative of the group may not be "professionally engaged in the formation of groups for the transportation or in the solicitation or sale of transportation services."

(b) In most cases, there is a middle man who brings the chartering group and the air carrier together. Under the Board rules, if that middleman gets a commission for the service from the carrier (as generally is the case): (1) he is treated as the agent of the carrier, not the group; and (2) he is not permitted to receive a commission or any other compensation from the chartering group in regard to the air transportation.

In general, the middle man in the sort of situation contemplated by Question 18(b) would not be considered an air carrier and accordingly would not be subject to the general jurisdiction of the Board. However, the Board does have regulations that, while addressed to air carriers, have an impact on such middlemen. For instance, the Board limits the commissions that air carriers can pay them. Further, were two or more air carriers to enter into an agreement that dealt with the relationship between the carriers and middlemen, the Federal Aviation Act requires that the agreement be submitted to the Board. Disapproval of the agreement by the Board would open the carrier to antitrust attack.

Question. What is the Board doing now with respect to surveillance of possible illegal charters for this coming summer?

Answer. Since charter arrangements are normally made six months or more in advance, we are in a position now to begin investigating and surveilling possible illegal charters for next summer. One of the principal means of obtaining information is to investigate complaints from private individuals, air carriers, travel agents, and other commercial concerns advising us of suspected violations of the charter regulations. Enforcement notices are sent where appropriate, requesting carriers to conduct careful screening of proposed charters to determine that they are in full compliance with charter regulations. Where there is reasonable evidence of contravention of regulations, carriers are requested to submit their charter records to the Board for audit. The Board is not empowered to compel cancellation of illegal charters but carriers are aware that they risk enforcement action in operating charters when the Bureau has issued a warning of charter violations.

In addition, form letters are sent to charter participants warning them not to sign false affidavits of membership in the chartering organizations. An explanatory statement has been prepared to assist prospective charter participants in determining the validity of charter flights. Newspaper advertisements in New York and the West Coast are routinely checked to discover possible charter irregularities and appropriate action is taken where warranted. Also, inquiries are conducted by telephone and mail, and field investigations are made within the limitation of the Bureau's investigative staff.

Question. Three organizations—American Union of Students, University Students' Association, Associated Cultural Club, Inc.—were all involved in strandings this summer. Did the Board know or have reason to know either through complaints or stories carried in the trade press that these organizations were possibly putting together illegal charter flights? Did the Board take any action before these flights had departed? If not, did the Board have authority to do so?

Answer. In discussing strandings the distinction must be made between charterworthiness and financial stability. A charterworthy group suffering from financial mismanagement may strand numerous passengers overseas while a patently uncharterworthy group exercising financial good sense may provide reliable service to its "members". Existing legislation is directed primarily to assure charterworthiness and operates only indirectly to prevent strandings, whether they be by a charterworthy or uncharterworthy group.

The Board had no information with respect to the University Students' Association prior to its 1971 strandings. With respect to the American Union of Students, the Board had received several complaints concerning passenger refunding policy and had obtained the informal commitment of this organization to make refunds at the time of the strandings. Finally, the Bureau of Enforcement had filed a formal complaint before the Board against the Associated Cultural Club, Inc., before the strandings in question, limited to the charterworthiness of the club.

Question. Does the Board know the specific airlines which are doing most of the illegal charter business? If so, what steps can the Board take to stop them, and has it done so?

Answer. The Board's Bureau of Enforcement has good information concerning which airlines and groups of airlines engage in most of the illegal charter business. Since most of these carriers are either presently involved, or may soon be involved, in formal legal proceedings, however, it would not be proper for the Board to identify carriers against which no complaint has yet been filed or attempt to measure degrees of noncompliance among those against which complaints have been filed.

To stop such activities involving allegedly unlawful affinity charter and group flights, the Bureau of Enforcement, over the past two years, has filed twenty formal complaints before the Board, as follows:

<i>U.S. Scheduled Airlines</i>		<i>Foreign Scheduled Airlines</i>	
1. Pan American-----	2	9. Air France-----	2
2. TWA-----	1	10. Alitalia-----	1
<i>U.S. Supplemental Carriers</i>		11. KLM-----	1
3. American Flyers (Universal)---	2	12. Lufthansa-----	1
4. Capitol-----	1	13. Sabena-----	1
5. Overseas National-----	1	14. SAS-----	1
6. Saturn-----	1	<i>Foreign Supplemental Carriers</i>	
7. Trans International-----	1	15. Atlantis-----	1
8. World-----	2	16. Caledonian-----	1

16. Carriers—20 Complaints

Three such cases have resulted in cease and desist orders, two by consent (Capitol; Overseas National) and one after adjudication before the Board (American Flyers, now acquired by Universal Airlines); \$142,000 has been collected in civil penalties against the two consenting carriers, Capitol and Overseas National. Six additional settlements, consisting of cease and desist orders and substantial civil penalties, are imminent. Although the Bureau anticipates ultimate settlements with the remaining carriers, the Bureau is prepared to proceed to trials before the Board and the federal courts in absence thereof.

Due to the order of the Court in the *New York Consolidators* case, described in the answers to questions 8(b) and 28, the following carriers will be joined as respondents in that proceeding:

1. Dan-Air (British Supplemental).
2. Donaldson (British Supplemental).
3. Laker (British Supplemental).
4. Pan American.
5. Trans International.
6. Universal.

It is believed that all these proceedings will serve to correct the abuses that have been so widespread in the past.

Question. (a) Describe the operations which resulted in the charter strandings of this past summer.

(b) Please give examples of other types of operations which have resulted in charter strandings.

Answer. See pages 9–13 of the Board's Statement.

Question. It is contrary to the Board's regulations to advertise publicly an affinity charter. When this is done, does the Board have any responsibility? And if so, what is the extent of it?

Answer. The Board's regulations prohibit a direct carrier from operating an affinity charter flight for which there has been mass media advertising. Available sanctions against direct carriers are adequate in this respect.

It is unclear whether similar sanctions are available against persons other than direct air carriers. At the present time, the question of whether persons other than direct air carriers may be enjoined from mass media advertising is being tested in the "New York Consolidators" Case referred to in the answer to Question 8(b).

Question. Do all types of illegal charter operations raise the possibility of potential strandings, and, or, financial loss to the public?

Answer. Not necessarily. For instance, the charters discussed in the answer to question 13(b)—relating to profitmaking charters by non-profit organizations—are "illegal", but the possibility of a stranding in such cases would be remote.

In general, the greatest risk of strandings and financial loss occur when someone charters an aircraft as a principal in hopes of selling enough seats on that aircraft to provide him with a profit—i.e., the activities of an indirect air carrier.

Question. (a) What is the usual way the Board detects violations of the Federal Aviation Act and its regulations with respect to illegal charter operators, i.e., complaint, surveillance, etc.? (b) How many staff members are assigned to this task? (c) How many suspected violations have come to the Board's attention in the past three years? (d) What sanctions, civil and criminal, are available to the Board? Are they timely in the sense of being able to restrain an illegal charter operation from actually departing for soliciting business for a particular flight?

Answer. (a) The great bulk of violations coming to the Board's attention are reported to it from industry and private sources, including the airlines themselves, travel agents, chartering organizations, and passengers. Most of these reports are in the nature of informal complaints, but a substantial number are formally filed. Government agencies and other governments from time to time also refer suspected violations to the Board. In addition, to the extent permitted by its resources, the Board has its own positive program of violation detection. This is carried out through reporting requirements, periodic surveillance of problem areas, monitoring of trade publications, and ad hoc investigations of specific firms and organizations. Numerous non-public hearings, intended by the Bureau of Enforcement to develop information concerning unlawful charter activities, have also been conducted and have proved an invaluable investigative tool in this area.

(b) The Civil Aeronautics Board's enforcement and surveillance work rests primarily on the Board's Bureau of Enforcement. At present the Bureau's authorized staff is twelve attorneys and eight investigators.

(c) The Board has no statistics on the numbers of suspected violations that have come to its attention. However, an indication of its magnitude can be derived from the fact that in the past three years over 850 cases of charter regulation violations have been processed informally. The number of charter cases has represented about 35 percent each year of the Bureau of Enforcement's total annual volume of informal cases. However, in terms of manhours, charter violations have accounted for a larger share of the Bureau's work. The Bureau in the past few years, has received over a thousand mail and phone inquiries annually on charter problems. This is in addition to the formal charter cases filed as summarized in the answer to question 21 above.

(d) The sanctions available to the Board are:

(a) Criminal—section 902 of the Federal Aviation Act (49 U.S.C. 1472) states that any knowing and willful violation of the statute, Board regulation, rule or order constitutes a misdemeanor punishable by fine of up to \$500 for the first, and up to \$2,000 for each subsequent occurrence.

(b) Civil—section 901 of the Federal Aviation Act (49 U.S.C. 1471) states that any violation of the statute, Board regulation, rule or order may be subject to a penalty up to \$1,000 per occurrence.

(c) Administrative orders—section 1002 of the Federal Aviation Act (49 U.S.C. 1482) states that, after notice and hearing, the Board may issue an order compelling compliance with the statute, Board regulation, rule or order found to have been violated.

(d) Judicial orders—section 1007 of the Federal Aviation Act (49 U.S.C. 1487) states that, upon application by the Board, the appropriate Federal District Court may issue a restraining order compelling compliance with the statute, Board regulation, rule, or order found to have been violated.

These sanctions are principally remedial in effect. None, except a court order, effectively serves to restrain an illegal charter operation from actually departing or soliciting business for a particular flight. Because of procedural problems, particularly the short lead time normally available, court orders generally are not feasible except in the case of widespread and flagrant abuses.

Question. (a) What regulations does the Board now have with respect to "study-tour operators" that were not in effect at the time of the World Academy strandings?

(b) *In the Board's judgment, do these regulations adequately protect participants in study tour programs from strandings?*

i) *Before they depart the U.S.?*

ii) *From Europe home?*

iii) *Ground accommodations?*

Answer. (a) Prior to the World Academy strandings the Board treated study groups as affinity groups. However, the Board has now adopted new regulations treating study group operators as indirect air carriers and requiring them to adhere to certain standards designed to assure that the study program is a bona fide one, and to protect the student participants' monies. (See Appendix A.)

(b) i, ii, and iii. Yes; the same points discussed in number 11 above would apply here. Also, we note that the price of the round-trip air transportation must be paid before the tour leaves the U.S., and the cost of hotel accommodations and at least two meals a day must be included in the price of the tour. The ground accommodations are the most vulnerable as we have no way to require that they be paid prior to flight departure. However, as shown in Appendix A, the Board's regulations do allow some withdrawals from the depository account to pay for ground accommodations.

Question. Would enactment of S. 2577 conflict with any provisions of the Federal Aviation Act or the Board's regulations?

Answer. It may depend upon the interpretation the courts might give to the legislation.

The basic problem is that indirect air carriers of persons would appear to be regulated as travel agents under S. 2577. Thus, the question might arise about whether a person who has obtained a registration certificate from the Director of Travel Agents Registration would thereby be free from regulation under the Federal Aviation Act. We assume that that is not the intent of the legislation and that the courts would so rule. But arguably a possible ambiguity does exist.

As alluded to earlier in response to Question 16, there is also some ambiguity whether S. 2577 would conflict with the Board's duty to approve or disapprove air carrier resolutions adopted under section 412 of the Federal Aviation Act, to the extent that such resolutions affect the entrance and ongoing standards pertaining to agents. Here too, we assume that such is not the intent of the legislation and that the courts would so rule.

Question. In testimony before the Committee on November 18, Congressman Van Deerlin stated the following, "Two months ago, the CAB trumpeted in a press release that it was going to court to halt operations of 16 chartering services it branded as illegal."

And what was the result of all this huffing and puffing? Well, that press release turned out to be worth exactly the paper it was printed on. At least three of the operators cited in the release are continuing to function in total disregard of a CAB suit to put them out of business. I will include with this statement an actual transcript of telephonic conversations with these firms, in which they offered to book reservations—six weeks after the CAB moved against them. Under existing law, it seems there's no way to stop these fly-by-nighters, short of a successful criminal prosecution." Would you please comment on this statement.

Answer. An injunction action is normally the quickest way to stop unlawful activities so this remedy was sought. However, even an injunction action has to follow prescribed procedures. Here is the calendar of events in the "New York Consolidators Case" (discussed in the answer to Question 8(b) above):

September 17, 1971—The Bureau of Enforcement filed its complaint against organizations and individuals, seeking a preliminary injunction.

October 8, 1971—Hearing date postponed, over objection of the government, to November 8, 1971.

October 28, 1971—Respondents file motions to dismiss the complaint, to change the venue of proceeding, and to join six airlines as indispensable parties.

November 4, 1971—Bureau files answers to motions filed October 28, 1971.

November 5, 1971—Oral arguments heard on motions; the court, on its own initiative, postpones the hearing on issuance of preliminary injunctions to November 15, 1971, later postponed to November 22, 1971, later postponed indefinitely.

November 24, 1971—Court denies motions to dismiss and to change venue, but grants motion to join six direct air carriers as indispensable parties. Joinder of six airlines requires filing a new complaint, discovery procedures and the issuance of additional subpoenas.

As slow as this may seem, we know of no faster route. Certainly criminal prosecution would not lead to quicker results. Rather, in view of the crowded criminal court docket in New York's federal courts, the Board believes that criminal prosecution would require an unacceptably long period prior to decision during which time the defendants would continue to operate.

APPENDIX A

Surety requirements for inclusive tour operators and study group charterers¹ under part 378 and part 373

ALTERNATIVE A

Length of ITC program:	Amount of surety bond
1. 2 weeks or less-----	A surety bond in an amount of not <i>less than</i> the charter price.
2. A tour of more than 2 weeks but less than 4 weeks -----	A surety bond in an amount of not less than <i>twice</i> the charter price.
3. A tour of 4 weeks or more -----	A surety bond in an amount of not less than <i>three times</i> the charter price.

¹ Since study group tours must be at least 4 weeks in length, Study Group Charterers opting for Alternative A are limited to #3.

ALTERNATIVE B

Surety Bond—Depository Agreement Option

The tour operator shall furnish a surety bond in minimum amount of \$10,000 per flight up to a maximum amount of \$200,000 for a series of 20 or more flights.

In addition, the tour operator and supplemental air carrier enter into an agreement with a designated bank for the escrow of tour participant monies, the terms of which are outlined in section 378.16(b) (2). The pertinent provisions include, among other things, the following:

(1) All payments by tour participants shall be made payable by check or money order to the bank.

(2) Agents' commissions may be deducted, with balance of tour price forwarded to bank. If the tour is canceled, commissions returned to bank within 10 days.

(3) Bank to pay the charter price to air carrier not earlier than 60 days prior departure of originating or returning flights.

(4) Provisions for reimbursements by bank to tour operators and for refunds to be paid directly to tour participants upon cancellation of tour.

(5) Provisions for reduction of account funds up to 80 percent for payment of surface accommodations upon certification by tour operators of amounts payable and presentation of Vendors' bills.

(6) The Bank is required to maintain a separate accounting for each tour.

(7) Provision for reduction of total deposits up to 80 percent with the substitution of bonds or securities.

(8) Balance of escrow account to be paid 2 banking days after verification by carrier of completion of tour.

(9) A monthly financial report shall be filed with the Board showing deposits and disbursements during the reporting period.

CIVIL AERONAUTICS BOARD ENFORCEMENT ACTIVITIES FISCAL YEAR 1971

I. STATUTORY AUTHORITY AND MISSION

The basic statutory authority and mission of the Civil Aeronautics Board is set forth in the Federal Aviation Act of August 23, 1958, as amended (72 Stat. 731, as amended; 49 U.S.C. 1301, *et seq.*) Its prescribed objective is to encourage, promote, and regulate a sound and vigorous air transportation system designed to serve the domestic and international needs of the traveling and shipping public, of the Postal Service, and of the national defense. To enable it to pursue this objective, the Board is granted broad powers of an administrative, investigative, and quasi-judicial nature, as well as rule-making authority.

As an integral part of this broad authority the Board is charged with the responsibility of enforcing compliance with the requirements of the Act and the regulations promulgated by the Board pursuant thereto. These enforcement activities, designed both to prevent and to terminate violations in the economic sphere, are pursued both before the Board itself and, with the aid of the Department of Justice, in the courts. Sections 901 and 902 of the Act (49 U.S.C. 1471 and 1472) provide for the imposition of civil and criminal penalties. Sections 411 and 1002 (49 U.S.C. 1381 and 1482) provide for the entry of compliance orders by the Board, and Sections 1004 and 1007 (49 U.S.C. 1484 and 1487) provide for the entry of such orders by the courts. To effectuate the objectives of these provisions, the Board employs its broad investigative powers and seeks initially to achieve voluntary compliance with all economic requirements.

Within the Civil Aeronautics Board, the enforcement task rests primarily on the Bureau of Enforcement. As defined in the Board's Manual, the Bureau of Enforcement is responsible for the development and execution of a program to obtain observance of the economic provisions of the Federal Aviation Act of 1958, as amended, of the relevant provisions of the Clayton Antitrust Act and the Railway Labor Act, and of all economic orders, regulations and other requirements promulgated by the Board.

Appendix A to this report presents the Board's Organization Chart; the various Bureaus and Offices, each within its own delegated functions and responsibilities, complement and assist in the Board's enforcement program.

The Board's law enforcement responsibility covers the broad and complex range of the air transportation industry in the United States and the many commercial enterprises allied to this industry. Its principal elements are necessarily the United States and foreign scheduled airlines, United States and foreign supplemental air carriers, air taxi operators, commercial operators involved in interstate or foreign common carriage, and "private" flying clubs. Of equal importance and difficulty in curbing infractions affecting air transportation, is the surveillance and regulation of the ground activities complementing the industry—including domestic and international air freight forwarders, consolidators of cargo and passenger groups, and travel agents and firms engaged in organizing charters and inclusive tour groups.

II. LAW ENFORCEMENT RESOURCES

The air transportation industry (including allied commercial enterprises) has increased more than three-fold over the past decade in terms of passengers, cargo, employment, and revenues, and has become the dominant and fastest growing mode of public intercity and international travel. Although the law enforcement task of regulating this vastly expanding industry has reached major proportions, the staff and funding of the Bureau of Enforcement have remained a minor element in the Board's complement and allocations; the Bureau of Enforcement staff authorized in Fiscal 1971 (28 positions) numbers below 4 percent of the Board's personnel and its fiscal share of the Board's resources was around 4.4 per cent. For Fiscal Year 1971 the Board's enforcement and public protection program (including the enforcement functions of all Board and staff entities) accounted for 33.3 man-years with a program cost of \$652,308. Although this constitutes a limited allocation of manpower and resources, it represented an increase over Fiscal Year 1970 during which 27.4 man-years with a program cost of \$492,941 was dedicated to law enforcement.

III. FISCAL YEAR 1971 LAW ENFORCEMENT ACTIVITIES

A. General

The Board's law enforcement activities are designed to eliminate practices that detract from the efficiency and well-being of the air transport system or that inflict inconvenience, hardship, or loss on the travelling and shipping public. This program presently includes six major categories of violations: charter irregularities, unfair and deceptive practices (including misleading advertisements), tariff violations, unauthorized air transportation, air taxi registration and operational deficiencies, and failure to submit required reports and to adhere to reported standards. Appendix B to this report sets forth a graphic comparison of the relative magnitude of these six categories of violations and the classifications of entities committing violations during Fiscal Year 1971. Appendix C enumerates the enforcement actions taken during that period. Appendix D lists the formal enforcement proceedings instituted during Fiscal 1971. The highlights and most noteworthy efforts of this program can be summarized as follows:

B. Charters

Charter operations have experienced an explosive growth in the past few years, and regulation of this activity has represented a major problem to the Board. A recurring infraction is that charter carriers, contrary to their filed tariffs and the limitations of their operational authorizations, solicited and carried members of the general public—who normally would fly on regularly scheduled services—under the guise of operating legitimate affinity charters. Similarly, chartering organizations and travel agents unlawfully participated in the sale of individually ticketed seats on flights to the general public purporting to offer pro rata charter transportation and in many cases acting as unauthorized indirect air carriers. The results of these fraudulent activities have been monetary loss to passengers, strandings, international friction, and a weakening of the air transport system as a whole.

In Fiscal 1971 proceedings in 12 dockets alleging violations of the CAB's charter regulations, first initiated in Fiscal 1970, were continued against three scheduled air carriers (Pan American, TWA and KLM), against five U.S. supplemental air carriers (World Airways, Overseas National, Capital, American Flyers, and Saturn), and two foreign charter carriers (Caledonian (British) and Atlantis (West German)). Included in the foregoing and in two other parallel dockets were a total of 61 East and West Coast chartering organizations, travel agents and individuals. In these proceedings five consent cease and desist orders were issued against sixteen respondents.

In addition, in Fiscal 1971 formal complaints for consideration by the Board were filed against a foreign air carrier, Air France, and a U.S. supplemental air carrier, American Flyers, alleging violations of the Board's charter regulations. Similarly, a formal complaint was filed in May 1971 against three travel agents and a British air charter carrier, Donaldson International Airlines, for contracting to perform over 20 charter flights without the required authorization.

C. Tariff violations

Tariff violations, including overcharges and discriminatory rebates, continue to plague the industry in both passenger and cargo operations. Whenever the consumer is overcharged for air transportation, action must be taken by the CAB to assist the consumer in obtaining the appropriate refund and to ensure that the violation does not recur.

In Fiscal 1971 litigation in this area included a formal complaint filed against a charter group (Special Services School Teachers Group, Inc.) and five foreign air carriers (Alitalia, Air France, Lufthansa, Sabena and SAS) for charging affinity group fares to members of organizations that did not qualify as valid affinity groups. Also, following an investigation of cargo rates, formal proceedings to obtain cease and desist orders were filed against four direct air carriers (Delta, Airlift, National and Eastern), and three air freight forwarders (Skyline Air Freight, Shulman Air Freight, Wings and Wheels, and Air Express). In addition, cease and desist orders were issued against six individuals and four clubs (Transworld Medical Club, Transworld Professional Club, United European-American Club, and the International Club of California) to stop the flagrant practice of overcharging for passage on charter flights.

D. Unfair and deceptive practices

Intense competition between the airlines has led to widespread misrepresentation of air services in promotional and publicity materials. A constant screening of promotional airline programs by the CAB is required to put a stop to deceptive advertising. Over fifty misleading advertising cases were processed in Fiscal 1971 in which voluntary compliance was informally obtained. Two formal cases are pending alleging misleading advertising by Hawaiian Airlines and Aloha Airlines.

Another area of enforcement involves boarding of passengers. Many air carriers and foreign air carriers overbook flights with consequent inconvenience and hardship to passengers denied boarding. The CAB has issued regulations requiring carriers to establish priority rules and criteria for determining which passengers holding confirmed reserved space shall be denied boarding on an over-sold flight, and providing that compensation must be paid to passengers denied boarding under specified circumstances. Numerous violations involving denied boarding were dealt with informally during Fiscal 1971, and a cease and desist order for recurring boarding violations was issued against Northeast Airlines.

A new area of enforcement activity was brought about by amendments to the Consumer Credit Protection Act of 1968 requiring accurate and full disclosure of credit terms offered to consumers ("Truth in Lending" Act), regulating the issuance of unsolicited credit cards, and requiring consumer credit reporting agencies to adhere to fair and equitable procedures to ensure confidentiality, accuracy, and the proper use of credit information (Fair Credit Reporting Act). A systematic program was instituted to advise the airlines of the requirements of these provisions and to obtain compliance. Some twenty-four cases were opened regarding truth-in-lending issues, most of which involved failure to make required disclosures in credit card application forms and billing statements. These cases have been informally pursued, and the deficiencies, with few exceptions, have been corrected.

E. Unauthorized air transportation

In order to ensure a high degree of safety and economical and efficient services at reasonable charges, all persons and firms offering air transportation and services must first obtain CAB authorization. Infractions of this requirement by so-called indirect air carriers are particularly difficult to ferret out and prevent. During Fiscal 1971 cease and desist orders were issued to fourteen persons and firms engaged in such activities and civil penalties were assessed against an inclusive tour operator (Simmons Group Journey's).

F. Air taxi operators

Air taxi operators have grown vastly in numbers and services during the past few years and are fast becoming the predominant means of air transportation to small communities. The size of equipment used in air taxi operations, the relationships between air taxi operators and common carriers, and the liability and insurance responsibilities of air taxis require constant vigilance to adequately protect the public. With over 3,000 air taxi firms offering both scheduled and irregular services, this activity required constant surveillance and numerous compliance measures during Fiscal 1971.

G. Court actions

In June 1971 the CAB instituted a precedential court action in the U.S. District Court for the Eastern District of New York to enjoin Alitalia, the Italian flag carrier, from selling reduced rate transportation at a fare that had not been properly filed and processed before the Board. The distinguishing element in this case was that the foreign air carrier involved sought to justify its violation of the Federal Aviation Act and of the Board's tariff violation on the basis that its national government had ordered it to charge the rate in question. However, in light of the Board's firmness, Alitalia assured the court that the tariff violation would be immediately stopped, and further court action was accordingly suspended.

In another innovative measure further described in Section I below, the CAB, represented by the Department of Justice, submitted a memorandum as *amicus curiae* to a U.S. District Court in California to aid that court in ruling on a request for an injunction by a private party in a civil suit dealing with air charter flights. That proceeding culminated in the issuance by the court of a preliminary injunction barring further charter flights by the three defendant organizations.

The CAB has also instituted two court proceedings in the U.S. District Court for the District of Columbia against three parties who failed to honor CAB subpoenas. In both proceedings the court upheld the validity of the CAB subpoenas, and ordered the witness to appear before CAB hearing examiners. To obtain future compliance, the Board plans to use the Federal Court procedures at every opportunity.

H. Cooperation with other government agencies

The predominant emphasis in the Board's enforcement program is to obtain compliance with the Federal Aviation Act, and the Orders and Regulations issued thereunder. However, the Board has also cooperated extensively with other U.S. Government agencies with its enforcement facilities and resources.

The Civil Aeronautics Board shares with the Federal Aviation Administration responsibility for enforcing the Federal Aviation Act, and enforcement tasks of the two are complementary. A joint program was established in Fiscal Year 1971 to improve the enforcement of their enforcement activities, as envisioned by the Admiral Smith report of the Department of Transportation. Key enforcement personnel of the two agencies instituted the program during the past year with a joint inspection and surveillance trip to the Houston and Miami gateways.

Other agencies with which the CAB cooperates in enforcement activities are the National Transportation Safety Board, the U.S. Postal Service, the Department of Defense, the Department of State, the Interstate Commerce Commission, the Federal Trade Commission, the Department of the Treasury, and the Securities and Exchange Commission. This cooperation, to a large extent, takes the form of the exchange of information derived from their respective enforcement work and in bringing to the attention of the agency most directly concerned violations which have been disclosed. This reciprocal exchange of information and continuing consultation has had the result of enhancing law enforcement by (i) expediting disclosure of violations, (ii) ensuring that infractions are brought to the attention of the proper agency, (iii) avoiding conflicting or duplicative actions by two or more agencies, and (iv) benefiting from the prior experience and expertise of the various agencies on particular problem areas.

I. ASSISTANCE TO LAW ENFORCEMENT ACTIVITIES OF STATES AND MUNICIPALITIES

The Board's enforcement staff and its activities have assisted State and local authorities in regulating aspects of air transport within their respective jurisdictions. This assistance has not taken the form of dollar aid, but has rather been developed through consultation, the exchange of views and information, and the use of complementary informal measures and formal administrative or court proceedings.

The following illustrations will serve to exemplify the broad range of assistance possibilities and of administrative levels serving as channels for such aid:

1. The difficult issue of what constitutes an "indirect air carrier" arose before the U.S. District Court for the Central District of California in an injunction action by a private party seeking to enjoin the operation of certain illegal charters. To assist the court in its deliberations, the CAB, represented by the Department of Justice, submitted a Memorandum as *amicus curiae* on the "indirect air carrier" issue, and the court issued a preliminary injunction barring further charter flights by the three defendant organizations.

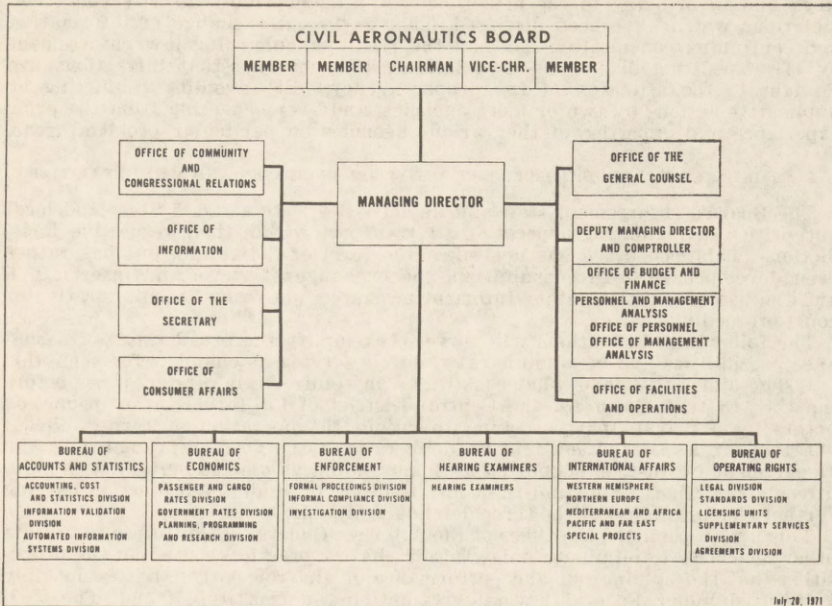
This action permitted the Office of the Attorney General of California to initiate other measures to eliminate unlawful air charter practices, based on the proposition that the holding out and performance of air transport activities not duly authorized under Federal law and regulation can constitute fraud. The CAB staff assisted the Assistant Attorney General of California in pursuing these measures through informal consultation procedures.

2. In a separate action in California, the Board's enforcement offices collaborated with the District Attorney for San Francisco in developing a case against a travel agent, Mr. Stanley D. Richardson, who was engaged in the sale of illegal charters to the general public. These efforts culminated in the conviction of Mr. Richardson for travel agency fraud, and subsequently to his deportation from the United States to Ireland.

3. On the municipal and administrative level, the CAB enforcement staff has collaborated with the Department of Consumer Affairs of the City of New York in developing and carrying out aspects of its consumer protection program involving air transportation.

The Board's experience during Fiscal 1971 in its consultation and collaboration with state and municipal law enforcement agencies, confirms the mutual and reciprocal value of such assistance and interchange, and lends support to its program for continuing and expanding these relationships.

APPENDIX A

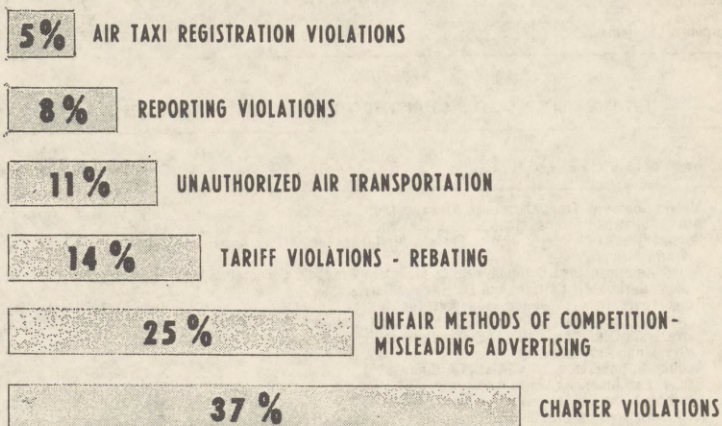


APPENDIX B

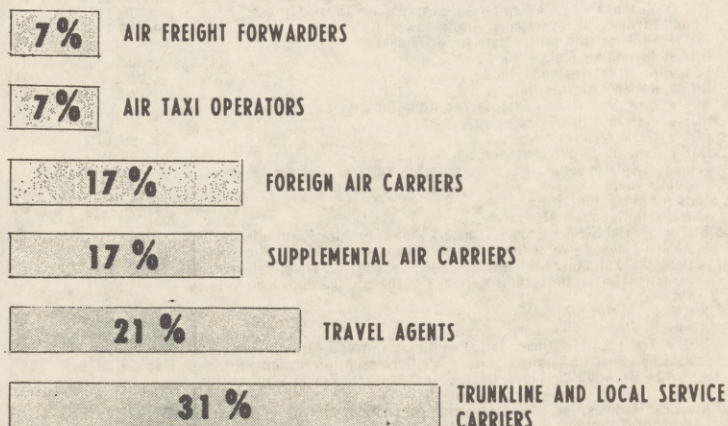
AIR TRANSPORT VIOLATIONS INVOLVED IN ENFORCEMENT ACTIONS

Fiscal Year 1971

A. CATEGORIES OF VIOLATIONS



B. CATEGORIES OF ENTITIES INVOLVED IN VIOLATIONS



Bureau of Enforcement
Civil Aeronautics Board

APPENDIX C
ENFORCEMENT ACTIVITIES, FISCAL YEAR 1971

Enforcement category	Pending July 1, 1970	Instituted during fiscal 1971	Concluded during fiscal 1971	Pending June 30, 1971
Informal compliance cases	488	861	1,056	293
Formal proceedings	124	65	42	147
Investigations	48	127	154	21
Special enforcement projects	20	18	23	15

APPENDIX D
ENFORCEMENT PROCEEDINGS INSTITUTED DURING FISCAL YEAR 1971¹

Docket number	Name of case	Date filed	Date concluded
1. 22535	Melvin Gebroe v. Trans Caribbean Airways, Inc.	July 13, 1970	Nov. 25, 1970
2. 22358	Alpa v. Shawnee Airlines, Inc.	do	(²)
3. 22398	Commonwealth of Puerto Rico v. Eastern Air Lines, Inc. & Pan American World Airways	July 29, 1970	(²)
4. 22437	Allied American Bird Company, Hartz Mountain Products Corporation, et al. v. Certain Air Carriers and Foreign Air Carriers.	Aug. 1, 1970	Dec. 31, 1970
5. 22464	Amgo Tours, Inc. Travel and Transport, Inc.	Aug. 11, 1970	(²)
6. 22465	C. Arnholt Smith, Lois S. Smith C. Smith Shannon, United States Holding Co. Westgate-Calif. Corp., United States National Bank, Michael J. Coen, First Greystone Associates.	do	Jun 25, 1971
7. 22468	Reuben B. Robertson, III v. Alaska Airlines, et al.	Aug. 14, 1970	(²)
8. 22583	BOE v. Pan American World Airways	Sep. 23, 1970	(²)
9. 22603	Fur Manufacturers, Inc. v. Airline Tariff Publishers, Inc., Air Cargo, Inc.	Sep. 25, 1970	Dec. 31, 1971
10. 22688	Northwest filed by Brotherhood of Railway, Airline, and Steamship Clerks, Freight Handlers, Express and Station Employees and International Association of Machinists and Aerospace workers.	Oct. 28, 1970	Jan. 26, 1971
11. 22841	Northwest Orient Airlines	Dec. 3, 1970	Apr. 15, 1971
12. 22894	William Holdorf v. Trans World Airlines, Inc.	do	Feb. 26, 1971
13. 23003	Alaska Airlines, Inc. v. Interior Airways, Inc.	Jan. 12, 1971	(²)
14. 23046	Aloha Airlines, Inc. v. Northwest Airlines, Inc.	Jan. 28, 1971	May 11, 1971
15. 23047	Texas International Airlines, Inc. v. Air Southwest Co.	Jan. 28, 1971	July 6, 1971
16. 23098	Executive Jet Aviation, Inc. v. Executive Air Fleet Corp.	Feb. 12, 1971	(²)
17. 23102	William J. Jones v. North Central Airlines, Inc. and Ozark Airlines	Feb. 16, 1971	July 2, 1971
18. 23122	Branniff Airways, Incorporated v. Air Southwest Co.	Feb. 19, 1971	June 15, 1971
19. 23131	BOE v. Shulman, Inc. d/b/a Shulman Air Freight	Feb. 24, 1971	(²)
20. 23132	BOE v. Skyline Air Freight, Inc.	do	(²)
21. 23133	BOE v. Airlift International, Inc.	do	(²)
22. 23134	BOE v. National Airlines, Inc.	do	(²)
23. 23135	BOE v. Wings and Wheels Express, Inc. d/b/a Air Express International	do	(²)
24. 23136	BOE v. Eastern Airlines, Inc.	do	(²)
25. 23141	BOE v. World Airways, Inc.	Feb. 25, 1971	(²)
26. 23139	BOE v. Simmons Group Journeys, Inc.	Feb. 5, 1971	Feb. 25, 1971
27. 23143	Touragent International, Inc. a/k/a Gateway Holidays, Cosmos of London Globus Tours.	Feb. 26, 1971	Aug. 4, 1971
28. 23130	Delta Air Lines, Inc.	Feb. 24, 1971	(²)
29. 23189	Compagnie Nationale Air France	Mar. 11, 1971	(²)
30. 23190	BOE v. Special Service School Teachers Group, Inc. Ira Karp individually, Alitalia-Linee Aeree Italiane, S.p.A., Compagnie Nationale Air France, Deutsche Lufthansa Aktiengesellschaft, Societe Anonyme Belge D'Exploitation De la Navigation Aerienne (Sabena), Scandinavian Airlines System.	do	(²)
31. 23264	K.L.M. Royal Dutch Airlines	Apr. 6, 1971	(²)
32. 23288	American Flyers Airline Corp.	Apr. 15, 1971	(²)
33. 23401	BOE v. Trans World Airlines, Inc., Pan American World Airways, Inc.	May 17, 1971	(²)
34.23411	Donaldson Line (Air Services), Ltd., d/b/a Donaldson International Airlines filed by Beverly Hills Travel Bureau, Inc., Monarch Travel Services, Inc., Eckdahl-Sundin Travel Bureau, Inc.	May 18, 1971	(²)
35. 23452	American Airlines, Inc. v. Pan American World Airways, Inc.	May 28, 1971	(²)
36. 22479	International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Western Air Lines, Inc.	June 7, 1971	(²)
37. 23488	Member Carriers of the National Air Carrier Association v. Member Travel Agents of the New York Chapter of American Society of Travel Agents, Inc. and their Agents Joseph Rotante and Norman S. Sherman.	June 9, 1971	(²)
38. 23489	Six Member Carriers of the National Air Carrier Association v. Pan American World Airways, Inc.	do	(²)
39. 23498	BOE v. Airlift International, Inc.	June 15, 1971	(²)

¹ Does not include cases processed during fiscal year 1971 which were pending at the beginning of that fiscal year.

² Pending.

CIVIL PENALTY CASES INSTITUTED DURING FISCAL YEAR 1971

Civil penalty No.	Name of case	Date filed	Date concluded
1. CP-70-12	American Flyers Airline Corp.	Sept. 28, 1970	(1)
2. CP-70-13	Ozark Air Lines, Inc.	Oct. 5, 1970	(1)
3. CP-70-14	Frontier Airlines, Inc.	do	(1)
4. CP-70-15	American Airlines, Inc.	do	(1)
5. CP-70-16	Northwest Airlines, Inc.	do	(1)
6. CP-70-17	Interstate Air Motive	Oct. 15, 1970	(1)
7. CP-71-1	Hoit Flying Service, Inc.	Jan. 11, 1971	Aug. 9, 1971
8. CP-71-2	Touragent International, Inc.	Feb. 26, 1971	Sept. 9, 1971
9. CP-71-3	Airlift International, Inc.	Feb. 24, 1971	(1)
10. CP-71-4	Eastern Air Lines, Inc.	do	(1)
11. CP-71-5	Delta Air Lines Inc.	do	(1)
12. CP-71-6	National Airlines, Inc.	do	(1)
13. CP-71-7	Wings & Wheels Express, Inc. d/b/a Air Express International	do	(1)
14. CP-71-8	Skyline Air Freight, Inc.	do	(1)
15. CP-71-9	Shulman, Inc. d/b/a Shulman Air Freight	do	(1)
16. CP-71-10	World Airways, Inc.	do	(1)
17. CP-71-11	Simmons Group Journeys, Inc.	Feb. 25, 1971	(1)
18. CP-71-12	Compagnie Nationale Air France	Mar. 3, 1971	(1)
19. CP-71-13	Special Service School Teachers Group	do	(1)
20. CP-71-14	Alitalia Airlines	do	(1)
21. CP-71-15	Compagnie Nationale Air France	do	(1)
22. CP-71-16	Deutsche Lufthansa Aktiengesellschaft	do	(1)
23. CP-71-17	Societe Anonyme Belge d' Exploitation de la Navigation Aerienne (Sabena)	do	(1)
24. CP-71-18	Scandinavian Airlines System	do	(1)
25. CP-71-19	Lineas Aereas de Nicaragua, S.A.	June 17, 1971	(1)
26. CP-71-20	Transportes Aereos Benianos, S. A. (TABSA)	June 23, 1971	(1)

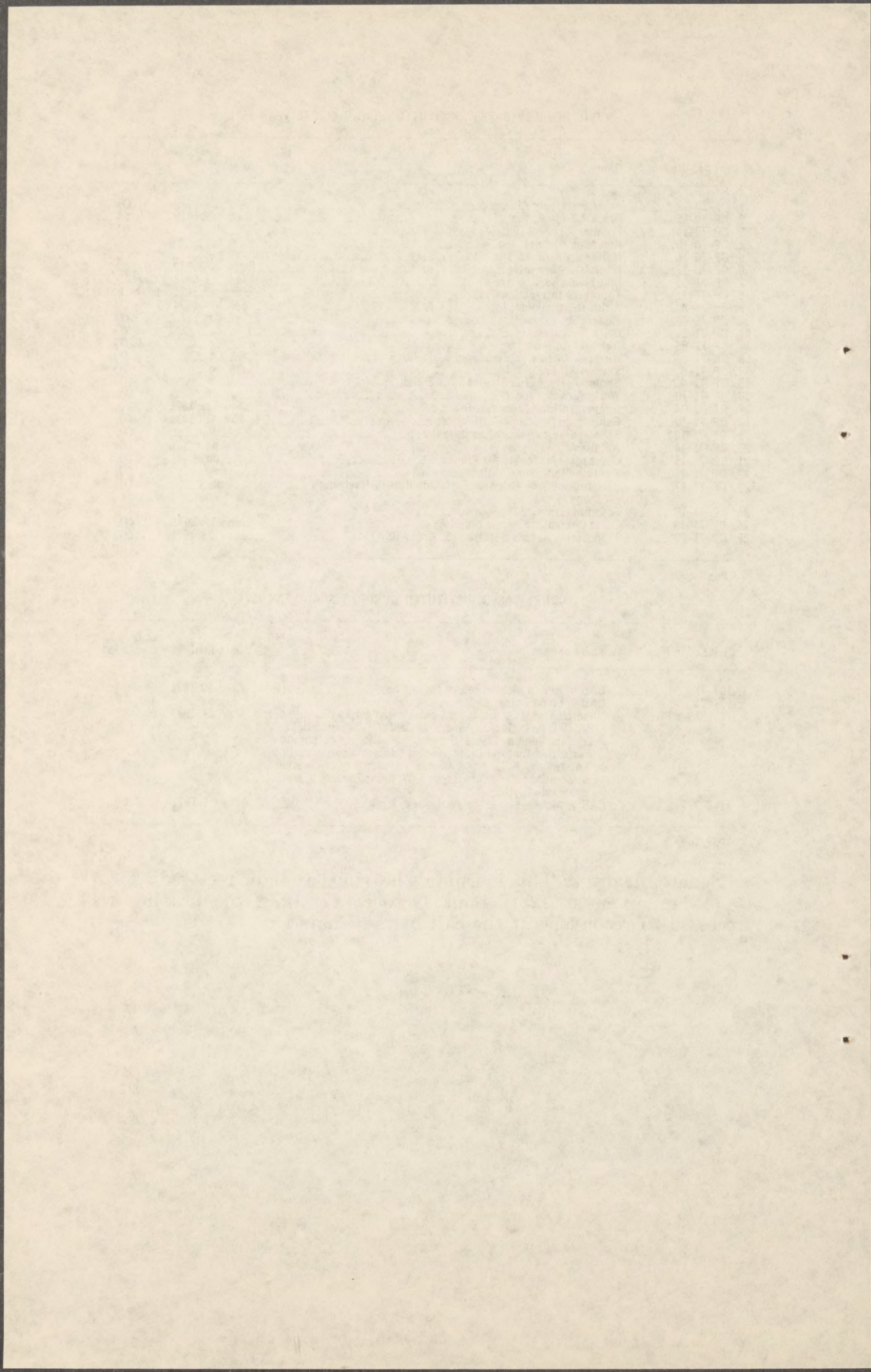
¹ Pending.

COURT CASES INSTITUTED DURING FISCAL YEAR 1971

Civil action No.	Name of case	Date filed	Date concluded
1. 107-71	CAB v. Kimon Makris/Peters Tours, Inc.	Feb. 19, 1971	(1)
2. 108-71	CAB v. Linda Cornelsen	do	Apr. 16, 1971
3. 71-1176-WPG	Monarch Travel Services, Inc., a California corporation; Beverly Hills Travel Bureau, Inc., a California corporation; and Eckdahl-Sundin Travel Bureau, a California corporation v. Associated Cultural Clubs, Inc., a California corporation, also known as A.C.C.I.; Universal Students Organization, a corporation; Maria Rita Bopp; J. W. Reid; Thomas D. Mercola; and Paula Blythe.	May 28, 1971	(1)
4. 71-C-772	CAB v. Alitalia-Liness Aeree Italiane, S.p.A.	June 1, 1971	(1)

¹ Pending.

Senator INOUE. This morning's hearings are now recessed.
(Whereupon, at 12:17 p.m., October 17, 1971, the hearing was recessed to reconvene at the call of the Chair.)



AMEND THE INTERNATIONAL TRAVEL ACT OF 1961

THURSDAY, NOVEMBER 18, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON FOREIGN COMMERCE AND TOURISM,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:35 a.m., in room 5110, New Senate Office Building, Hon. Daniel K. Inouye (chairman of the subcommittee) presiding.

Present: Senators Inouye and Beall.

Senator BEALL (presiding). Unfortunately Senator Inouye has been delayed because of activities taking place on the floor. In order not to further delay the witnesses appearing here this morning he has asked me to preside and I am happy to do so.

Our first witness is Congressman Lionel Van Deerlin.

STATEMENT OF HON. LIONEL VAN DEERLIN, U.S. REPRESENTATIVE FROM THE 37TH DISTRICT OF CALIFORNIA; ACCOMPANIED BY TED HARRIS, EXECUTIVE VICE PRESIDENT, CONSORTIUM INTERNATIONAL

Mr. VAN DEERLIN. Good morning.

Senator BEALL. Congressman, we are delighted to have you. You are commenting on your bill, I believe.

Mr. VAN DEERLIN. Yes, Mr. Chairman.

First let me say it is always nice to see one of our former House colleagues who has made good.

Senator BEALL. That is debatable.

Mr. VAN DEERLIN. With your permission, Mr. Chairman, I have with me Mr. Ted Harris, who was formerly a professor of transportation economics in commercial air transportation at an institution with which I am certain you are familiar, the University of Maryland.

A year or two ago Mr. Harris heard the higher call of riches, and knowing as much as he does in the transportation field, particularly air transportation, he founded a company of which he is now the executive director, called the Consortium International.

The important thing, and the reason I wanted Mr. Harris with me this morning, this Consortium International puts together charter groups of students dealing with campuses. So he has been familiar for quite a long time with the mounting chaos that has overtaken the air charter business, particularly as it affects students.

Mr. Harris warned me and several other Congressmen—as you know, I serve on the Commerce Committee on the House side—that the strandings of wholesale numbers of students was almost sure to occur

this last summer. The estimates most conservatively are that 7,000 students were stranded and some estimates within the industry are that as many as 11,000 or 12,000 may have been stranded.

I, myself, was in Western Europe with some of my family in the late summer, during the congressional recess, and I saw outside the American Express headquarters and in the airports of Amsterdam and London some of the most pathetic sights. You would see these kids sitting on the sidewalks and your first impulse was to think to yourself, my, what a dreadful impression of the United States these kids—they need a shave, they look as if they needed some place to sleep. Then you begin talking with them and you find out some sharp fly-by-night operator sold them what appeared to be a roundtrip ticket and that he took them over all right, but when they started making inquiries at the airport about the return flight they found their return ticket was nothing more than some kind of warrant for which there was no booking, and if it hadn't been for the efforts of some of the commercial airlines, some of the travel agencies, and one or two Congressmen who were overseas at the time acting as ombudsmen for these kids, some of them might be there yet.

I don't have to tell you that for parents expecting to get a 19-year-old daughter back who has been away for 2 months and finding she is stranded over there, sometimes unable to even make a phone call, it is a matter of very great and broad concern.

It is just almost to be expected that unless specific legislative steps are taken there is going to be a recurrence in summers to come.

I say specific legislative steps must be taken. Actually, this wouldn't have to be. The Civil Aeronautics Board has all of the authority it needs at this point to crack down on these companies. It comes before your subcommittee and tells you that it is cracking down and tells you it doesn't need new legislation.

I imagine the Federal Trade Commission would say the same thing about the advertising of illegal charter flights which appear regularly in Washington newspapers under the very noses of House and Senate Members.

You would be interested to know, I imagine, since the CAB has so proudly related its current prosecutions to you against four companies in New York, interested to know that as of last week at a time that all four of them were in court, three of those companies were still busy about the business of selling tickets. You can find them at various dingy front offices and side street headquarters in New York.

The three companies in particular out of the four which are still doing business and which are quoting rates and flight dates by telephone to anyone who calls are the Consolidated Air Brokers, Inc., Tour Europe Travel Agency, Inc., Aeromatic Travel Corp.

All three of these firms were subjected to an injunctive proceeding by the CAB on September 17. That happens to be Constitution Day. I don't know what their constitutional rights are in the matter, and perhaps they are not impaired by the mere prosecution. But the point I am making is that with the absolute open and shut case that the CAB has against these firms for their illegal operations, if the CAB exercised the right of licensing and required bonding, it would be able to come in with a cease and desist order against these firms until and unless they cleaned up their operation and flew right.

Now, your subcommittee chairman—by the way, Mr. Chairman, I think it might be of interest, and I would ask to have included in the record just to back up what I am saying a recorded telephone conversation that was made last week, and I have carefully edited it to hide the identity of the person making the call, a complete transcript of a call made between an inquirer into air flights with one of these companies which I mentioned, Consolidated Air Brokers in New York.

It is quite clear in the transcript of this call that they are willing to quote rates. They gave a series of dates on which they have departures for Europe. They were quoting rates, \$200 roundtrip. They were asking who referred you to us, and all of the rest. It was a typical call to a company that might be assumed to be doing business legitimately.

I would offer this for the record.

Senator BEALL. We will be happy to put that in the record with the caveat that we check first with the CAB to be sure the public disclosure won't damage the case in court.

Mr. VAN DEERLIN. I am perfectly agreeable with that.

Senator BEALL. I might say that the committee, for the record, is and will be in touch with the CAB with specific questions regarding the issues you just raised in your testimony.¹

Mr. VAN DEERLIN. I thank the Chairman.

Mr. VAN DEERLIN. I know that you, Senator, have served long enough in office, as I have, to know that while we may not always have the answers. We see just enough of what goes on in some of the agencies to realize that there is a good, sound reason for congressional oversight of these agencies.

With five House colleagues including—I was going to note if the chairman had been here, one of my cosponsors is Congresswoman Patsy Mink who shares a part of the Hawaiian Islands with him—I introduced H.R. 11560.

This would require licensing and bonding by the CAB of indirect air carriers of passengers, those individuals and organizations who, as you know, act as middlemen in buying air transportation wholesale for resale among members of the charter-worthy affinity groups.

I should think that it might be well, if I may request at this point, to have a copy of this relatively short bill included in the record of your hearings as well.

Senator BEALL. Without objection.

(The bill follows:)

¹ See p. 57.

92D CONGRESS
1ST SESSION

H. R. 11560

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 1971

Mr. VAN DEERLIN (for himself, Mr. BROWN of Ohio, Mr. LEGGETT, Mr. McFALL, Mrs. MINK, and Mr. MURPHY of New York) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Federal Aviation Act of 1958 to provide that an indirect air passenger carrier may promote, assemble, and consolidate charter passengers and arrange their transportation between points within the United States and points in foreign countries in accordance with regulations established by the Civil Aeronautics Board pertaining to charter air transportation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Indirect Air
5 Carrier of Passengers Act".

I

1 DECLARATION OF FINDINGS AND PURPOSE

2 SEC. 2. (a) The Congress hereby finds and declares—

3 (1) that United States citizens are being defrauded
4 by illegal charter organizers, especially on international
5 flights, resulting in the stranding of thousands of unsus-
6 pecting citizens of the United States;

7 (2) that because of the unenforceability of present
8 charter regulations, there has developed a large number
9 of charter organizers which function as unauthorized and
10 illegal indirect air carriers;

11 (3) that legitimate charter travel, especially with
12 respect to the eight million student population of the
13 United States, is a very valuable educational and social
14 device which can mean much for the future of interna-
15 tional relations;

16 (4) that the increased financial and operational
17 stability for the airlines and the restoration of public
18 confidence in charter air travel, which would occur with
19 the removal of illegal charters and charter organizers,
20 would have a positive effect on the maintenance of a
21 sound national air transportation system;

22 (5) that the creation of a regulated indirect air car-
23 rier of passengers category would result in a new type
24 of specialized air transportation service organizations,
25 well versed in the consolidation and rapid movement of

1 large numbers of persons, which could be of considerable
2 value in times of national need;

3 (6) that the development of more economic and ef-
4 ficient charter travel in the United States would do much
5 to attract foreign visitors who would otherwise be unable
6 to afford travel in the United States; and

7 (7) that domestic short term air charter travel
8 readily lends itself to the increased amount of leisure
9 time available to the people of our Nation.

10 (b) It is therefore the purpose of this Act to create a
11 regulated system of indirect air carriers which will assume
12 responsibility for charter flights of affinity groups under
13 regulations of the Civil Aeronautics Board.

14 DEFINITION

15 SEC. 3. Section 101 of the Federal Aviation Act of 1958
16 (49 U.S.C. 1301) is amended by redesignating paragraphs
17 (20) through (36) as paragraphs (21) through (37), re-
18 spectively, and by inserting immediately after paragraph
19 (19) the following new paragraph:

20 " (20) 'Indirect air carrier of passengers' means one who
21 purchases air transportation wholesale from a direct air
22 carrier for resale to members of organizations who qualify
23 as charter worthy under the rules and regulations of the
24 Board."

INDIRECT AIR CARRIERS

2 SEC. 4. Title IV of the Federal Aviation Act of 1958
3 (49 U.S.C. 1371-1387) is amended by adding at the end
4 thereof the following new section:

“INDIRECT AIR CARRIERS

"LICENSE REQUIREMENT

7 "SEC. 418. (a) No indirect air carrier of passengers
8 shall engage in any air transportation unless there is in force
9 a license issued by the Board authorizing such indirect air
10 carrier of passengers to engage in such transportation.

“APPLICATION REQUIREMENT

12 “(b) In the case of an application for a license to oper-
13 ate as an indirect air carrier of passengers, such application
14 must demonstrate that the applicant—

15 “(1) possesses managerial competency;

16 “(2) possesses financial stability; and

17 “(3) can obtain sufficient bond (as determined by
18 the Board) to protect its customers from a failure on
19 the part of the applicant to fulfill a contract for air
20 transportation.

"BONDING

22 “(c) (1) A license to operate as an indirect air carrier
23 of passengers may not be issued until after a sufficient bond

1 is posted with the Board. The Board shall have the authority
2 to determine the sufficiency of a bond in each individual
3 case.

4 “(2) In the case of forfeiture of a bond the license of
5 the indirect air carrier involved shall be revoked, unless the
6 Board determines that such forfeiture was not proximately
7 caused by the indirect air carrier.

8 “REGULATIONS

9 “(d) The Board shall promulgate rules and regulations
10 delineating—

11 “(1) the extent of liability to be imposed upon
12 such indirect air carrier of passengers;

13 “(2) antidiscrimination provisions;

14 “(3) regular reporting requirements;

15 “(4) merger and acquisitions restrictions; and

16 “(5) enforcement provisions.

17 “LICENSING FEES

18 “(e) The Board shall establish a schedule of fees to be
19 paid to the Board for certification. Such schedule of fees
20 shall be based upon the cost of implementing and admin-
21 istering the program authorized by this section.”.

22 SEC. 5. That portion of the table of contents contained

1. in the first section of the Federal Aviation Act of 1958
2. which appears under the center heading

"TITLE IV—AIR CARRIER ECONOMIC REGULATION"

3. is amended by adding at the end thereof the following:

"Sec. 418. Indirect air carriers.

- "(a) License requirement.
- "(b) Application requirement.
- "(c) Bonding.
- "(d) Regulations.
- "(e) Licensing fees."

Mr. VAN DEERLIN. Now, S. 2577, introduced by Senator Inouye, has the same laudable goals; that is driving out of business the unscrupulous operators who tempt young or naive travelers with bogus offers of bargain basement trips abroad. But I suggest this bill, H.R. 11560, might be better suited with its emphasis on charters specifically, rather than travel agents generally, because it is important to recognize differences between the two.

The charterer is an independent entrepreneur who functions as an indirect air carrier while dealing—if he is legitimate—only with charter-worthy customers. The travel agent, on the other hand, is likely to offer a wide range of travel services, deal with the general public rather than specific groups, and act on behalf of the direct air carrier rather than independently.

I cannot believe these fly-by-night operators who openly flout the CAB in its legal efforts to restrict them would be just as contemptuous of the controls envisioned in S. 2577 as they are of the prosecutions brought to date by the CAB.

These indirect air carriers should more logically fall within the jurisdiction of the CAB.

I know that Chairman Browne in a statement he submitted for your record has said essentially what he said to me in a letter on the subject about a month ago, and that is if we establish licensing and bonding for these operators then it is going to be necessary to weigh the cost of licensing and bonding against what I can assume he means to be the relatively minor inconvenience caused by the stranding of American citizens abroad.

Well, I just think that when an American citizen undertakes to buy an airline ticket, just as he feels assured that his safety is protected, he must feel that if we are permitting these outfits to do business then we, as the responsible Government oversight people, must be satisfied that he is going to get value received for the ticket he buys. He knows this is true if he buys on a commercial domestic carrier within the United States.

There are all kinds of grievance procedures established by the CAB of which they have been justly proud to enable passengers who are stranded or who are bumped in the case where the computer doesn't work and too many tickets have been sold on one flight. There are grievance procedures by which he can recover damages without hiring a lawyer. But on these overseas flights no such protection clearly prevails.

I think we have got to establish it. Even if they are flying on a foreign airline, if we have someone going to the campuses of the country—incidentally, the president of the University of Tampa had a daughter among those stranded on a flight which he, as the president of the university, had authorized for solicitation and sales on his campus.

If we allow these people to remain in business doing this, then there has got to be assurance given the traveling public, especially these young people, that their Government is not going to let them down.

I think the fact that there are 28 American students visiting Europe for every European student visiting the United States shows that Europe is doing a better job of attracting the student travel than we as a nation are doing. We have to do something to correct that im-

balance. But, meanwhile, we have to make certain these students, who are at a very impressionable age, an age when they are ready to believe the worst of Government and Senators and Congressmen. I think we have got to do something to restore their confidence.

I will just tell you, a hungry kid who has had to go panhandling for food and who has to wait a turn for someone of good will to try and help find him a way back to this country when he has been stranded through no fault of his own, this is a pretty sorry sight.

I was quite ashamed, I can tell you, of our inability to regulate this when I was able to see these kids last summer.

I think that, if I may submit my statement for the record, I probably covered most of it, but I suppose it is considered good form to ask that the statement be included so that every last precious thought will be included for your bedtime consumption.

Senator BEALL. We appreciate your appearance here, Congressman, and we share your concern for this matter, as evidenced by these hearings here today, and we are hopeful as a result of this we will get legislation that will bring some much-needed relief to this problem.

It is unfortunate so many young people are finding themselves stranded in a destitute condition in foreign lands.

Do you feel that there are other activities which cause injury to the traveling public which should be treated? In other words, for instance, do you think there is a need for legislation to take care of the fraudulence on the part of some wholesale tour operators, or defaults?

Mr. VAN DEERLIN. I should hope this would probably not be necessary if the right kind of regulatory machinery is required. But the answer is most assuredly, "Yes." I would hope that the responsible agencies in this field would be after fraud wherever they find it.

Senator BEALL. Would your bill cover these situations?

Mr. VAN DEERLIN. My bill, by dealing with the direct charterers rather than with the broader field of travel agents would zero in precisely in this area.

I don't think—I imagine that any travel agent who was in the position of contributing to this evil would automatically qualify for coverage by a good tight law. He would be doing something that he is not licensed to do as a travel agent.

Senator BEALL. It seems a lot of the difficulty has come when tour operators have defaulted on a payment to an air carrier and to a hotel or to any person with whom they do business, and this has caused the traveler to be left in the lurch, so to speak.

Mr. VAN DEERLIN. Yes, and by so doing I suppose it has tended indirectly to drive up the cost of doing business legitimately. The fact that the shady operator actually sold these tickets that looked like roundtrip tickets, and sure enough there is a flight over, they get them over there and then they go to the airport to find out about the trip home and they find out there is no booking, there is no ticket, they are up against it. This has got to be—this has got to make things tougher for the legitimate operator.

Senator BEALL. You agree that the legislation we finally design must be broad enough to reach out and take care of these people?

Mr. VAN DEERLIN. It surely must.

Senator BEALL. Thank you.

Did Mr. Harris want to add anything?

Mr. VAN DEERLIN. I must say if I have covered it so sufficiently that Mr. Harris has nothing to add—I will yield if you have anything to add.

Mr. HARRIS. I think the Congressman has covered it sufficiently. Senator BEALL. The Congressman generally does things in a very thorough manner.

Mr. VAN DEERLIN. With that, Senator, I will quit while I am ahead.

Senator BEALL. Thank you. We were happy to have you both.

(The statements follow:)

STATEMENT OF HON. LIONEL VAN DEERLIN, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. Chairman, members of the subcommittee, I appreciate this opportunity to discuss with you the inability of our Government to control the charter flight organizers responsible for the stranding of literally thousands of young Americans in Europe this past summer.

With five House colleagues, I have introduced H.R. 11560, which would require the licensing and bonding by the Civil Aeronautics Board of "indirect air carriers of passengers"—those individuals and organizations who act as middlemen in buying air transportation wholesale for resale among members of charter-worthy affinity groups.

S. 2577, introduced by Senator Inouye, has the same laudable goals: Driving out of business the unscrupulous operators who tempt young or naive travelers with bogus offers of bargain basement charter services. But I would respectfully suggest that H.R. 11560 might be better suited in its emphasis on charterers specifically, rather than travel agents generally. We should recognize inherent differences between the two.

The charterer is an independent entrepreneur who functions as an indirect air carrier while dealing—if he's legitimate—only with charter-worthy customers. The travel agent, on the other hand, is likely to offer a wide range of travel services, deal with the general public rather than specific groups, and act *on behalf of* the direct air carrier rather than independently.

I feel that fly-by-night operators who now openly flout the Federal Aviation Act would be just as contemptuous of the controls envisioned in S. 2577. These indirect air carriers should more logically fall within jurisdiction of the CAB.

And for anyone who doubts that the situation is out of hand, let me do a little documenting at this point.

Two months ago, the C.A.B. trumpeted in a press release that it was going to court to halt operations of 16 chartering services it branded as illegal.

And what was the result of all this huffing and puffing? Well, that press release turned out to be worth exactly the paper it was printed on. At least three of the operators cited in the release are continuing to function in total disregard of a C.A.B. suit to put them out of business. I will include with this statement an actual transcript of telephonic conversations with these firms, in which they offered to book reservations—*six weeks after the C.A.B. moved against them*. Under existing law, it seems there's no way to stop these fly-by-nighters, short of a successful criminal prosecution.

Under H.R. 11560, prospective charter organizers would have to demonstrate managerial competence, financial stability and eligibility for bonding—just to get a license to operate. And once licensed, the charterer would have to adhere to all pertinent regulations—just as the airlines must. Charter services would become effectively self-policing, for legitimate licensees would be able to blow the whistle on their unscrupulous competitors, both through the C.A.B. and local U.S. attorneys.

This past summer, I have seen with my own eyes the plight of hundreds of our young citizens, stranded through no fault of their own in foreign capitals. Many, it turned out, had been gulled into paying roundtrip prices for what proved to be one-way airline tickets. The vouchers of return which these kids were sold turned out to be as useless as soup coupons, since the airlines could not honor them.

Clearly, all this is tending to undermine public confidence in air charters, especially student charters abroad, with their enormous educational and social potential. I personally would hate to see this opportunity for reliable low-

cost transportation denied our young citizens. Fortunately Congress, through actions such as these hearings by your Subcommittee, can begin to straighten out the charter mess.

The time has clearly come to shed some light, through C.A.B. licensing, on the murky middlemen of the charter flight business.

INTRODUCTION OF TED HARRIS

I have with me here Mr. Ted Harris. Mr. Harris spent several years on the faculty of the University of Maryland teaching courses in Transportation Economics and Commercial Air Transportation. In the Spring of 1970 he helped to found Consortium International which is primarily a student charter travel organization which he now serves as Executive Vice President.

Mr. Harris accurately predicted to me and other members of the Congress, as early as last Spring, the level of student strandings that were to occur in Europe this past Summer. Over the past year and a half he has brought to the attention of the CAB well over 100 specific instances of illegal charter operators functioning in the U.S. student market. Because of the CAB's relative inability to enforce its own rules and regulations, Mr. Harris spent months researching a sweeping new approach to the problem of illegal student charters. That proposal, filed prior to the current round of student strandings, calls for the establishment of tough federal licensing and bonding standards—not for travel agents—but for indirect air carriers of passengers, which are companies which specialize in organizing charters for groups which qualify as "charterworthy" under current CAB regulations. That proposal, currently pending before the CAB, would eliminate most of the student strandings and most of the wanton abuse of the travelling public which is currently taking place.

Mr. Harris has lent a good deal of assistance in the formulation of my Bill (HR 11560). His academic background, his industrial consulting activities, his writing in aviation trade journals, and his intimate knowledge of exactly how the student market is exploited makes him highly qualified to comment on the Bill pending before this committee.

STATEMENT OF THEODORE P. HARRIS, EXECUTIVE VICE PRESIDENT, CONSORTIUM INTERNATIONAL, INC.

Mr. Chairman and members of the subcommittee, I am grateful for this opportunity to testify with Congressman Lionel Van Deerlin on S. 2577, the Travel Agents Registration Act of 1970.

It is my understanding that this Subcommittee is particularly interested in determining the precise cause of the annual strandings of American citizens abroad by "illegal" charter operators. As a founder and executive officer of a firm in the student charter travel business, I believe I may be able to add some insight into the causes of the student strandings abroad—strandings which, I might add, are but the "top of the iceberg" as far as illegal and fraudulent charter activities are concerned.

Consortium International was founded some eighteen months ago by four well-educated and ambitious individuals, all under thirty years of age. I was then serving on the faculty of the University of Maryland and was lecturing in the field of commercial air transportation economics and public policy. Along with a colleague who was lecturing in business law, we selected the student travel market as the focal point for the exercise of our entrepreneurial instincts. We were joined in our endeavor, shortly thereafter, by two young attorneys from the University of Michigan in Ann Arbor, where we were later to establish our corporate headquarters. Because of our intimate association with the academic community, all of us could readily appreciate the tremendous social and educational benefits that could be realized through the promotion of international student travel. Perhaps more importantly, we viewed the large scale exchange of the world's student population as holding the greatest potential for the development of increasingly harmonic international relations and the relaxation of world tensions. The apparent profit potential was also attractive.

With such lofty goals we naively ventured out into a marketplace which we were soon to learn was fraught with regulatory complacency, illegal operators, and even convicted felons. Shocked at the deteriorating state of the illegal student charter situation, we sought stepped-up enforcement of the CAB charter regulations. We were encouraged by the CAB to report on illegal charter activ-

ities and consequently supplied the CAB with evidentiary materials on well over one hundred "gray area" charter operators. But effective enforcement action was not readily forthcoming. The cumbersome quasi-judicial process which the Board must follow and the recognition of its own economic priorities have hampered the Board's ability to move quickly and decisively against those operators that we, and others, had identified—operators which, in some cases, were selling "round trip" charter tickets to Europe when, in fact, only one-way transportation was to be provided with students being consequently stranded. We predicted those strandings—and identified the responsible parties—six months before they occurred.

In August of this year (prior to the current round of student strandings) Consortium International filed a sweeping proposal with the CAB. That proposal consists of an analysis of the current illegal charter situation, some pertinent regulatory recommendations, and an application for experimental temporary operating authority for my company to operate as a federal licensee which has met tough fitness and bonding standards. That application is now pending before the Board. A copy of the entire proposal, along with related materials from the Docket (CAB #23749), has been made available to this Subcommittee. We believe that this proposal could go a long way toward both decreasing the amount of illegal charter traffic which now moves by both scheduled and supplemental carriers, especially foreign carriers, and eliminating the increasingly bad student stranding situation.

HR 11560, a Bill introduced by Congressman Van Deerlin, is compatible with the Consortium proposal now pending before the CAB. The Bill calls for the establishment of a new formalized category of Indirect Air Carriers. An indirect air carrier is one who does not directly operate aircraft equipment but who, instead, acts as a consolidator of eligible passengers thus assuring the full-planeload operations that make charter travel so attractive from a per-seat/cost standpoint. Legitimate indirect air carriers, licensed and bonded, would do much to put out of business the unethical and illegal carrier charter operator who preys on the unsuspecting traveller.

Indirect carriers have existed for hundreds of years, variously known as consolidators, assemblers, or forwarders of passengers and freight. Congress, the court, and regulatory commissions have long recognized the desirable nature of the services of various types of indirect carriers and the public interest need for their regulation. Even the CAB directly regulates several types of indirect carriers; air freight forwarders; inclusive tour operators; and, study tour operators. In 1942, Congress recognized the pivotal nature of indirect carrier services by enacting Part IV of the *Interstate Commerce Act*, also known as the *Freight Forwarder Act*. 56 Stat. 284 (1942). The abusive situation which caused the Congress to act in 1942 with respect to surface indirect carriers is not at all unlike the situation which now exists with respect to certain indirect carriers which function in the airline business. Here is why:

Indirect carriers profit by taking advantage of the "spread" that exists between bulk (planeload) rates and individual fares. They enable the individual traveller to take partial advantage of the scale economies inherent in air transportation. On a per-seat basis, it is not at all unusual for bulk (planeload) fares to be less than one-half the price of a ticket on a scheduled flight between the same points. However, the bulk fares are only available to certain customers—such as charterworthy "affinity" groups (as designated by the CAB)—and these fares are most beneficial only when the aircraft is completely filled (100 per cent load factor). When the airplane is less-than-full, the planeload rate must be allocated to fewer passengers, thus increasing the per-seat cost to the charter passenger. This pro-rata cost distribution is spelled out in the Board's regulations. But on illegal charters, the increased cost of empty seats is rarely passed on to the passengers. Instead, the illegal operator peddles available seats to individuals who, under CAB regulations, are not *bona-fide* affinity group members and therefore are not legally eligible for charter travel. A genuine "black market" has developed in the sale of charter seats to members of the general public by illegal indirect air carriers who operate without regard for CAB regulations. Many of these illegal indirect air carriers have become so brazen that they now create "phony" affinity groups, complete with bogus membership cards in order to give the appearance of CAB compliance. Some don't even bother to appear innocent—they take ads in newspapers (in itself a violation) and offer to sell charter tickets to anyone who comes in off the street, no questions asked.

The economies of charter travel are so attractive and the CAB regulations so complex and unenforceable that the illegal charter market provides an extremely profitable haven for the unscrupulous, unethical, and illegal operator. And, I am sorry to note, these illegal indirect air carriers are often treated as "favored" customers by certain airlines because they control a significant portion of the total charter traffic. Certain U.S. and foreign carriers alike have been, and are, willing to "look the other way" in the matter of regulatory compliance in return for the promise of charter traffic. Those CAB enforcement proceedings that are a matter of public record contain a shocking, but unpublicized account of a wide variety of illegal and collusive practices between carriers and charter organizers—practices which include illegal rebates, "loans", legal assistance, and other schemes designed to evade the lawful regulations. Let me hasten to add that my remarks should not be interpreted as indicting *all* carriers. To be sure, there are those conscientious carriers who insist on regulatory compliance. There is a cost to their compliance, however, since the illegal charter traffic which they turn away is all too quickly picked up by less-scrupulous competitors who strengthen their economic base—and their competitive position—by carrying illegal charters. Under the current regulations, it appears that those carriers and charter organizers who play the charter ball game by the rules—they finish last, operationally and economically. I would like to note, too, that Consortium International's efforts to clean up the illegal charter situation have been interpreted by certain carrier interests as "rocking the boat." There has resulted a chilling in formerly warm corporate relationships with certain carriers. Simply stated, Consortium is "out of favor" and finding it increasingly difficult to arrange aircraft charters at favorable prices. Such an attitudinal shift was not unexpected, but it is nonetheless difficult to document and prove discrimination.

Amounts as high as one-hundred thousand dollars can change hands in the performance of a single roundtrip charter flight between the U.S. and Europe. Often, these monies are paid to charter organizers months in advance of the actual performance of the air transportation service. When these funds are naively paid to illegal indirect air carriers, the charter passenger leaves himself open to a large number of contingencies which range from bankruptcy and embezzlement to absconson and strandings. Not subject to indirect federal regulation, the charter organizer is allowed to act as custodian of funds without ever having demonstrated fitness or fiduciary capability. When one considers that charter organizers can arrange in excess of one hundred flights per year, the number of passengers moves into the tens of thousands and the monies into the tens of millions. Herein lies the difference between the operating character of the individual travel agent and the indirect air carrier: the former is an "agent" acting on behalf of, and responsible to, the airline while the latter is an entrepreneur acting on his own behalf. Chartering entire aircraft and determining destination and departure time, an indirect air carrier is truly a transportation—not travel—company.

H.R. 11560 does not seek to "legalize" those operators or activities which are now outside the law. It does not seek to interject additional middlemen between carriers and the travelling public (although they already exist, *sub rosa*). It does not seek to restrict markets which carriers now serve. But it does seek to have Congress recognize the dire nature of the illegal charter situation and the public service potential of licensed and bonded indirect air carriers which would operate in strict compliance with CAB rules and regulations. The Bill recognizes fact: that the U.S. system of economic regulation in air transportation is based on rate and route restrictions and that applied rate theory indicates that as traffic volume, density, and distance increase, unit costs (per seat cost) for traffic movement decrease—and that this inverse relationship yields attractive bulk rates (the tapering rate principle). As long as these bulk rates, along with route restrictions, continue to exist there will be an attractive and useful market for indirect air carriers of one sort or another who can pass some of the benefits of bulk rates on to charterworthy groups and their members.

Licensed indirect air carriers would not supplant, merely supplement, carriers in the orderly promotion and development of group and charter travel. Nothing in H.R. 11560 would inhibit carriers from dealing directly with charterworthy groups. Importantly, licensed indirect air carriers could provide to sponsoring charterworthy groups a service not now readily available—the complete design, management, and responsibility for a successful flight program.

Consortium is especially concerned with the elimination of illegal operators in the student charter field because their presence there has had dire economic consequences for students, universities, and my firm. Consortium's lonesome

position of regulatory compliance has, to date, resulted in substantial financial losses, losses which would not have occurred had the student charter market not been so permeated with illegal operators and unscrupulous practices.

Consortium International develops college student flight programs only upon the invitation and sponsorship of individual colleges and universities. When the willingness to support an organized flight program is demonstrated, Consortium undertakes a careful study of potential student charter traffic from that particular college and evaluates student attitudes and preferences for various destinations and departure/return dates. Having projected the traffic level for a particular college, Consortium begins the complicated search for aircraft availability, patterning, and price quotation. Frequently, Consortium will attempt to consolidate flight programs of smaller schools and universities under the CAB's "split affinity" rules which permit up to three separate affinity groups to charter an aircraft. Making effective use of "split affinity" rules requires careful planning and coordination. But this effort results in the sponsorship of legitimate and economical student charter flight programs at colleges which would otherwise be too small to independently support a flight program under the Board's current regulations. Also, "second level" charters are often required to mate split affinity groups from differing geographical locations at the departure gateway airport abroad long-range intercontinental jets which are unable to land at smaller airports.

When aircraft prices and departure/return dates are established, Consortium prepares a formal flight program proposal for university officials. Upon approval of this proposal, Consortium presents airline charter contracts for the signatures of appropriate university officials. (Consortium is not now allowed, under current regulations, to enter directly into contracts with the airlines and assume financial responsibility for the success of a flight program). Once these contracts are signed, Consortium provides the university with a complete flight program management system. We hire university students to operate a student travel center. We educate these students with respect to CAB regulations and flight eligibility. We establish a local depository for flight funds which are administered by a rigidly controlled accounting system. We also provide advertising design, layout, and promotional assistance—and any other services that will assure a successful flight program.

Several weeks prior to the departure of each flight, Consortium finalizes all flight data and accounts and delivers tickets to charter passengers. A Consortium representative is on hand to assist the airline and passengers for each departure and return flight.

Consortium maintains an international Telex facility that may be used by any charter passengers who is experiencing some difficulty in travelling abroad. In many cases, Consortium has played an instrumental role in repatriating students when a family or other emergency dictated their early return to the U.S. Consortium even provides the student traveller with insurance to cover the cost of a ticket on a scheduled flight should he somehow miss his return charter flight.

The procedure I have outlined touches on only a few of the major components required of a successful student charter flight program. It is a complicated task which requires a management well-versed in the intricacies of the international airline industry, various national regulatory systems, university restrictions, and student travel desires. The appearance of illegal charter operators on a college campus jeopardizes the success of even the most carefully planned flight program. Here is why:

An illegal charter operator functions without official university endorsement. More often than not, he has not precise airline charter prices, dates, or contracts. Nonetheless he cleverly chooses a name that probably sounds like governmental institution or educational association (American Union of Students and University Students Association—"USA", for example). Next, he secures a post office box number at the university post office annex. This gives him a university address and the implied endorsement of the university which he can use in his advertising. The illegal operator next proceeds to undercut the prices estimated for the official flight program. He has no real price advantage—he generally does not even have the product, evidenced by a signed airline contract, which he is advertising for sale. As the departure date approaches for a low-priced flight, the illegal operator has a number of unscrupulous options:

1. He will contact each passenger and advise him that the low priced flight has been cancelled by the airline—but that another, higher priced, flight is available the same day. The student has little choice but to accept.

2. The illegal operator will assess a "surcharge" just prior to aircraft boarding to assure himself a healthy profit on even his lowest priced flights. He will generally attribute the surcharge to some government regulation. Such surcharges can cause student to sharply curtail carefully budgeted trips abroad and can lead to embarrassing personal financial emergencies.

3. The illegal operator may have sold low cost "round trip" charter tickets but may have purchased only "one way" charter transportation. In this event he may have up to three months before students discover that they have no return transportation—more than ample time to make a clean getaway.

The demand for student charter travel on any given campus is highly price-elastic. Students, having implicit faith in the government's close regulation of air transportation, regard aircraft seats as a homogeneous commodity and will generally purchase the cheapest tickets available. This drains charter passengers from an officially sponsored flight program which, in turn, results in empty seats on aircraft. According to CAB regulations, the total cost of a charter flight must be pro-rated among the number of passengers on each particular flight. Thus any empty seats increase the pro-rated price, through a federally-required surcharge. Illegal operators rarely have problems with empty seats since they rarely comply with the affinity regulations. Illegal operators easily fill empty seats with members of the general public who are anxious to travel cheaply.

The illegal operator ignores other CAB regulations that give him an illegal advantage over an officially sponsored program. The CAB requires, for example, that members of the chartering group depart and return together on the same flights. Because of this restriction a legally operated charter flight can offer students only round-trip flights with specific departure and return dates. Even though an official flight program may consist of several different flights, there can be no mixing and matching of departure and return dates. The illegal operator, on the other hand, pays no attention to this restriction and allows the student to pick his own departure and return dates—a decided, albeit illegal, advantage.

A great many colleges and universities flatly refuse to assume the financial responsibility required in the execution of an airline flight contract. They contend, and rightly so, that universities are in the education field, not the transportation business. More pointedly, universities are very reluctant to assume financial responsibility for a student charter flight program the administration of which they know little about. Too, the adverse publicity stemming from wholesale student strandings and other activities of illegal operators has cast a dark shadow of doubt over the desirability of official flight programs. Attempts by universities to chase illegal operators from their campuses have been wholly unsuccessful and they have written in by the score to the CAB to express their concern (Docket 23749).

At universities where officials refuse to sign flight contracts there can be no legitimate campus-wide student charter program—and the illegal operators have a field day because there is no reputable operator with whom they have to compete.

Consortium International feels that the time has come for the Congress and the CAB to realistically appraise the causes and solutions to the illegal charter problem. We also feel that it is about time for the carriers to shed their complacency and awaken to the perils they are creating not only for the travelling public, but for the very security of their own futures.

Illegal charters are operated by both scheduled and supplemental carriers. Foreign air carriers have been identified by the CAB as being especially prone to violating the CAB regulations. Regardless of which carriers carry the most illegal charters, it must be recognized that the illegal charter is revenue generating traffic for an industry in the throes of a ruinously competitive price war, adverse international economic conditions, and the problem of chronic overcapacity. With their economic lives at stake, carriers become less insistent on regulatory compliance and more anxious for traffic of any sort.

In an effort to drive charter outlines out of certain markets during the past nine months, the scheduled international carriers have slashed certain rates to the point where, obviously, they are discriminatory and non-compensatory. A good example is the "student" or "youth" fare (up to 29 years of age!) instituted on the North Atlantic routes this past Spring and Summer. The low rates offered young travellers compared favorably with those offered by charter airlines (many of whom were operating surplus scheduled airline equipment). But these rates did not the charter restrictions, such as affinity requirements and fixed return dates, that are inherent in the charter regulations. Consequently,

much student traffic was drawn away from officially sponsored student flight programs, sometimes at substantial financial loss to the respective universities. In addition, these low student rates caused certain legitimate charter organizers and charter airlines to cease or curtail operations, some through bankruptcy. Now that the peak student travel period has passed and the ranks of charter competition and charter organizers have been thinned, the scheduled carriers have "voluntarily" withdrawn the international student and youth fares. Both the Department of Transportation and the CAB had indicated that these fares were unjustly discriminatory, but both were powerless to act to eliminate them.

For the past several months, the American public has been subjected to a barrage of full-page newspaper advertisements by scheduled carriers announcing new drastically reduced fares to Europe and elsewhere. It was the same type of publicity that accompanied the introduction of the youth fares last Spring. These new low fares, which were scheduled to go into effect in February of 1972, have been quietly dropped or, more appropriately, "raised" by mutual agreement of carriers meeting recently in Hawaii. But the travelling public has not been apprised of this fact by a correspondingly intense advertising campaign by the carriers. To the contrary, the great majority of the public, students included, believe that highly attractive low fares await them—fares competitive with those assessed charter passengers. The public will receive a rude awakening when reservation time arrives. Much student travel to Europe will be prohibitively expensive because of the absence of legitimate charter flight programs. Many anticipated vacations will be postponed. The only real beneficiary will be the illegal charter operator who will find the higher scheduled rates a boon to the sale of charter tickets to members of the general public. Such is the nature of the abusive airline situation that the events of the past year will repeat themselves more emphatically unless some remedial measures are taken.

The Congress should be properly outraged that an industry so vitally vested with the public interest as is the airline industry has become so chronically unstable and accustomed to engaging in ruinous competitive practices which are clearly antagonistic to the public interest which the *Federal Aviation Act of 1958* was designed to protect. The Congress should be similarly outraged that as the airline industry goes about trying to destroy itself, thousands upon thousands of American citizens are being stranded, defrauded, and misled at an unprecedented rate—citizens who were once confident that their government closely regulated the airline industry for their protection. The level of public confidence in charter travel, especially, has deteriorated significantly and needlessly.

It would certainly be a difficult task to quantify, in dollar terms, the cost of the strandings and defraudings created by illegal charter operators. More easily measured, perhaps, would be the public funds expended by the CAB in the uphill battle of trying to enforce its regulations. Also more easily measured would be the funds expended by the State Department in trying to repatriate the thousands of Americans who have been stranded abroad in recent years. But not at all measurable in dollar terms is the trauma of the stranded student who is reduced to beggar status in foreign cities through no fault of his own. Also not measurable is the emotional price paid by concerned parents and loved ones when a young son or daughter fails to return as scheduled from a foreign land. It is an understatement to say that a new approach to this increasingly severe problem is needed.

I believe that Congress should take note of the international competitive situation in which U.S. scheduled and supplemental carriers now find themselves. Their foreign competition is frequently government-owned and subsidized. Such airlines are often viewed more as an extension of national policy rather than as an economically self-supporting channel of international communication. Subsidy provides built-in pricing advantages which become even more attractive when the lower direct operating costs of foreign carriers are considered. Economic considerations frequently give way to political expediency when new international agreements, such as uplift rights, are negotiated. As a partial result, much of the charter traffic—especially illegal charter traffic—that moves between the United States and Europe is carried by foreign carriers even though most of the traffic originates in the United States. Also, foreign carriers are more amenable to bypassing CAB charter rules and regulations. U.S. airlines need to be restored to a balanced competitive position that would allow the more orderly development of all types of passenger traffic both domestically and internationally. This can only be done through repairing regulatory flaws and legislative loopholes which encourage illegal and unethical activities which are weakening the foundation of public confidence on which the airline industry has become so dependent.

I would like to remark briefly about a CAB proposed rule making named the "six month advance payment non-affinity charter proposal." As the name implies, anyone could fly on a charter provided that the ticket was purchased six months in advance. This proposal is staunchly opposed by the scheduled carriers and, not surprisingly, warmly embraced by the supplementals. It has been suggested that the adoption of this proposal would serve to end illegal charters and strandings. I suspect that a large portion of the general public would be unable or unwilling to purchase charter tickets six months in advance and that there would remain a substantial market for the illegal charter operator. But more importantly, from the standpoint of Consortium, the adoption of that proposal would serve to further inundate the student charter market with illegal charter operators. To college students, six weeks—not six months—more appropriately defines "long range" planning. Clearly, the proposed six month rules would do little to serve the low cost travel needs of this nation's college students—unless an increasing influx of illegal operators can be viewed as serving this market. And that is exactly what would happen with the adoption of the proposed rule because illegal operators would find often naive young American students more vulnerable and exploitable than ever. Certainly, the proposed rule would do little to eliminate student strandings. To the contrary, it would probably serve to increase the number of strandings.

It has been suggested that the imposition of licensing and bonding requirements for legitimate charter operators would act as a barrier to free entry into the market. It should. Should operators who are unable to demonstrate their fitness, managerial, and financial stability be allowed into a marketplace so closely tied to the airline industry and the public interest? Should individuals who are unable to demonstrate their integrity be allowed custody of the millions of dollars in flight funds that can be generated by a flight program. Clearly, the liability of a charter operator is that of an entrepreneur, nor that of an agent, and the public is entitled to some assurance of performance and competency.

In conclusion, it is my considered opinion that the stranding and defrauding of charter passengers is not caused by travel agents but by illegally operating indirect air carriers who exploit a trusting public and an unenforceable regulatory structure. While the federal licensing of travel agents by the Department of Transportation as contained in S. 2577 may have merits on other grounds, it would not provide the answer to the strandings and defraudings that continue to occur. I believe that HR 11560 is a more appropriate solution to this problem. The establishment, and close regulation, of a new category of indirect air carriers—as transportation, not travel, companies—should appropriately be enacted by the Congress and administered by the CAB.

Senator BEALL. Our next witness is Mr. Bruce B. Wilson, Deputy Assistant Attorney General for Consumer and Interagency Affairs, Antitrust Division, Department of Justice.

STATEMENT OF BRUCE B. WILSON, DEPUTY ASSISTANT ATTORNEY GENERAL FOR CONSUMER AND INTERAGENCY AFFAIRS, ANTI-TRUST DIVISION, DEPARTMENT OF JUSTICE; ACCOMPANIED BY JOHN C. KEENEY, CHIEF, FRAUD SECTION, CRIMINAL DIVISION

Mr. WILSON. Good morning, Mr. Chairman.

Mr. Chairman, with me is Mr. John Keeney, who is the Chief of the Fraud Section, Criminal Division, Department of Justice.

We appreciate the opportunity to appear before you today to discuss the various proposals for Federal licensing and regulation of travel agents.

The travel industry is one which has recently been the subject of considerable discussion. I believe that there are some obvious abuses in this area which should be halted. These abuses, however, are confined to narrow fact situations and can be prevented by exercise of existing statutory powers or by relatively narrow grants of additional authority.

We believe the general licensing scheme proposed in S. 2577 is, therefore, neither necessary nor desirable.

The travel industry is composed of many diverse groups and the degree of regulation is varied. There are, of course, the direct suppliers of travel accommodations such as hotels, car rental companies, and so on. These segments of the industry are virtually free from Federal regulation. On the other hand, air, water, and surface carriers are comprehensively regulated by the CAB, FMC, and ICC.

The traveler often does not deal directly with these suppliers. Instead, he engages the services of a travel agent to arrange for the entire package of transportation, car rentals and other accommodations.

There are now about 8,000 travel agencies, including branch offices. The retail travel agency business is highly competitive and entry by small firms is relatively easy. According to recent surveys, the median agency has five to seven employees, generates about \$850,000 in gross sales and earns from \$25,000 to \$50,000 in gross revenues—commissions from sales.¹ These 8,000 businesses produce over \$5 billion in total travel sales.

Travel agents must obtain appointment from various conferences before they can sell airline or steamship transportation. The Air Traffic Conference, pursuant to standards approved by the CAB, appoints travel agents for domestic scheduled air carriers. In the international scheduled air carrier sphere, the International Air Transport Association (IATA) appoints travel agents for international scheduled air carriers, with its standards also subject to CAB approval. There are similar procedures for the appointment of agents for steamship lines, with FMC oversight. Although any procedure which places the application of standards in the hands of private combinations of carriers can lead to problems, the regulatory agencies have attempted to assure that the standards for appointment are relatively objective and based on financial responsibility and professional competence.

In addition to the carriers and retail travel agents, several other types of organizations provide services in the travel industry. Tour operators, sometimes known as wholesalers, arrange package tours and offer them to the retail agent. Tour operators may promote their packages independently or they may be acting as agents of a carrier which itself markets and promotes the tour.

Another component of the industry consists of hotel representatives which represent one or more foreign hotels in accepting reservations for hotel accommodations.

Finally, there are charter consolidators or arrangers, who may also function as tour operators or travel agents. Consolidators arrange charter trips for scheduled air carrier flights for groups of travelers. This segment of the industry has been the subject of considerable controversy, since there have been a number of illegal charter promoters who have given the entire industry a bad name.

Given the structure of the travel industry I have described, what abuses exist which might be thought to justify the Federal regulatory scheme proposed under S. 2577?

As to the retail travel agents, there seems to be little justification for broad Federal regulation. While a few travel agents may be dishonest or incompetent, this problem is not unique to this industry.

¹ Harris, *The Character and Volume of the U.S. Travel Agency Market* (March 1971); *Airline/Travel Agent Marketing Study* (Systems Analysis and Research Corp., August 1967).

Abuses arising from these conditions can be handled, I believe, through established agencies of consumer protection.

Bankruptcies of retail travel agents have been a relatively minor problem. For the first 9 months of this year, the Air Traffic Conference reported that 34 agents had defaulted, owing the carriers approximately \$800,000. This, however, represents a miniscule amount compared to the over \$2 billion that agents generate in domestic airlines sales.

Moreover, bankruptcies should not affect the traveling public, since the air carriers are protected by the bond that is required of the travel agent for conference appointment. More often than not, carriers will honor tickets already issued by bankrupt agents, and the CAB would appear to have the authority to require that they do so. Also, the travel agent's bond could be modified to provide for more complete coverage to protect the traveler as well as the airline. This could be accomplished without a broad licensing scheme.

With respect to tour operators, some bankruptcies have taken place in recent months. In these cases, the air carriers have by and large accommodated affected travelers. CAB regulation could, we believe, provide that any air carrier which contracts with a tour operator be required to guarantee air transportation and ground accommodations for travelers in the event of bankruptcy of the tour operator. This is currently being done voluntarily by at least one international air carrier. Also, a bond could be required of tour operators to protect the carrier and the traveling public. We understand that the American Society of Travel Agents currently has under consideration a bonding arrangement for tour operators.

As an alternative, adoption of the European practice of carrier orders could be encouraged. Under this system, the retail travel agent pays the air carrier directly rather than through the tour operator. Suppliers of ground accommodations then can accept the order, knowing that the carrier will stand behind it.

Though I do not suggest one approach over another, there would seem to be a variety of alternatives available to solve problems restricted to a narrow segment of the industry. In our view, however, the need for comprehensive Federal regulation, as envisioned by S. 2557, has not been demonstrated.

Finally, the abuse which has generated the most concern relates to another narrow and distinct portion of the industry. We have witnessed a number of instances in which American travelers have been stranded in airports throughout Europe because their charter flights had been cancelled. On occasion, it appears that the travelers were themselves to blame, in that they sought to take advantage of phoney affinity groups. In other instances, however, travelers were innocent victims of business failures in the travel industry. Cancellations occurred either because the charter group was discovered to be illegally constituted or because the consolidator had failed to pay over to the carrier the amounts collected from the travelers. The bankruptcy of one group charterer, World Academy, stranded 3,000 students in Europe in the summer of 1970. For the people involved, these incidents were agonizing experiences. We share your concern to prevent such incidents in the future. We believe, however, that prevention can be accomplished without a broad Federal licensing scheme.

At present, several civil and criminal remedies are available to prosecute illegal charter operators. Our criminal division has several cases under investigation for violations of the mail fraud statute. However, this statute requires a showing that at the time money was solicited from the public, the operator had no present intention of providing the services contracted for.² This, of course, is a difficult burden of proof. The World Academy situation is now under investigation by the Postal Service and the results of the investigation will be reported to the Department upon its completion.

Additionally, the Civil Aeronautics Board and the Federal Maritime Commission have promulgated regulations to govern the conduct of tour organizers and to protect the public from the unscrupulous or undercapitalized. Violations of these regulations can result in administrative sanctions as well as civil and criminal penalties. For example, the Federal Aviation Act of 1958 permits the Civil Aeronautics Board to conduct its own investigations and to enforce its regulations through cease and desist orders.³ Also, civil penalties of \$1,000⁴ and criminal fines of \$2,000 for willful and knowing violations are available under the act.⁵ Violation of regulations promulgated by the Federal Maritime Commission are subject to a criminal fine of \$5,000, whether or not such violations are knowing and willful.⁶

It is apparent that there already has been a serious attempt by the agencies to deal with many of these problems within the existing statutory framework. The CAB has taken action to protect the public from being stranded overseas. Tour operators who conduct inclusive tour charters are now required by the CAB to post a bond to insure that they will be able to meet their obligations to the chartered air carrier.⁷ These provisions have been recently modified to make the bond requirements more workable and to provide better protection to the public.⁸ The new regulations also relate the amount of the bond to the length of the tour and increase the size of the bond required for the larger tour programs.

The Board has also acted to regulate study group charters, which would encompass organizations such as World Academy. All such charters, except those conducted by bona fide educational institutions, must now comply with the Board's recent regulations, including the posting of a surety bond large enough to protect the individual travelers in the study groups.⁹

One of the most persistent and difficult problems in airline travel has been the formation of affinity charter groups which violate CAB regulations. The CAB has recently taken affirmative action to halt the formation and operation of charter groups which violate its affinity regulations. In addition, the Board recognizing the difficulties inherent in the affinity concept, has instituted a proposed rulemaking on nonaffinity charters.¹⁰ These administrative actions, available under existing law, should of course be considered in weighing the need for new legislation.

² 18 U.S.C. sec. 1314.

³ 49 U.S.C. sec. 1482.

⁴ 49 U.S.C. sec. 1471.

⁵ 49 U.S.C. sec. 1472.

⁶ 46 U.S.C. sec. 831.

⁷ 14 CFR 378.16.

⁸ Regulation SPR-45, adopted Mar. 30, 1971.

⁹ 14 CFR 373, adopted Mar. 10, 1971 in regulation SPR-46.

¹⁰ Special Regulations Docket No. 23055, issued on Jan. 29, 1971.

As I have indicated, S. 2577 would go much further. It would provide for the certification of all travel agents and the creation of a regulatory body within the Department of Transportation to promulgate and enforce rules and regulations governing many aspects of the travel agent business.

The bill would create within the Department of Transportation a Bureau of Travel Agents Registration. The Bureau would be headed by a full-time Director of Travel Agents Registration appointed by the Secretary of Transportation. Within the Bureau, a part-time Travel Agents Registration Board would be created consisting of eight members, also appointed by the Secretary of Transportation. The Board members would be selected from the travel agent industry, the general public, and other Government agencies. The Board would serve merely in an advisory capacity, while the Director would be responsible for the day-to-day functioning of the Bureau. The Director, with the advice of the Board, would be given the power to promulgate rules and regulations relating to virtually all aspects of travel agent conduct, including, but not limited to, financial requirements and ethical practices.

All applicants would be required to apply to the Director for a registration certificate. The Director, with the advice and consent of the Advisory Board, could approve an application on the basis of a demonstration of financial responsibility, good character, and successful completion of a written examination as to competence. In addition, the Director, with the advice of the Board, would be required to make affirmative finding that the applicant, if certificated, would provide a useful public service.

Individuals who have been engaged in the travel agency business for at least 2 years and who have been approved agents of at least two air and steamship conferences for at least 2 years, automatically would be granted a registration certificate when applied for, unless the Director made a specific determination that the applicant lacks good character or is not financially qualified.

The Director would be authorized to suspend or revoke the registration certificate or impose fines, after a hearing, if he found that the registrant had engaged in any one of several enumerated practices. Such an order by the Director would be subject to judicial review in the court of appeals.

The Department of Justice opposes this bill for the reason that it is seriously anticompetitive and would establish an extensive Federal bureaucracy without any clear showing of need.

One of the most essential prerequisites for the maintenance of competition in any industry is ease of entry. It assures that prices cannot in the long run be maintained at a level which produces excessive profits. On the other hand, high barriers to entry may result in uncompetitive prices and excessive profits.

The travel agency industry today is characterized by relatively low barriers to entry. Consequently, it would appear that the prices charged by travel agents for their services have remained closely related to their costs and, in addition, the quantity and variety of services offered the traveling public have been highly responsive to consumer demand.

Any licensing scheme imposes some barrier to entry because of the expense and delay that ensues from applying for a license. But entry requirements which contemplate a limitation upon the number of industry participants impose especially serious barriers.

S. 2577—requiring as it does a finding of “useful public service”—apparently would limit the number of entrants based on the Director’s judgment as to what is required to serve the demands of the market. Similar restrictions on entry have been imposed in the ICC certification of motor carriers, which requires a showing of public convenience and necessity. In practice, this has amounted to a requirement that the applicant for entry demonstrate that service by the existing licensees in the market is not adequate. The agency has been criticized for erecting a protective shield for carriers already certificated.

The “grandfather” provisions of S. 2577 also resemble restrictions imposed by the Motor Carrier Act. As ICC experience shows, grandfathered rights today, bear no relation to economic conditions tomorrow.

S. 2577 also fails to specify clearly the licensing procedures contemplated. General administrative law principles would likely require that there be opportunity for a hearing at some stage of the application process and that existing agents who would be financially disadvantaged by the licensing of new competitors be permitted to participate in that hearing.

Experience in the motor carrier industry demonstrates that existing members of the industry can mount massive campaigns to oppose new entrants. In the travel agent industry, existing agents would have the financial ability and economic incentive to oppose new entrants vigorously, and even if the door to new competitors were not completely closed, opposition to new entrants would increase the expense and time of obtaining a license.

At one time, the domestic airlines used a similar standard—this is, the need for additional agents in a particular area—as a criterion for appointing new agents. About 1959, the CAB found that limitation to be contrary to the public interest. The Board chose to allow freer entry based solely on objective standards as to the agent’s financial and professional qualifications.

At present, many statutory schemes of entry control are being seriously questioned, particularly in the transportation areas. On November 8, for example, the Department of Transportation sent to the Congress a far-reaching bill to relax regulation in the surface freight transportation industry. It would be anomalous to impose new controls on other industries without a clear showing of serious defect in the functioning of the free market which cannot otherwise be remedied.

It is our view, for the reasons I have stated, that this clear showing is lacking. The defects which do exist, and with which this subcommittee is rightly concerned, can be remedied by other, less anticompetitive measures.

While we oppose S. 2577, there may be merit in a simple Federal scheme which would replace existing governmental and private regulatory schemes in the travel industry. While I do not necessarily sug-

gest any one particular system, any new regulation should be tailored to meet competitive objectives.

First, there should be no limitation on the number of industry participants, and no unreasonable barriers to entry.

Second, the present method of conference appointments might be abandoned. Either all agents could automatically be appointed agents of the air carriers and steamships, or each individual carrier could be free to appoint any or all agents. Collusion among carriers to exclude agents from any particular area would be subject to prosecution under the antitrust laws.

Very importantly, some form of a financial guarantee, such as the posting of a bond to protect the public and suppliers, might be required.

Finally, criminal sanctions and future disqualifications could be imposed upon those who fail to comply with the requirement for posting a financial guarantee.

The system of financial guarantees seems to me to have several advantages. It would operate primarily in a competitive atmosphere free from regulation, either governmental or private. It would be principally self-enforcing. Bonding companies would investigate the financial status of agents before issuing the required bond. And the surety company which was forced to pay off a defaulting agent's obligations, either to travelers or to suppliers, could likely be relied upon to make sure that the offending agent ceased to do business. The threat of significant criminal sanctions would be an effective deterrent to those who would do business without satisfying the requirement of a financial guaranty.

I suspect that the overall cost of such a system—to travelers, to the industry, and especially to the taxpayer—would be substantially less than any man-made system of regulation.

Of course, upon further examination this subcommittee may determine that the system I suggest is not feasible. While it is one alternative, I am sure that it is not the only one.

We would, of course, appreciate the opportunity to comment upon any new plan selected by the subcommittee to modify or replace existing statutes.

We must be careful not to overregulate any sector of the economy. There should be a clear economic justification for any type of regulation and particularly for a licensing scheme. It is our view that the existing abuses do not provide such a justification, and we, therefore oppose the enactment of S. 2577.

Senator BEALL. Thank you, Mr. Wilson.

In your statement, I notice you point out the persistent and difficult problems the CAB has had with affinity charter groups and that the CAB has taken affirmative action. I believe you heard Congressman Van Deerlin's testimony. Is it true that notwithstanding the action of the CAB, these people are still doing business?

Mr. WILSON. I think the answer to that, Senator, is probably not in the area of lawsuits or litigation which takes time. Such measures are after the fact—the horse is gone before the barn door is locked. I think the solution probably lies in the proposed rulemaking on non-affinity charters, which would bring the benefits of the low-cost travel to the American public without requiring the affinity which the present regulations do.

Senator BEALL. But we must correct the abuse now. They continue this business unless they are successfully criminally prosecuted; isn't that true?

Mr. WILSON. Yes, I think that is true. The answer I proposed is one where there would be a bond posted, the airlines and other suppliers could rely on that bond, and if a fellow did business without posting that bond, I would want to have pretty significant criminal sanctions for that violation.

Senator BEALL. Would the bond extend far enough to cover ground accommodations, all of that sort of thing?

Mr. WILSON. I think it should. I think the amount of the bond, for example, could be related to the volume of business done by the particular person, whether he be a travel agent, a tour operator, or any combination of those functions.

Senator BEALL. Have the surety companies indicated a willingness to provide that sort of bond?

Mr. WILSON. They provide bonds now for many travel agents under the existing regulations.

Senator BEALL. That cover all of the commitments that the travel agents make?

In other words, in addition to travel, it would cover any forfeiture or lack of ability to provide ground accommodations and that sort of thing?

Is the bond that extensive today?

Mr. WILSON. I believe the tour operators' bonds are that extensive. I am not sure of that—I would be glad to check it for you—but I see no impediment to establishing such a bonding requirement.

Our competitive system has been fairly flexible in responding to the demands for various types of goods and services, including bonds. I think it would respond to a requirement, either by statute or pursuant to regulation, that the bonds extend to include any service offered by the tour operators or by the travel agents.

Senator BEALL. The bond requirement itself then restricts the entry into the field.

Mr. WILSON. It does, Senator, but it is an objective standard and that is what is important about it. We have seen in the past many instances where competitors have the incentive and the opportunity to discourage new competition solely for the sake of discouraging new competition. I believe that, where we have objective standards and where anybody who can meet those objectives standards can enter the industry, it will be a much healthier system.

Senator BEALL. Anybody who can get a bond?

Mr. WILSON. Right.

Senator BEALL. Even though some bonding companies may have different requirements for providing the bond?

Mr. WILSON. Yes, sir.

Senator BEALL. In your statement, you point out that a few instances of shoddy dealing by fly-by-night operators have given the whole travel industry a black eye.

In making that statement, is the Department aware of the number of tour operators who are involved in so-called shoddy dealings?

Mr. WILSON. I certainly think it is of course less than the majority, Senator.

Senator BEALL. Oh, I would hope it would be, but is the Department aware of the number of wholesale tour defaults?

Mr. WILSON. I believe we have a figure on that, Senator. If we do not have it, I am sure it is available from the various regulatory agencies. There have been a few, but in relation to the number of agents and the magnitude of travel and tour operations that go on, it is a very relative few. As I point out in my statement, we have had, for example, 34 defaults of travel agents in the first 9 months, representing \$800,000. But that is out of \$2 billion generated in domestic airline sales.

So it is a very small proportion. I am not saying it is not a problem, but a small proportion.

Senator BEALL. It is a problem to those people who lost their money.

Mr. WILSON. Yes, sir.

Senator BEALL. I think it would be helpful to the committee if the Department could furnish the statistic it has on the number of wholesale tour operators who have defaulted or gone bankrupt or other statistics you feel might be useful to the committee.

Mr. WILSON. Yes, sir.

Senator BEALL. You also say in your statement that travel agencies must obtain an appointment from the various conferences before they can sell airline or steamship transportation.

Isn't it true that there are travel agents who sell airline and steamship accommodations without getting an appointment from the conference?

Mr. WILSON. I don't think there are such travel agents. There are perhaps tour operators who get into the act.

Senator BEALL. Well, travel agents themselves, I believe.

Mr. WILSON. I don't believe the travel agents, Senator, can sell the air transportation or the steamship transportation without an appointment from the appropriate conference.

Senator BEALL. As I understand it, they aren't entitled to a commission unless they have an appointment, but they can sell the service without belonging to the conference if they are willing to do so, without a commission.

And I understand, some of them do.

Mr. WILSON. I am not sure of that, Senator.

Senator BEALL. Well, I think it is so.

You state in another part of your statement that the abuses that have occurred can be taken care of through the existing consumer legislation that is already on the books.

Now, isn't this, really, though, an after-the-fact cure?

Mr. WILSON. Again, Senator, this is, as I pointed out earlier, an after-the-fact cure. The bonding requirement, I think, would be before-the-fact preventive medicine, if you will. And I think it would work and work much more cheaply than any system of regulation we could devise.

Senator BEALL. In other words, what you are really saying is, as far as the Department is concerned, they think the bonding requirement would be sufficient to provide the kind of protection that is needed?

Mr. WILSON. Yes, sir.

Senator BEALL. Without any licensing of agents or licensing of operators?

Mr. WILSON. That is correct, sir.

Senator BEALL. Thank you, Mr. Wilson.

Mr. WILSON. Thank you, Senator.

(The following information was subsequently received for the record:)

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., December 2, 1971.

HON. DANIEL K. INOUE,
Chairman, Subcommittee on Foreign Commerce and Tourism, U.S. Senate, Washington, D.C.

DEAR SENATOR INOUE: At the hearings conducted on S. 2577 on Thursday, November 18, 1971, Senator Beall raised a question concerning the number of tour operator failures of which the Department was aware, and I undertook to supply the information for the record.

The Department is aware of six bankruptcies of tour operators since the beginning of 1971. These tour operators are: Travelmaster Tours, Arlington Heights, Illinois, specializing in tours to Europe; United Tours, Miami, Florida, specializing in tours to the Caribbean; McQuade Tours, Miami, Florida, specializing in tours to the Caribbean; BonVista Tours, New York, New York, specializing in tours to the Caribbean; Stevens Tours, Miami, Florida, specializing in tours to the Caribbean; and Berry World Travel, specializing in tours to Europe.

It is apparent that most of the failures involved tour operators specializing in tours to the Caribbean. This is a clear reflection of the depressed travel market in that area, which is the result of a variety of factors. Caribbean tour operators generally must obtain appointment from the hotel association of each major island in order to operate as a tour operator for that island. The hotel members of each association and the association itself are supposed to maintain a review procedure whereby any tour operator not meeting the thirty-day payment requirement is put on a cash only basis and not allowed further extensions of credit. This was not always done in the past, but the recent failures have caused the hotels to become more rigorous in enforcing their contractual arrangements.

In answer to one of Senator Beall's questions, I indicated that under CAB regulations tour operators are now required to furnish a bond, which assures payment to the suppliers of ground accommodations as well as to the air carrier. That answer should be qualified. CAB regulation SPR-45, adopted March 30, 1971, is applicable only to supplemental airline inclusive tour operators and scheduled international airline contract bulk inclusive tour operators (which organize a type of promotional rate which was dropped from the last approved IATA resolution). This does not encompass all tour packages which are offered by travel wholesalers. I do believe, however, that this recent Board regulation is significant in that it indicates the feasibility of formulating comprehensive protection for tour participants, covering both the air and ground services for which they have paid. It also should be noted that this regulation offers the tour operator an alternative to the furnishing of a bond: *i.e.*, the creation of an escrow arrangement with a bank whereby payments by tour participants are promptly forwarded to the bank and the bank is responsible for making timely payments to the air carrier and the supplier of ground services. There may be a number of situations in which such escrow arrangements would be a cheaper and more convenient method of protection than comprehensive bonding.

As I indicated to Senator Beall, the Department would be pleased to respond to any further questions which may arise during the Subcommittee's consideration of these questions or to comment upon any other legislative proposal to be considered by the Subcommittee.

Sincerely yours,

BRUCE B. WILSON,
Deputy Assistant Attorney General.

DEPARTMENT OF JUSTICE,
Washington, D.C., December 16, 1971.

Hon. DANIEL K. INOUE,
Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR SENATOR INOUE: This is in response to your recent letter requesting our views on a number of additional questions with respect to S. 2577.

Your first question asks whether a program of self-regulation for the travel agent industry would present antitrust problems.

Attempts at industry self-regulation are usually carried out through trade or professional associations. Such associations may also engage in such activities as exchanging statistical information among members, promoting the industry's product, representing the industry before governmental bodies, and developing product standards.

Forms of self-regulation vary from the purely voluntary—such as recommended codes of ethics or institutional advertising programs—to inherently coercive systems of private law enforcement which impose sanctions such as fines, expulsion from membership, or denial of a license or certificate needed for effective participation in the industry. Over the years such industry self-regulation programs—especially of the latter type—have raised substantially antitrust question.

The least troublesome method of self-regulation involves purely voluntary compliance—that is, the formulation of codes of ethics, resolutions, or recommendations which members of the industry are free to accept or reject. Here the principal antitrust questions concern the substantive content of the code. Any agreement among association members on a code of ethics must leave undisturbed the fundamental areas of individual competitive decision making—price, level of output, choice of customers, and so forth. Trade association agreements which go beyond that limit constitute unlawful horizontal combinations in violation of Section 1 of the Sherman Act. See *e.g.*, *Federal Trade Comm'n. v. Cement Institute*, 333 U.S. 683 (1948); *Sugar Institute v. United States*, 297 U.S. 553 (1936); *National Macaroni Mfrs. Ass'n v. Federal Trade Comm'n.* 345 F.2d 421 (7th Cir. 1965).

More serious antitrust problems have been raised by self-regulatory associations which restrict membership or impose sanctions on members who violate the association's code of ethics. When enforcement powers are placed in the hands of competitors, there inevitably are dangers of arbitrary or sham enforcement actions against competitors. See *Silver v. New York Stock Exchange*, 373 U.S. 341 (1963); *Millinery Creators' Guild v. Federal Trade Comm'n.*, 312 U.S. 469 (1941); *Fashion Originators' Guild v. Federal Trade Comm'n.*, 312 U.S. 457 (1941); *Associated Press v. United States*, 326 U.S. 1 (1945).

The problem is complicated by the close connection between the regulation of business ethics and the regulation of competition. In devising rules and regulations to improve professional behavior in an industry, trade associations often have a tendency to equate aggressive competition with unprofessional behavior. For example, pharmacists' associations have frequently regarded price competition in the retailing of prescription drugs as unprofessional conduct.

One of the most serious antitrust problems of private regulation has arisen in situations in which an association becomes essentially a licensing agency. Because of the resulting monopoly position, the association exercises life-or-death control over industry members or potential industry members. This type of self-regulation has led to a number of antitrust violations in the past. See *United States v. New Orleans Ins. Exchange*, 148 F. Supp. 915 (E.D. La. 1957), *aff'd*, 355 U.S. 22 (1957); *United States v. Insurance Bd. of Cleveland*, 144 F. Supp. 684 (N.D. Ohio 1956); 188 F. Supp. 949 (N.D. Ohio 1960); see also *United States v. Baton Rouge Ins. Exchange*, 1958 Trade Cas. 169,068 (E.D. La. 1958). Cf. *Silver v. New York Stock Exchange*, 373 U.S. 341 (1963).

In light of these principles, self-regulation is not likely to be the best solution for very many of the problems in the travel agent industry. As I indicated in my testimony, the financial failure of some agents represents the only problem in the retail travel agent industry which could be thought serious enough to warrant consideration of new regulation. The determination of which retail travel agents have sufficient financial qualifications to receive appointment is presently made by the carrier conferences, within the regulatory framework established by the CAB and FMC.

The determination of financial qualification inevitably involves examination of sensitive financial information about the applicant. We would not wish to see the function now performed by the carrier conferences simply shifted over to a trade association of travel agents. Whatever competitive problems now exist with collective carrier decisions, collective travel agent decisions on admitting new competitors would obviously have more severe anticompetitive consequences than the present system.

The preferable solution, as I suggested in my testimony, would be federal establishment of relatively simple and objective standards of financial qualification, which would be implemented largely by the free market.

For basically similar reasons, we doubt that self-regulation is the answer to the problems affecting the wholesale travel agent business. With regard to charter operators, the basic problem is determining what the standard for charter-worthiness should be and then adequately enforcing that standard. These, we believe, are properly matters for Government, rather than private, action. See *Fashion Originators' Guild v. Federal Trade Comm'n*, *supra*.

Your second question asks for additional detail regarding the "simple federal scheme" of travel agent regulation which I recommended to the Subcommittee's consideration.

A licensing agency could be created within the Department of Transportation or some other appropriate agency. A full-time director and small staff would take care of the day-to-day functioning of the agency.

All travel agents would be required to be licensed, but licensing would be based only on objective criteria.

No control over the number of travel agents would be provided; therefore, there would be no requirement similar to that of S. 2577 that the licensing agency find that the agent "would provide a useful public service."

All applicants who meet the objective financial requirements should be licensed. If there is a serious, persistent problem of incompetent travel agents in the industry, then some demonstration of experience or competence might be required, but I believe it unnecessary to require both a demonstration of experience and the successful completion of an examination. Vague requirements such as "good character" should be deleted, although prior conviction of specified offenses may be relevant.

The most important requirement would be evidence of financial responsibility. Past business experience may be relevant here, although the lack of such experience should not be grounds for denial of a license if other criteria are met. The specific type of financial showing should be left to the judgment of the licensing agency. With a general standard along the lines of "adequate showing of financial responsibility" (see, *e.g.* Public Law 89-777, 46 U.S.C. 817e), the detailed alternatives could then be prescribed by the agency's regulations (see, *e.g.* 46 C.F.R. § 540).

Such flexibility is necessary to deal with different problems arising at different levels of the industry. With respect to retail travel agencies, the greatest concern is with agency defaults, especially when air transportation is involved. Air carriers presently have the protection of a surety bond of at least \$10,000, and the bonding companies closely screen applicants as to their financial responsibility. The air traveler is protected under present practice for, if an agent does default after issuing air transportation, the air carriers will honor the tickets.

The remaining problem, therefore, is to protect the traveler who has paid for land accommodations and related services. A licensing agency could issue regulations requiring a travel agent to do one of the following:

- (1) Post a minimum performance bond;
- (2) Establish a trust account for funds paid for accommodations;
- (3) provide a combination bond-account arrangement (see the discussion of inclusive tour charter operators below); or
- (4) provide a guarantee in the form of acceptable bonds or securities (in some instances a self-insurance plan may be acceptable).

The agency should have the same flexibility in dealing with the tour operator. The major concern with tour operators is defalcation after receiving the traveler's money, but prior to payment for the contracted services. In that situation vouchers issued to the travel usually are not honored by hotels, and other concerns, and the traveler is left without his money or his accommodations.

Some tour operations are currently regulated by the CAB, such as inclusive tour charters (operated only on charter carriers) and study group charters. ITC operators have the option of posting a bond, which varies with the length of tour, or of using a bond-depository account arrangement (see 14 C.F.R. 378).

Under the latter option, the bond is usually smaller, but strict controls are placed on funds in the bank account. The tour operator can place in escrow a guarantee of suitable bonds or securities and thereby can reduce the amount of money required to be maintained in the bank account. These financial arrangements cover all transportation, accommodations, and related services.

One problem that has occurred under this approach of mandatory bonding is that the bonding companies have required that 100% collateral be posted to back up the bonds. Most ITC operators use the bond-bank arrangement, and, since they operate a large number of tours, they are usually required to post a \$200,000 bond. The operators, therefore, must post at least \$200,000 in collateral, in addition to paying what they consider high premiums. A licensing agency should look into this practice to determine its justification and whether premiums can be lowered.

The type of financial security required of ITC operators could be required of all tour operators, but bonding may be too costly and impose prohibitive barriers to entry. Thus, bonding should be only one alternative and the other alternatives outlined above with respect to retail travel agents would be allowed. The licensing agency would determine which approach or approaches would be most feasible.

Finally, charter arrangers must be brought within the scope of the licensing agency's jurisdiction. Again, the agency would have the latitude to require any one of the several financial-responsibility alternatives already indicated. The enabling statute could exempt from coverage all *bona fide* clubs, or it could be framed in a manner to give the licensing agency power similar to the CAB's exemption power. Under this system an organization could apply for a license or, in the alternative, for an exemption from obtaining a license. This would give the licensing agency discretionary control over *bona fide* organizations.

Once an agent is licensed, the scheme could provide that all licensed agents are automatically agents of the various transportation companies; alternatively, each carrier individually could be free to appoint all or any of the licensed agents. Either alternative would necessitate the abandonment of the present conference system of appointment.

Finally, both civil and criminal penalties could be imposed on any travel agent failing to obtain a license. In addition, to curb the existence of those organizations operating without a license, civil and criminal penalties would be imposed on any transportation company who deals with an unlicensed agent, after the transportation company has been notified by the licensing agency of the existence of an unlicensed organization. Injunctive powers would be given to the licensing agency to provide swift measures for dealing with illegal operators.

In response to your third question, we would refer you to page 9 of my testimony which indicates the Department's criminal authority to stop illegal operators. There is currently pending in the District Court in New York a suit against several illegal charter operators. The Department, through the United States Attorney's office, is handling this litigation with the Civil Aeronautics Board providing expert assistance. The *Monarch Travel* case is a private action and the Department has played no role in that suit.

Your fourth question raises issues as to the cost of bonding and whether it would unduly restrict entry into the travel field. The cost of a surety bond—the bond presently required by the air carriers of their travel agents—can be as low as \$7.75 per thousand dollars and as high as \$15.00 per thousand dollars. Thus, a \$10,000 bond will cost between \$77.50 and \$150.00—a cost that is not prohibitive. Performance bonds, however, may cost more, and we are in the process of ascertaining their actual cost.

As indicated before, ITC operators must post 100% collateral in addition to paying their premiums. This burden may be unduly heavy and thereby restrict entry into the industry more than other financial responsibility alternatives.

We shall be happy to attempt to supply any further information you or the Subcommittee may desire.

Sincerely yours,

BRUCE B. WILSON,
Deputy Assistant Attorney General.

Senator BEALL. Our next witness is the Honorable George M. Stafford, Chairman of the Interstate Commerce Commission.

**STATEMENT OF HON. GEORGE M. STAFFORD, CHAIRMAN, INTER-
STATE COMMERCE COMMISSION; ACCOMPANIED BY FRITZ R.
KAHN, GENERAL COUNSEL**

Mr. STAFFORD. Mr. Chairman, with me this morning I have our General Counsel, Fritz Kahn, of the ICC.

The Commission is grateful for this opportunity to testify on S. 2577, the Travel Agents Registration Act of 1970.

The bill's stated purpose is to protect the convenience, safety, and well-being of persons who patronize travel agencies in the United States, Puerto Rico, or U.S. possessions by making adequate provisions for the issuance or registration certificates to travel agents.

There would be established in the Department of Transportation a Bureau of Travel Agents Registration. The Bureau would be headed by a Director who would consult with a Travel Agents Registration Board, the membership of which would include a representative from the Interstate Commerce Commission.

S. 2577 would require anyone engaging in the business of conducting a travel agency as defined in section 23(5) to secure a registration certificate which would have to be renewed every 2 years.

The registration certificate could be suspended or revoked for causes set forth in the bill. Also contained therein are fines which can be imposed for listed unlawful practices.

Anyone presently holding a passenger broker license issued by the Interstate Commerce Commission or who has acted for 2 or more years as an agent for two or more conferences of air or steamship conferences would be granted a registration certificate unless specifically disqualified on the grounds of not having good character or being financially unfit.

All other applicants would have to show appropriate financial qualifications and pass a written examination to show competence.

The Director, with the advice of the Board, must then determine that a useful public service would result from a grant of the registration certificate to the applicant.

There are no bonding requirements.

The Interstate Commerce Commission presently does not regulate travel agents. The Commission's jurisdiction in this area is limited to the regulation of brokers for motorbus operations.

Brokers operate as intermediaries between passengers and regulated motorbus operators arranging for the contracts of conveyance and sales of tickets.

Several hundred passenger broker licenses have been issued by the Commission—347 to be exact. With very few exceptions these have authorized the arranging of tours, and were issued to enable persons to engage in the business of gathering individuals into groups and arranging a bus charter, meals, hotel accommodations, sightseeing, entertainment, et cetera, for the group, the arranger profiting from the spread between his charge to the group members and his cost for transportation and other services provided.

The Motor Carrier Act of 1935 subjected these brokers to regulation by the Commission, and the issuance of their licenses is governed by section 211 of the Interstate Commerce Act. However, we know of no comparable regulatory provisions for persons engaged in similar water or rail transportation activities.

Pursuant to section 211(c) of the act and by appropriate regulation (49 CFR 1043.4), brokers must furnish a bond or other security approved by the Commission, in an amount of not less than \$5,000.

The security must be in such form as will insure the financial responsibility of the broker and the supplying of authorized transportation in accordance with outstanding contracts, agreements, and arrangements.

Since the regulations were implemented there have been no reported instances of losses due to the default of a broker or of the failure of a broker regulated by us to perform in accordance with a contract, agreement, or arrangement.

The Commission can easily understand the congressional concern that brought about hearings on S. 2577. We at the Commission have also read with concern the accounts of American citizens being stranded overseas because of the lack of financial integrity of certain travel agencies.

In fact, because of increased costs and the problems just cited, on February 26, 1971, we instituted a proceeding to investigate existing bonding requirements and to determine whether the amount and coverage of the bond is adequate.

All the statements and replies have now been received in that proceeding, *Ex Parte No. MC-5* (Sub-No. 1) *In the Matter of Broker Security for Protection of the Public*. Its purpose seems consistent with the aims of the bill before you; that is, the assurance of financial responsibility in the travel industry.

Since S. 2577 does not provide for repeal of any portions of the Interstate Commerce Act, if the measure were enacted in its present form the result would be dual regulation of many if not all brokers of motor passenger transportation by the new Bureau and by us.

We can visualize situations where a broker could secure a license from us and then fail to pass the certification requirements of the new Bureau.

Or, we could be faced with a situation where our agency could suspend a broker's authority for failure to meet our bonding requirements and yet that broker would be fully certificated by the new Bureau.

Because of the problems inherent in dual regulation it seems to us that either brokers of motor passenger transportation should be excluded from the purview of S. 2577 or the pertinent licensing requirements contained in the Interstate Commerce Act should be repealed.

In any event, we urge that the bill be amended expressly to provide for (1) bonding requirements similar to those contained in section 211(c) of the Interstate Commerce Act, and, (2) suspension for failure to comply with the bonding requirement similar to that contained in section 212(a) of the Interstate Commerce Act.

In making the bonding recommendation the Commission feels it owes this subcommittee the duty to be perfectly candid about its own experiences in requiring performance bonds by licensed brokers.

Obtaining such a bond can be a very expensive proposition and it is certainly not impossible that a small operator, even though he may be completely competent and honest, will not be able to meet the expense.

We have had some indications that it is virtually impossible for the small operator to obtain this kind of insurance, and in a number of instances the actual posting of a collateral has been undertaken by the broker.

Our present bonding requirement is \$5,000 and we are currently considering in our Ex Parte No. MC-5 (Sub-No. 1) whether the amount of the bond should be raised to \$10,000. Obviously it could present a real problem to many small businessmen if they have to set aside this much cash to meet the bonding requirement.

We also would suggest that staggered expiration dates would prove administratively more desirable than the system set forth in section 30(a), which is found on page 8 of the bill.

To have all registration certificates expire on the 31st day of December of each odd-numbered year would result in a flood of renewal applications in advance of such dates and an ebb in the workload and employment needs of the office at other times.

Finally, in deciding just how broad Federal regulation of the travel agency industry should be, you may wish to consider whether certain operations should be exempt from regulation.

We often receive complaints from brokers relative to the activities of church groups and groups of women's societies and retired persons who are endeavoring to provide meaningful recreation for groups of individuals. Some of these complaints are found to involve possible violations unknowingly committed because the organization in question made a little money over and above expenses incurred.

As you well know, the result can be that outstanding public-spirited citizens are very emotionally upset. Therefore some sort of safeguard should be incorporated to protect these types of groups from unintentionally violating the law.

That concludes the presentation of my prepared statement. At this time I, or the members of my staff who have accompanied me to the hearing, would be happy to answer any questions that you, Mr. Chairman, or members of your subcommittee may have.

Senator BEALL. Thank you, Mr. Stafford.

I think the record should show to my knowledge, and to those of us on the committee, few of the modes of travel coming under your purview have caused any traveler to be stranded.

Mr. STAFFORD. That is true, they have been very dependable.

Senator BEALL. I think your agents should be congratulated for having this kind of control over the people who provide the services.

If we require a bond for people providing travel service do you think the bond ought to extend all the way to reach out for all of the service they are holding out as an inducement to travel? In other words, should it go beyond the mere travel itself and cover accommodations and meals and any other inducements the travel agent or purveyor or seller of the service offers?

Mr. STAFFORD. Well, we have found our arrangements working pretty well in this area, that is, as long as it is part of the transportation package, we have seen to it that our bonding requirement covers the whole transaction. So I can't say that you should have separate bonding requirements.

Senator BEALL. I think what you are saying is something I suggested to the previous witness, that is that the bonding requirement itself might be more restrictive of entry than would be any licensing procedure that the Government might set up: Isn't that possible?

Mr. STAFFORD. That is very possible, yes. It has a tendency to exclude the very small businessman if he doesn't have the money to put on the line.

But, by the same token, we get mighty fine compliance from those that are under the regulations.

Senator BEALL. A number of witnesses testifying on S. 2577 have suggested that the regulation should not be placed under the Department of Transportation but should be placed under the Department of Commerce. Are you ready or willing to enter into that discussion and testify on which of these Departments of the Government might be best vested with this authority?

Mr. STAFFORD. Of course, there is justification for placing this in the Department of Commerce. It already is in charge of trying to build up travel in this country to help our dollar balance of payments.

But, no, I do not think the Commission is ready to take a position on which of the agencies you gentlemen should put in charge; whether you should place it in either Department or issue more directions to the CAB.

Senator BEALL. Am I correct in the assumption that the railroads some time ago stopped ticketing through travel agents?

Mr. STAFFORD. Yes.

Senator BEALL. Why? Do you know?

Mr. STAFFORD. I may want to come back and correct the record on this, but if I recall the situation correctly, there was a question of finance. I believe, the financial situation of the railroads did not permit the payments for the travel business that was involved. But let me have an opportunity to correct the record after I go back and look at my records.

Senator BEALL. In other words, the railroads couldn't afford to pay the commission.

Mr. STAFFORD. Yes.

Senator BEALL. Thank you, Mr. Stafford.

Our next witness is Mrs. Helen Bentley, the Chairman of the Federal Maritime Commission. I think the record should show that Mrs. Bentley is a very distinguished Marylander. We are delighted that she is not only from Maryland, but we are delighted she is occupying the position of Chairman of the Federal Maritime Commission and doing so in a very able fashion.

STATEMENT OF HON. HELEN DELICH BENTLEY, CHAIRMAN, FEDERAL MARITIME COMMISSION; ACCOMPANIED BY ROBERT BOURGOIN, GENERAL COUNSEL'S STAFF; AND ROBERT S. HOPE, SPECIAL ASSISTANT

Mrs. BENTLEY. I was going to say I am particularly delighted today to have my first appearance before this committee this year with you in the Chair.

I am accompanied this morning by Bob Bourgoin of the Commission's General Counsel's office and Robert S. Hope, my special assistant.

Mr. Chairman, I appreciate this opportunity to appear here today and offer the views of the Federal Maritime Commission on a bill which would amend the International Travel Act of 1961 to provide for Federal regulation of the travel agency industry.

Essentially, S. 2577 would establish, within the Department of Transportation, a Bureau of Travel Agents Registration and would prohibit, under penalty of fine and/or imprisonment, any person from

engaging in the business of conducting a travel agency without first having obtained a registration certificate. The bill would require applicants for registration certificates to demonstrate financial qualification and competence in accordance with standards established by the Director of Travel Agents Registration with the advice of a Travel Agents Registration Board, composed of eight members, representing the general public, the travel agency industry, and the Federal transportation agencies.

As contemplated in the proposed legislation, the Board would not only consider applications for registration certificates but would also advise the Director on all matters relating to the functions of the Bureau.

The Director would be authorized, with the advice and consent of such Board, to establish qualifications for obtaining certificates, and to promulgate a code of ethics for the industry. "Grantfather" certificates would be authorized for all persons conducting travel agencies on January 3, 1968, if they meet certain specified conditions set forth by the bill. All other persons desiring certificates would have to meet the requirements of the bill, including a showing that they would provide "a useful public service" if certificated.

Clearly, the provisions of this bill, considered collectively, provide a comprehensive plan for the regulation of travel agents. The question to which we have been requested to address ourselves today, however, is whether this proposed legislation or, indeed, any Federal legislation, is necessary to safeguard traveling Americans.

Based on our experience in administering the financial responsibility provisions of Public Law 89-777, we see no need for legislation to regulate the travel agency industry, as it relates to the sale of accommodations aboard oceangoing vessels subject to the Commission's jurisdiction.

Whether regulations and licensing of travel agents may be necessary with respect to other travel agency activities, involving air, rail, or motor transportation is a matter outside the especial expertise of the Commission and one as to which we take no position.

Under section 3 of Public Law 89-777, oftentimes referred to as the "Safety of Life at Sea" legislation, no person is permitted to arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for 50 or more passengers and which is to embark passengers at U.S. ports, without first establishing his financial responsibility for indemnification of passengers for nonperformance of transportation.

Public Law 89-777 further provides that evidence of adequate financial responsibility be established by one, or a combination of, the following methods: (1) policies of insurance; (2) surety bond; (3) qualification as a self-insurer; or (4) other evidence of financial responsibility acceptable to the Commission. (The Commission has heretofore provided, by rule, that escrow accounts and guaranties also constitute acceptable evidence of financial responsibility.) This provision requiring the actual submission to the Commission of evidence of financial responsibility is to be contrasted with the provision in S. 2577 that allows an applicant for registration certificate to merely make "a showing that he is financially qualified."

In enacting Public Law 89-777, Congress clearly expressed its intent to insure that the traveling public be protected from financial

loss at the hands of unscrupulous vessel owners and operators or other persons booking transportation on oceangoing vessels.

The legislative history of the statute unequivocally evidences that Congress wished to assure that passage moneys were refunded to prospective passengers in the event of nonperformances of contracted transportation.

While the requirement of the aforementioned legislation clearly applies to travel agents when they undertake to arrange, offer, advertise, as well as collect fares for ocean transportation, to date, no travel agent, as such has obtained a Certificate of Financial Responsibility from the Commission.

The reason lies in the fact that travel agents dealing with steamship passenger lines work under agency arrangements whereby the passenger lines assume responsibility for the funds collected from prospective passengers by their authorized travel agent.

Lest, however, there be any question as to the responsibility of certified vessel owners and operators with regards to passage moneys collected by their travel agents, the Commission has recently provided by rule that certificants shall be deemed to be responsible for any unearned passage money or deposits in the hand of its agents, or any other person or organization authorized by the certificant to sell the certificant's tickets, unless the Commission is notified to the contrary. While the situation has yet to arise, the Commission would, given such notification by the certificant, require the "unauthorized agent" to establish financial responsibility in his own right.

Thus, by insuring that payments made to agents will safely reach the carrier, Public Law 89-777 and the Commission's implementing regulations are presently effectively protecting the traveler from defalcation by a financially unsound travel agent. Since the enactment of the legislation in question, we know of no instance where a steamship passenger has been stranded or otherwise inconvenienced by the financial irresponsibility of either the carrier providing the transportation or the travel agent booking the passage. And while there still remains the possibility, albeit extremely slight, of an unauthorized sale of passenger tickets by a financially irresponsible and fraudulent travel agent, such a possibility would exist, regardless of the nature of the legislation enacted.

The foregoing discussion has been offered to demonstrate how existing legislation is providing tangible coverage to the ocean traveling public as protection from the unscrupulous fly-by-night operator, be he a steamship owner or travel agent, and why, as a result, there is presently no real need for any protective legislation establishing a regulatory system for travel agents as far as the steamship industry is concerned. Because Public Law 89-777 has, based on our experience in implementing that statute, proven highly workable and successful in terms providing financial protection to the ocean passenger and, for all intents and purposes, has insulated him from any travel agency abuses, it may be that the subcommittee may wish to consider, as a possible alternative or supplement to S. 2577, a Public Law 89-777 type system for the establishment of financial responsibility by the party arranging for or providing the transportation by whatever mode.

While we take no position as to whether regulation and licensing of travel agents may be necessary with respect to other travel agency

activities, such as air travel, ground travel, organized tours, and hotel accommodations, should such legislation be considered necessary in these areas, we would make the following comments and suggestions.

1. We note that the bill, whether designedly or otherwise, would have the effect of preventing members of voluntary organizations, such as church groups, student associations, fraternal organizations, and professional organizations from joining together to make their own arrangements and obtain their own tickets, forcing them in lieu thereof to patronize the already vested interests of the travel agency industry. Since these groups and organizations are self-contained and beholding only to themselves, the proposed bill may, as to them, impede their legitimate social functions. Consideration might be given to providing proper exclusion for such voluntary groups and associations when they are acting on behalf of their own membership.

2. We question the need or propriety of a Travel Agents Registration Board. However, should the necessity of such a Board be firmly established by this subcommittee, we would suggest that the procedure for the creation thereof be revised to allow each individual Federal agency concerned to appoint its respective member to the Board rather than vest that function in the Secretary of Transportation, as is presently provided.

3. As we read section 28, the "grandfather rights" clause, an applicant would be entitled to "grandfather rights" so long as he can establish that he was in business on September 3, 1968, notwithstanding the fact that he might not be engaged in the travel agency business at the time of passage of the bill. In contrast, a travel agent who commenced operation subsequent to September 3, 1968, and is in bona fide operation at the time this bill becomes law, would be denied "grandfather rights." It seems that a more practicable and proper cutoff date would be the date on which the act is signed and that a time limit such as 90 days be provided during which application for such grandfather rights would have to be made.

4. We would also suggest that there be a specific bonding requirement for travel agents, as well as the general requirement, now provided for in the bill, that they demonstrate financial qualification. On the basis of our experience with freight forwarder and passenger vessel bonding requirements, we believe that the inclusion of a bonding requirement would afford additional protection for the public, and provide the implementing agency with access to the physical evidence of financial responsibility. Such a requirement would certainly appear to be warranted in those instances where the applicant is not already bonded under the requirements of conferences and carriers for which he may serve as agent.

5. We note that the bill would have all registration certificates expire at the same time—the 31st day of December of each odd-number year. While we feel that the 2-year certificate is indeed proper, it is our opinion that the expiration dates should be staggered throughout the year so that all the renewal administrative and clerical work would not fall during one short period of time.

6. While there is no requirement in the bill that an applicant be a U.S. citizen, section 29(a) provides that a certificate shall be denied to any person who has been convicted in any State, the District of Columbia, the Commonwealth of Puerto Rico or possessions of the United States of felony or crime involving activities prohibited by the

provisions of this bill. Consideration should possibly be given to also providing for denial of registration to a person convicted of a crime or felony in a foreign country which would constitute a crime or felony, under this bill, if committed in the United States.

7. Finally, we would point out that licensing of any substantial number of foreign citizens or companies as travel agents could adversely affect the U.S. international balance-of-payments situation. In this regard, consideration might be given to a requirement that foreign citizens would only be licensed where the foreign country permits U.S. citizens to engage in the travel agency business in such foreign country.

The foregoing comments have been submitted in an effort to be of assistance to the committee in the event hearings should demonstrate to the satisfaction of the committee members that legislation which would provide for licensing of travel agents is desirable. Again, we must emphasize, however, that insofar as this Commission has been able to ascertain, there does not exist a need for licensing travel agencies engaged in the sale of passenger transportation via ocean carriers subject to the jurisdiction of the Federal Maritime Commission.

That concludes my prepared statement, but I will be happy to answer any questions which you may have or to supply additional information for the record. In closing, I wish to express my sincere appreciation to you, Mr. Chairman, and the members of your subcommittee for this opportunity to present the views of the Federal Maritime Commission on the matters before you today, and to offer to you the full cooperation of the Commission and its staff in your efforts to make traveling by the American public safer and even more enjoyable.

Thank you.

Senator BEALL. Thank you, Mrs. Bentley.

Do you think the bond should extend to ground accommodations, to all facets of the commitment the purveyor of the service makes?

Mrs. BENTLEY. To all facts he holds out, yes; it should be covered so that if an American should put down \$200 or \$300 with the understanding that he is going to have not only travel, but also hotel arrangements—yes, he should be covered fully.

Senator BEALL. In your agency, have you had any incidents of fraudulent activities of this sort?

Mrs. BENTLEY. Not since the so-called Safety of Life at Sea legislation was enacted. Prior to that there had been, Mr. Chairman.

There were several incidents where people were left on the docks, literally. The ships did not come in, or they came in and left without taking the passengers. People who had spent their life savings to take the trip were stranded. That is why the Safety of Life at Sea legislation was enacted.

Senator BEALL. Under your present regulations, are there ways other than through a bond to establish financial responsibility?

Mrs. BENTLEY. Yes; they are listed here. The types of evidence we will accept are policies of insurance, guaranties, escrow accounts, and qualification as a self-insurer.

Senator BEALL. By financial statement alone, is that sufficient? Is the presentation of a certified financial statement sufficient?

Mrs. BENTLEY. No; there has to be money behind the financial statement. And the money has to be in this country or with an insurance company abroad that we approve, such as Lloyds of London. We have to know that there is enough cash on hand to take care of a voyage that might be canceled or lost at sea so that all of the passengers onboard would be covered.

Senator BEALL. You make an interesting observation about the lack of regulations of foreign competitors. I think the committee ought to take notice of that.

Mrs. BENTLEY. Yes; I think in our present crisis of balance of payments, we should definitely watch this.

Senator BEALL. Thank you very much for your testimony.

Out next witness is Mr. Charles Miller, Director of the Office of Criminal Investigations, Postal Inspection Service, U.S. Postal Service.

STATEMENT OF CHARLES A. MILLER, DIRECTOR, OFFICE OF CRIMINAL INVESTIGATIONS, POSTAL INSPECTION SERVICE

Mr. MILLER. Mr. Chairman, before proceeding, I want to express my appreciation for the opportunity to appear and testify before this subcommittee with respect to legislation that has for its objective the protection of the American tourist from travel agency entrepreneurs who operate without sufficient financial backing or surety bond.

The bill itself deals primarily with features not directly related to the general responsibilities coming within the purview of the U.S. Postal Service, and, more specifically, its investigative arm—the Postal Inspection Service. It is only when a travel agency operates fraudulently, and, in the process, uses or causes the mails to be used, that its affairs may become a subject for our official attention. My testimony will, therefore, for the most part, be confined to our limited investigative experience dealing with travel agency fraud.

As the subcommittee is aware, the protection of the public from all who would use the mails to despoil is a mandate given to the Postal Inspection Service by the Congress in 1872, through the enactment of the Mail Fraud Statute, section 1341, title 18, United States Code. It is perhaps the oldest, and yet remains today—nearly 100 years later—as one of the most effective consumer protection laws ever enacted by the Congress. It provides felony sanctions for any use of the mails in furtherance of a scheme to obtain money or property on the basis of fraudulent representations.

Confidence in business transacted by mail is regarded as vital to the national welfare, since the mails provide the principal artery of commerce and communication in this country. Society's need for protection from fraudulent practices has intensified as commerce and business have steadily expanded with new products, services, and investment opportunities. It is an environment well suited to criminal abuse.

Among the numerous types of legitimate business in which crooked entrepreneurs are able to operate at times, and thus require our investigative attention, are those constructed around the home improvement business, the work-at-home promotions, the inheritance deals, the land and stock sale promotions, the charity appeals, the franchise and distributorship promotions, the mail order medical offerings, the commercial credit dealings, and the insurance industry.

Numerically, cases of fraud in the context of travel agency or tour operations have not constituted a very large part of our total investigative effort in this area.

By way of background, we completed approximately 11,000 mail fraud investigations during fiscal year 1971, and, for the fourth straight year, a new high was recorded for convictions covering mail fraud violations. They totaled 1,113, an increase of 22.3 percent over the preceding fiscal year.

Arrests also reached record highs for the second straight year—1,513—30.1 percent above fiscal year 1970. During an 11-year span—1960 through 1971—arrests have increased 154.7 percent and convictions 204.1 percent in this area of our criminal investigative work.

While a review of our investigative files over the past 5 years has only brought to light six fraud investigations of travel agency organizations, the circumstances of these cases may be of interest to the subcommittee in its consideration of S. 2577. The following are synopses of the cases concerned:

1. In 1967, a complainant alleged that she had been defrauded of \$2,916 by the University Travel Agency, Inc., Chicago, Ill. The agency specialized in group tours and maintained branch offices in Detroit, Los Angeles, and Cleveland. Air flights, hotel accommodations, and all other necessary travel arrangements were covered in the total fee. Investigation disclosed that during the previous summer, the company had accepted a large number of payments for tours that subsequently could not be consummated, due, in large part, to a nationwide airlines mechanics strike. Attempts were made to refund some of the money and to reschedule the tours for a later date after the strike ended. However, the agency was in such poor financial condition that it was unable to continue operating and the owner was adjudged bankrupt on April 25, 1967. Records indicated debts of \$231,317.41 and assets of \$3,834.68. Some 123 victims sustained an aggregate loss of \$88,526.85. The U.S. attorney declined prosecution primarily on the basis that the facts indicated the business had collapsed through a combination of faulty business judgments and projections, and his belief that evidence of intent to defraud, a basic element in any criminal prosecution, was not sufficient to support conviction.

2. In early 1970, a complaint of mail fraud was made against a travel agency in New York City alleging that a 5-day tour to San Juan, P.R., had been canceled, allegedly due to a fire at the hotel where the tourists were to stay. Investigation revealed that no misrepresentation had been made, and the travel agency made refund.

3. In early December 1970, advertisements appeared in numerous college periodicals in the United States and Canada offering a 6-week summer study session at the Sorbonne in Paris for \$638 per student. The fee was to cover room, board, tuition, and roundtrip air travel via Air France. It was strongly implied that Air France and the Sorbonne were collaborating with the tour agency, American Student Travel Abroad (ASTRA), New Orleans, La., and a \$65 deposit, together with a completed application, was to be mailed via special delivery airmail to one M. Ward McIntosh, director, ASTRA, Sorbonne, Paris, France.

Fortunately, several prospective students wrote to the Air France office in New Orleans who advised they knew nothing about ASTRA, and this Service was notified. Our investigation in this country and

abroad determined that similarly, the Sorbonne knew nothing about ASTRA or Mr. McIntosh, except that they were holding a quantity of mail for such a person. Arrangements were promptly made through Interpol that the mail be withheld from delivery, and Mr. McIntosh be apprehended should he appear to receive it. It had been ascertained that McIntosh had attempted a similar scheme several years earlier from Middletown, Ohio, as FESTA (the French-English Society and Travel Association), and SCANSA (Scandinavian Studies Abroad).

Although Sorbonne administrators were sufficiently alert to refuse to give McIntosh the mail when he called for it on January 6, 1971, they did not arrange for his arrest and he disappeared. Postal inspectors finally arrested him in the artists' section of New Orleans on June 1, 1971, at a time when he was engaged in painting portraits on a street corner. While no prospective students suffered financial loss, college newspapers lost upward to \$3,000 in unpaid advertising fees.

4. At the present time, we have a case pending with the U.S. attorney for the Southern District of New York relating to an alleged scheme by a promoter to defraud doctors, dentists, and others in professions related to medicine in connection with worldwide medical seminar tours that were not furnished. The circumstances cannot be described in detail at this time because all of the facts have not yet been determined, and we do not want to risk prejudicing future prosecution.

5. Postal inspectors have also presented to the U.S. attorney for the Central District of California, a case involving an alleged scheme to defraud persons by mail, by selling passage on a nonexistent ship cruise. The promoters placed advertising in major newspapers throughout the Nation offering passage for \$1,448, less 2 percent for cash payment, and using the firm name of Roaring 70's Cruises, Ltd., Newport Beach, Calif. The cruise was to be in the form of a trip on the so-called *Vagabond Sun*, with destination—Acapulco. The enterprise was operated during October and November of 1970, and abandoned after \$18,000 had been obtained from prospects. Five individuals were arrested by State authorities and Federal prosecution is under consideration.

6. The subcommittee, I know, is well aware of the tragic circumstances surrounding the collapse of the World Academy, Inc., Cincinnati, Ohio. The firm filed a petition for voluntary bankruptcy, in U.S. District Court for the Southern District of Ohio on July 6, 1970, with some 3,231 American students stranded in Paris, Geneva, Rome, Vienna, Cologne, Prague, and other European cities. An additional 2,000 or so students were in the United States preparing to go to Europe on the study tour for which they had already paid. The firm had been incorporated on October 19, 1966, after which it began offering study programs to students which combined the features of a vacation in Europe and a college course in a European language, history, or other subject for which the student would allegedly receive college credit.

On August 12, 1970, the Senate Committee on Commerce heard testimony from T. Budge Hyde, president of World Academy, Inc., and some five subsidiary companies, all of which are in bankruptcy, and Merlin V. Fish, Jr., who founded the business and preceded Mr. Hyde as president. Initially, assets of \$1,918,441.76 and liabilities of \$2,555,440.35 were shown with about \$2.3 million of the liabilities

representing funds owed to students. The financial records of the parent and subsidiary companies can only be described as chaotic. This Service has been conducting an investigation to determine whether the mail fraud statute has been violated, and incident thereto, an attempt to accurately reconstruct the records in collaboration with the trustee has been underway. I regret that since the investigation is still in progress, I am unable to furnish further particulars other than to say that we are thoroughly tracing the firm's handling of assets, including the interchange of loans between subsidiary companies and individuals, and the handling of internal company stock transactions.

S. 2577 is a bill to amend the International Travel Act of 1961, to provide for Federal regulation of the travel agency industry. Its stated purpose is to protect the convenience, safety, and well-being of persons who patronize travel agencies in the United States, the Commonwealth of Puerto Rico, or possessions of the United States, by making adequate provisions for the granting of registration certificates to travel agents. No person could, under the provisions of this bill, engage in the business of conducting a travel agency without a duly authorized registration certificate. Applications for such certificates would be made to the Director of the Travel Agents Registration who is to be the chief executive officer of the Bureau of Travel Agents Registration to be established in the Department of Transportation.

The Director would promulgate such rules and regulations, including, but not limited to, those necessary to require sound financial practices. That official shall also issue a code of ethics for the travel agency industry which will be binding on all registered travel agents. If the Director determines that the applicant, if issued a certificate of authorization, would provide a useful service, he shall issue and deliver a registration certificate to him. The certificate may be suspended or revoked by the Director and a fine of \$1,000 is imposed by that official if the holder engaged in certain prohibited actions, including, but not limited to, any fraud or fraudulent practices of the operation and conduct of a travel agency business.

Any person knowingly or willfully violating any provisions of the bill or any order, rule, or regulation issued under such provisions shall be fined \$500 or imprisoned not more than 6 months, or both, for the first offense and shall be fined not more than \$2,000 or imprisoned not to exceed 2 years, or both, for succeeding offenses.

Whether, in fact, the provisions proposed in S. 2577 can eliminate the problems which provoked its introduction, we must leave to those with more experience in this area. The bill would not, of course, serve as a very effective deterrent to those fly-by-night swindlers who promote tours with the intention of collecting advance fares and then absconding. But then other laws now in existence, including the mail fraud statute, can be applied as a deterrent to such acts.

Such legislation as that proposed by S. 2577 would not seem to be unprecedented, for Public Law 89-777, 89th Congress, H.R. 10327, passed on November 6, 1966, and codified in 362(b), 362(c), 369(b), 817d, and 817e, of title 46, United States Code, requires, among other things, evidence of adequate financial responsibility to pay judgments and repay passenger fares in cases of nonperformance in connection with certain passenger voyages on vessels.

In summary, while our limited knowledge of the subject tends to indicate that by and large the travel industry operates honestly and efficiently, it, like any other industry, can be used as a means to commit fraud. Additionally, and perhaps what is more germane to the purpose of this proposed legislation, business failures, not necessarily associated with fraud, can and do occur in the tourist agency industry at the present time with very unfortunate consequences.

I shall be happy to try to answer any questions you may have.

Senator BEALL. Thank you very much, Mr. Miller, for your testimony. You probably heard the bell which indicates there is a vote on the Senate floor, so I won't have the privilege of asking you any questions because I have to get there.

We appreciate your testimony and the thought occurs to me, if nothing else, it points out how inventive some of the crooks are in this country in devising schemes to bilk the public. It does seem from your testimony that the Federal Trade Commission has some responsibility in this area with regard to the false advertising appearing in the newspapers.

It further seems that perhaps one thing can be said for some sort of regulation; namely, the mere fact that regulation would be provided is a protection for the public because you could require that those who sell the service signify in their advertising that they are registered with some legally constituted body. This in itself would be a guaranty that the public is getting the kind of service for which they are paying.

Mr. MILLER. I might say, Senator, we do come in after the fact. Much of the harm has been done before we get into the picture.

Senator BEALL. Yes; that is certainly understandable because of the nature of the laws controlling your activities. I would like—there are two telegrams that the committee has received from travel agents indicating or expressing interest in the legislation and addressing some anxiousness that something be done to protect them from the wholesale-tour operators who are defrauding people. They will be included in the record.

(The telegrams follow:)

[Telegram]

INDIANAPOLIS, IND.

Senator DANIEL K. INOUE,
Chairman, Senate Commerce Committee, Subcommittee on Foreign Commerce and Tourism, Washington, D.C.

Being a travel agency president in one of the larger Midwest travel agencies for the last 20 years I personally would like to commend and applaud you and your committee for looking into our industry and attempting to secure better controls through Federal regulations for our industry as outlined by ASTA. This corporation was one of the many who earlier this year was victimized of over \$30,000 due to the default of Berry World Travel, since no control was placed on them. ASTA recommendations are for the best interest of all legitimate travel concerns.

Cordially yours,

CHARLES E. BABCOCK,
President, Ross-Babcock Travel Bureau, Inc.

[Telegram]

MOLINE, ILL., November 17, 1971.

Senator DANIEL K. INOUE,
*Chairman, Senate Commerce Committee, Subcommittee on Foreign Commerce
 and Tourism, Washington, D.C.*

We are a travel agency substantially victimized by defunct tour operators and urge you and your subcommittee to take prompt actions as advocated and approved by ASTA.

FRANKLIN L. BARNARD,
President Blackhawk World Travel.

Senator BEALL. We have to recess the hearings at this time until 2 o'clock this afternoon in this room.

I understand the representative of Amtrak, Mr. Graham, has a meeting this afternoon which will prevent his attendance.

Mr. Graham, if you would like to submit your statement for the record, the committee will be happy to have it or come back later on, whichever you prefer.

The meeting is recessed.

(Whereupon, at 12 noon, the meeting was recessed, to reconvene at 2 p.m., this same day.)

AFTERNOON SESSION

Senator INOUE (presiding). The committee will come to order.

At the request of Mr. Harold Graham, Vice President of Marketing, Amtrak, who has advised this committee of a pressing engagement, the committee wishes to call upon him at this time.

STATEMENT OF HAROLD GRAHAM, VICE PRESIDENT, MARKETING, AMTRAK

Mr. GRAHAM. Thank you, Mr. Chairman, for your kindness. The National Railroad Passenger Corporation, more popularly known as Amtrak, is very pleased to appear before you today in order to state our position regarding the regulation of the travel agent industry.

In our opinion our statement revolves about the image presented to the general public by the travel agent industry. We feel that the public opinion needs reassurance because the whole industry has been tarnished by reports of bankruptcies, strandings, mishandlings, and other negative publicity.

There has been an effort on the part of this industry to regulate itself, but it needs the Federal Government's assistance as outlined in S. 2577. We depend heavily upon the travel agencies to be our extra salesmen as they are in greater direct contact with a larger element of the general traveling public than we are in our sales outlets.

The travel agent represents a degree of expertise unavailable elsewhere, putting most experienced and capable salesmen to work for us and we feel this proposed bill is strongly in the public interest.

The travel agent segment of the industry itself supports the need for regulation backed by the Federal Government as was evidenced at the recent World Conference of the American Society of Travel Agents held earlier this month in Sydney, Australia, where a resolution was passed endorsing the concept encompassed in bill S. 2577 and a Federal regulatory program for the United States travel agency industry.

Amtrak, a new Corporation, started May 1, 1971, to operate the majority of the national passenger trains, wishes to work with and cooperate fully with the travel agents.

Prior to our acquiring the intercity passenger train operations of 14 separate railroads, these companies were not actively promoting their services through travel agents.

Three, in fact, did not recognize travel agents as commissionable sales outlets for their services. We are changing this past procedure as the agents offer ticket outlets far in excess of those we could afford and they reach small towns and outlying suburban areas where no ticket offices or stations are located.

It is Amtrak's plan, once we have clearance under phase II of the wage/price regulation, to make commissionable all segments of our route system so that we can actively sell and promote our services through the travel agents.

Amtrak is embarking on a program of domestic tours working with the travel agents and tour wholesale organizations. It is necessary, in order to have a 100-percent coverage, that these be sold through the office of the retail travel agent sector of the business. We will do our best to meet all requirements for domestic tours from travel agents and tour organizers.

We are concerned with regard to the interrelationship and interplay of the various facets of the travel business and favor any means which would bring the unregulated sector of the travel industry into line with those other factors of the travel industry which have been able to act effectively under Government regulation.

Regulation and licensing as described by the bill under discussion today accomplishes this and assures that the agent meets basic qualifications in the public's interest.

The stature of the travel agent industry will be greatly enhanced by the successful recognition of the worth of a license issued by the Federal Government certifying that the licensee has met the requirements of the Federal Government.

Federal licensing, by its very nature, can effectively overcome the basic obstacle to public acceptance of the travel agent. If he can show that he is licensed by the Government, it provides substance to his position as regards his company's responsibility when the rigid standards of the law apply to him.

Thus, the travel agent becomes an object of faith, confidence and trust and worthy of use by an ever expanding segment of the traveling public. In the transportation industry, where large amounts of money are paid in advance for future travel, faith is an absolute requirement.

Amtrak would be happy indeed to see the speedy accomplishment of the goals set by S. 2577.

Senator INOUE. I thank you very much, Mr. Graham.

I note from your testimony, your reference to phase II of the wage/price regulation, that something must have been done by the Commission to hamper your progress in entering into arrangements with travel agents. Can you describe that to us, sir?

Mr. GRAHAM. Yes, Mr. Chairman.

Under the regulations as established under phase I, any change in commission status which would be applicable to an industry had to be cleared through the appropriate office.

We made application in order to cover the situation of the railroads who had not paid commissions in the past. In essence, it would be a completely new commission system.

We were told at that time it was not possible for us to do it, but if we made application after November 14, as the situation changed, that it was very possible we would receive a positive ruling.

We are in the process of making such an application now.

Senator INOUE. So they insisted you remain at zero?

Mr. GRAHAM. They insisted we not make any changes during the period of the price freeze.

Senator INOUE. What do you think are your chances now?

Mr. GRAHAM. I think they are very good, sir.

Senator INOUE. If this Congress should decide upon licensing travel agents as encompassed in this bill, what agency would you think would be the appropriate one to administer the license requirements? This bill calls for the Department of Transportation.

Mr. GRAHAM. I would say that perhaps the greatest interest in the field of agency relationships, in consumer relationships, as they relate to travel, is probably within the Department of Commerce.

The technology, of course, of transportation is in the Department of Transportation. Commerce has had the role of development, really, of agency relationships and of travel, particularly in the foreign field.

Senator INOUE. Thank you very much, sir.

Our next witness is the president of the American Society of Travel Agents, Mr. Thomas Keesling.

STATEMENT OF THOMAS M. KEESLING, PRESIDENT, THE AMERICAN SOCIETY OF TRAVEL AGENTS, INC. (ASTA); ACCOMPANIED BY RAYMOND H. HERING, VICE PRESIDENT, INDUSTRY RELATIONS, NEW YORK, N.Y.; PAUL S. QUINN, ATTORNEY, WILKINSON, CRAGUN & BARKER, WASHINGTON, D.C.; AND BOARDMAN F. LOCKWOOD, CTC, VICE PRESIDENT AND TREASURER, DAVIS-JACOBS TRAVEL SERVICE, INC., HARTFORD, CONN.

Mr. KEESLING. Senator, I am accompanied this afternoon by Mr. Paul Quinn of Wilkinson, Cragun & Barker; Mr. Raymond Hering, our vice president, industry relations; and Mr. Boardman Lockwood, the chairman of our legislative committee.

As I am sure you are aware, travel is a big and important industry. Last year travel agents in the United States sold over \$5 billion in travel and related services. In addition to the sale of transportation, hotel and motel accommodations, sightseeing tours, and a host of other travel-related services, the travel agent acts as an important counselor in selecting a vacationer's itinerary.

The travel agent's expertise and integrity has a significant impact upon the decision of a traveler to visit a particular location and to choose among various modes of transportation or choice of carrier.

Consequently, an upgrading of the public's confidence in travel agents cannot but help bring about an increase in travel and tourism to and within the United States.

Before I discuss the difficulties in the travel business generally and the necessity for legislation of the kind envisioned by S. 2577 specifi-

cally, I want to commend your subcommittee for holding these hearings on important issues of increasing public and industry concern.

As you pointed out in your floor statement of September 24, 1971, which accompanied the introduction of this legislation, the overwhelming percentage of travel agents in the United States are responsible businessmen and women.

However, an increasing number of "fly-by-night operators" have entered the field, victimizing the traveling public and bringing unfair public criticism and disrepute to legitimate travel agents.

This problem has existed for some time. Since 1964, bills under the sponsorship of Senator Magnuson of Washington, Congressman Staggers of West Virginia and Tiernan of Rhode Island and others have been introduced, which look to the establishment of a Federal regulatory system for travel agents. However, in that 7-year period this is the first occasion upon which hearings have been held.

It is ASTA's hope, that at this hearing useful information and data can be developed which will enable the Congress to select the type of regulatory program best suited to the travel industry.

At the outset I would like to emphasize that ASTA does not support this legislation in order to obtain protection by the Government from competition.

In fact, ASTA hopes that the legislation which will be developed as a result of these hearings, in addition to protecting the public, upgrading the status of travel agents, and preventing the inconsistent and contradictory results flowing from State regulation, will also promote fair and legitimate competition among qualified travel agents.

For that reason ASTA supports the enactment of a Federal regulatory program such as that envisioned in S. 2577.

Since 1964, ASTA has been increasingly concerned with the financial irresponsibility of certain groups involved in the travel field and the resulting harm to the public and legitimate travel agents.

Our board of directors and our membership have thoroughly reviewed this and related problems and have considered a number of alternate solutions.

After 7 years of study and consultation with lawyers, economists, legislators, and interested members of the industry, we have concluded that an approach similar to S. 2577 will provide the most effective and comprehensive solution to most of the problems confronting the public and the industry as a result of the activities of a small percentage of so-called travel agents.

A detailed analysis and some observations concerning the provisions of S. 2577 is attached to this statement.

It may be helpful to the subcommittee to review briefly the structure of the travel industry. First, there are the actual suppliers of travel and other services to the traveler. They include airlines, steamship companies, railroads, bus lines, hotels, motels, sightseeing concerns and car rental agencies.

Second, there are organizations which assemble travel and related services offered the traveler as a package or tour. These are principally wholesalers, tour operators or other travel organizations.

Third, there are the retail travel agents who take the tour packages developed by the wholesalers or the individual services provided by the various airlines, et cetera, and promote and sell them to the public.

There are currently over 6,000 conference-approved agents in the United States.

While that description is functionally accurate, the discrete distinctions between suppliers of service, wholesalers, and retailers are not maintained. For instance, airlines, both scheduled and nonscheduled, sometimes organize and promote packaged tours. In addition, travel agents in some instances maintain a wholesale operation or act as tour operators. Furthermore, there are a number of operations, illegal under current CAB regulations, which involve abuse of the affinity charter regulations and which, in reality, function almost as scheduled airlines.

The mechanics of the distribution and sale of travel services are really quite simple. The agent, through materials received from the various conferences, mailings by wholesalers, and experience developed through years of service, is able to counsel prospective travelers.

The travel agent receives payment for the services selected by his client and forwards it, after deducting his commission, either directly to the supplier of the services or to the tour wholesaler. The agent also distributes to his clients the tickets or vouchers which indicate they have paid for airline space and hotel accommodations. The wholesaler is required to have made satisfactory arrangements with the hotel and transportation facilities involved so that they will honor the coupons he has issued.

In practice the wholesaler, if he is financially stable, is given a certain number of days after the guest in question has left the hotel to pay the bills. But recently, some hotels have failed to honor coupons issued by some tour operators. In the case of the airlines, the CAB requires that chartered aircraft be paid in full prior to departure.

The travel agent is essentially a middleman or broker who brings together the supplier of travel and related services with the traveler. He counsels the traveler on the transportation and accommodations available, either singly or in a package provided by the wholesaler. He then forwards the funds received from the traveler either to the individuals supplying the accommodations and transportation or to the wholesaler who has organized the tour.

In analyzing the relationships briefly outlined above, it has not always been easy to determine exactly where the public has been injured most often. Recalling instances that come to mind most dramatically—the failure of World Academy, the bankruptcy of wholesalers in the Caribbean area, the strandings of students in London this past summer—it appears that it is generally either the failure of a wholesale tour operator or the improper activities of an affinity charter organizer which causes the problem and brings financial loss to retail travel agents as well as financial loss, consternation, and great inconvenience to thousands of American travelers.

In answering the basic question posed by the subcommittee—whether or not Federal regulation of travel agents is appropriate—it is ASTA's view that it is.

The CAB has some authority over travel agents through rather indirect means and directly over some areas of the tour operator business it has direct control. In addition, the FMC and ICC have limited jurisdiction over these activities. However, as pointed out earlier, passenger strandings, loss of money, and loss of confidence in the travel industry continue to occur. It is evident that this piecemeal, round-about control is not adequate to solve the problems which exist.

Let me turn now to efforts by States to regulate travel agents. ASTA has had much experience in dealing with various State regulatory schemes. Our local chapters, headquarters staff, and legal counsel have participated in consultations and hearings. They have aided members and committees of at least seven State legislatures concerned with the problem of regulation of travel agents.

Numerous proposals have been explored by the industry and various State legislatures ranging from bonding through full licensing schemes.

It is obvious to ASTA that attempts to regulate the travel industry on a State-by-State basis would prove futile and, in the last analysis, much more burdensome to the public and the industry than regulation on the Federal level.

It is doubtful if one State could effectively regulate and protect the traveling public from the unethical practices of organizations located outside the State. For that reason the Governor of Illinois, the Honorable Richard B. Ogilvie, vetoed a travel agent regulation bill which had overwhelmingly passed both houses of the Illinois Legislature. In vetoing that legislation Governor Ogilvie pointed specifically to the fact that this was a national problem for which national legislation was the only effective remedy.

Governor Ogilvie's position is perfectly understandable. The travel industry is a national and international industry. Carriers, tour operators and the vast majority of passengers are involved in interstate and international transportation. Travel and tourism, by their very nature, are interstate and foreign commerce. For these reasons it is doubtful that one State could effectively protect its citizens by regulation, more importantly, the more extensive the regulatory scheme the greater the possibility that intolerable burdens would be placed on the interstate aspects of the travel industry.

Thus, if there is to be regulation it must be at the Federal level.

ASTA reached the decision to seek Federal regulation reluctantly. ASTA is convinced that failure to take prompt action will increase the impetus for State licensing in the various States with the public and the industry suffering as a consequence.

There is a further reason for action on the Federal level at this time. Today, a substantial number of foreign countries regulate their travel agents and tour operators. In some of these countries substantial bonds are required. On at least one occasion in the past nationals of these countries have suffered substantial financial losses as the result of the failure of a few American tour operators. If such a pattern continues, it is feared that foreign countries might require bonds of American operators or impose other heavy restrictions or financial burdens.

Let me focus on the provisions ASTA seeks in any Federal regulatory program.

First and foremost, because a bill should envision the registration of all who sell for remuneration travel or related services offered by others, ASTA believes it is essential that everyone who sells travel be under the supervision of one agency. The piecemeal approach by the CAB has failed to produce significant results, nor, ASTA believes, would State efforts to legislate in this area work.

Furthermore, bringing all individuals engaged in the sale of travel under one registration system would tend to prevent the enforcement problems now incident to the affinity charter regulations.

For instance, the Board today, with its very limited investigatory staff, is required to police the affinity charter rules. In spite of its good intentions and efforts, costly private suits, spearheaded by ASTA, have proven necessary to curtail the more flagrant of these affinity charter rule violators. I have attached a copy of the judgment secured in a suit brought by several travel agents with ASTA's support to enjoin some of the most flagrant examples of these violations.

Under a registrative system, provided by S. 2577, the burden would be on the organization to register if it realized any direct or indirect remuneration from the sale of travel, assuming it met the requirements established by the law and the regulations of the Travel Agents Registration Board.

A further advantage in the proposed legislation is the diversity of representation on the Travel Agents Registration Board. Travel agents, the general public, the FMC, the CAB, and the ICC will all be represented on that Board. The wide variety of expertise and experience necessary to insure that the travel agency industry is regulated in a sensible manner will be available.

The emphasis on the financial stability of the agent as a criterion will aid both the traveling public and the retail travel agent. Additionally, it will be of benefit to the carrier in selecting his appointed agents, and will aid in resolution of the controversy on financial responsibility now pending before the CAB.

Further, the requirements for the promulgation of regulations and for the promulgation of a code of ethics will greatly enhance the professionalism of the travel agent, his reputation and his image in the community. Thus the important domestic travel industry will be strengthened.

Mr. Chairman, I am proud to be a travel agent. As a travel agent, I am one of more than 6,000 professional men and women located throughout the United States whose mission it is to help the public to obtain, on an impartial basis, the best, most economic, and reliable travel services by bringing it together with airlines, steamship companies, hotels, sightseeing firms, and other suppliers.

I am also proud to be the president of ASTA and to appear before you this afternoon on behalf of its more than 3,500 travel agent members. I believe that the decision of this newly created Subcommittee on Foreign Commerce and Tourism to conduct these hearings will provide very valuable assistance to the Congress, to the travel industry, and to the public.

The time is long past due for the Congress to scrutinize carefully the important role which travel agents play on behalf of the traveling public and the suppliers of travel services to assure that this role is being fulfilled as efficiently and reliably as possible.

Like all independent businessmen, we are anxious to continue to conduct our business affairs free of unnecessary government entanglement or supervision. However, it is clear to ASTA that the very troublesome areas which do exist in connection with the sale of the travel product must be dealt with without delay.

If this subcommittee and the Congress find after careful study that the enactment of a comprehensive Federal regulatory program for travel agents, such as that embodied in S. 2577, is necessary, ASTA will fully support such a finding.

If, on the other hand, it can be established that there are more limited yet effective ways of dealing with the problems which are being discussed before your subcommittee, then we stand ready to work with the Congress and involved agencies of our Federal Government to implement these more limited reforms.

The objective which ASTA seeks, and I am sure your subcommittee shares that objective, is to find new and better ways, through effective cooperation between Government and industry, to develop procedures which assure that travel agents can fulfill their important role to the traveling public by bringing to an ever-increasing percentage of our people the joys and benefits of travel and tourism in a professional, reliable, and efficient manner.

Thank you.

Mr. KEESLING. I would like to ask if any of my companions have anything to add.

Mr. QUINN. If I may comment briefly on three points raised earlier in the hearings, Senator.

First, on the contention by the Department of Justice that the objective of the legislation is to restrict entry into the industry, as we try to make clear in the statement, this is not the case.

We may have problems with language and we would be delighted to have them suggest other approaches to accomplish the objectives. But we are not seeking to limit entry. We are proposing a system which would allow anyone who qualifies under our objective standards to become a travel agent.

The second comment concerns what I think is undue reliance on bonding as being the answer to the industry's problems.

I would point out that the experience we have had so far with bonding in the travel industry, particularly with respect to inclusive tour charters, has been that bonds are exorbitantly expensive. In many instances, middle-sized and smaller agencies have been prevented from engaging in inclusive tour charter programs because of the cost of bonds. In addition to being extremely expensive they are not readily available at the present time.

This is not to say bonding couldn't be used to supplement other forms of financial security. But in itself we don't feel bonding per se offers the complete answer.

Additionally, there is a degree of irony in the position of the Department of Justice, because the attitude it has taken in opposition to efforts by the carriers, ASTA and others to bring about financial reforms in the industry has been very negative. For instance, it has objected at the CAB to the approval of the current ATC program that would open and uplift the financial responsibilities and criteria for agents.

So, I don't think it has been particularly helpful. Now it comes in and criticizes efforts to solve what we all agree is a very serious problem.

I think that concludes the points I wanted to make on the basis of earlier comments.

Senator INOUE. Any others?

Mr. HERING. No; I think that covers it.

Senator INOUE. Thank you very much, Mr. Keesling, and Mr. Quinn.

Were any of the persons involved in the World Academy tours and Caribbean tours members of your organization?

Mr. QUINN. The World Academy organizations were not a travel agent in the sense that they were not approved by either the Air Traffic Conference or the International Air Transport Association. Consequently, they were not eligible for ASTA membership and were not members of ASTA.

Senator INOUE. Mr. Keesling, you refer to 6,000 conference-approved agents.

Would you describe for the committee what you mean by "conference-approved agents"?

Mr. KEESLING. Mr. Chairman, the conference-approved agent is one who has applied—in the case, to the Air Traffic Conference of America—for appointment to represent their member carriers. It is a procedure that requires a financial statement as well as a substantial statement of experience, location, and ability to sell. It is one of the criteria that I think we use to attempt to define this word "travel agent."

With respect to the Air Traffic Conference, we refer to over 6,000 because the number of approved agents changes daily.

Senator INOUE. Is the membership procedure a very strict one?

Mr. KEESLING. No, in my estimation, it is not.

Mr. QUINN. I think the testimony of the Air Transport Association will go into greater detail on the mechanics of the procedures.

It is felt by the industry that while a good effort is made to objectively evaluate an applicant, in reality, the procedures are not quite as meaningful as they could be.

In other words, they should not be subjective or arbitrary, but they could, perhaps, be made more substantive.

I think Mr. Buchanan's testimony will comment on that.

Senator INOUE. Can you tell this committee whether persons who were involved in the World Academy tours or other groups involved in the problems were conference-approved agents?

Mr. QUINN. The World Academy organization were not, but I think in some instances some of the other tour operators who have gone to default in recent months were on the approved list of the Air Traffic Conference.

Senator INOUE. You have indicated your doubts about a bonding requirement and, yet, most of the other witnesses have suggested that in order to strengthen the financial responsibility aspect of this measure, some bonding requirement would be necessary.

What alternative would you suggest to bonding?

I must say, the bill seems rather vague in some of the use of terms such as, personally high moral integrity, whatever that means, you must be honest, and so on.

Mr. QUINN. I think, in answer to the first question, Mr. Chairman, it is our thought that if a regulatory program were established similar to what is contained in this legislation, the Director would have the option or discretion of imposing a bond and also making evaluations, perhaps by some system of requiring financial statements and proof of assets in excess of liabilities of a certain amount. There could be combined a test, plus a bond, which would give a good indication of the financial solidity of an applicant.

The difficulties, as I say, with a total reliance on a bond, are that we are afraid the cost would be too exorbitant, and, in fact, this type of measure would be very restrictive.

Again, I think it is ironic that the Department of Justice is recommending bonding while we have, through personal knowledge, found that bonding, at least in the case of inclusive tour charters, is so expensive and prohibitive, it is, in itself, an anticompetitive vehicle which prevents entry into the industry.

So we are trying to find a way that is effective but not so costly it would prevent a qualified person from becoming a travel agent.

Senator INOUE. So you believe that a listing authority, coupled with the criminal sanctions, would be sufficient to maintain discipline within the industry?

Mr. QUINN. We would hope it would be.

As Mr. Keesling pointed out, and as the Air Traffic Conference witnesses will establish, the existing criteria for ATC agents, conference approved agents, are quite significant. The difficulty is there are a substantial number of people that operate outside of the conference system, with no one having any control over their actions.

The CAB lacks jurisdiction or, if it has jurisdiction, hasn't asserted it. The Department of Justice has not asserted control; the Federal Trade Commission said it is not interested in the problem.

So no one has a handle on these people who sell tens of millions of dollars worth of transportation every year and no one can control their activities.

The program we are advocating would be comprehensive, and it could give one Government agency jurisdiction over the operations of anyone who sold travel for profit.

I might add, as far as the question on where the agency should be located, we have advocated, and still feel, that the Department of Transportation is a logical place to put it.

That is not to say it is the only place. It could well be, that the Department of Commerce, after some further study, would be more appropriate.

We think the important thing is that someone in the Federal Government have the authority and jurisdiction to assert control and to assert a degree of regulation over people who sell travel for profit.

Senator INOUE. Mr. Keesling, you have described the complex nature of your industry—it is not just selling airline tickets, but goes to tours and selling motel rooms, et cetera; what activity within your industry has been the cause of the most injury to the traveling public? What aspect of it?

Mr. KEESLING. I think, Senator, I can say as to its effects within the industry, it has been the rampant illegal charter operation that has been going on and is continually growing in this country.

Senator INOUE. Would you describe that, sir.

Mr. KEESLING. We have been frustrated for quite a number of years in the society with a diversion away from the travel agent office to an organizer—a term I think that is the only way I can identify this individual or this association—who is organizing as an indirect air carrier travel but is not complying with the charter rules, as we understand them today, that have been laid down by the Civil Aeronautics Board.

The society has taken note of this for a long time. We have tried to appraise the proper authorities—the Civil Safety Aeronautics Board and everybody—of what has been going on. We haven't had any degree of success whatsoever.

Finally, the ASTA boards, in the beginning of 1970, instructed the society to look into this situation and declared it the No. 1 item of concern to the travel agent members.

The result was that three agents filed a suit in southern California. The result of the suit is a part of the testimony here.

But there is no doubt that the illegal charters have been the major problem for the industry.

Now, in connection with that, let me make one thing clear, if I may. ASTA is not opposed to charters or opposed to low-cost transportation.

We oppose the illegal charter, but we are not opposed in any sense whatsoever to the legitimate charters. We favor low-cost transportation.

I would like to commend NACA, because I understand that that organization is going to have an appointment and retention standard for all persons who arrange and sell charter transportation through their member carriers.

I understand that that will be coming before this subcommittee today.

Senator INOUE. Are you suggesting, sir, that we have rules and regulations and laws on our books which can sufficiently regulate these charters and prevent the occurrence of illegal charters or illegal affinity tours, but that these rules, regulations, and laws are not properly executed?

Mr. QUINN. I think there are two answers to the question. First, there are many rules and regulations that have not been fully implemented. If they were, to a large degree, the illegal charter problem could be dealt with. The CAB recently has, I think, shown more enthusiasm and made a better effort than it has in the past in implementing its regulations. But as Mr. Keesling pointed out, we have been very frustrated by a lack of enthusiasm on the part of CAB and the Department of Justice to do what has to be done to apprehend the people breaking the law.

Even if this were done, we would still have a large gap. The CAB claims not to have jurisdiction over people who hold themselves out to the public as being charter organizers. In our view, until they ascertain that jurisdiction, either through the enactment of new legislation, such as this, or other legislation, the problem will continue to exist.

Senator INOUE. This morning we had some testimony suggesting that three so-called operators who have been cited in a CAB suit for carrying on illegal tours are still in total disregard of this suit, and are merrily continuing on with their business.

Is the CAB, to your knowledge, aware of this?

Mr. QUINN. My understanding is that the Board is aware of it. I think Congressman Van Deerlin made a substantial contribution to the hearings by pointing out the impact of failure to act.

In our case in Los Angeles, we obtained an injunction back in the first week of June. The defendant, who was found to have violated the Federal Aviation Act was enjoined from conducting additional

charters. If they did conduct a charter, it was a violation of the injunction.

They did disburse money from an account, contrary to the provisions of the injunction, while the U.S. attorney sat by and did nothing.

A large part of the problem is a jurisdictional one. The CAB, Bureau of Enforcement, understands the problem, and they are trying to work. But they can't act unless the Department of Justice acts.

Up until yesterday, the U.S. attorney had failed to do a single thing to enforce its injunction or bring criminal contempt proceedings for violation of the injunction.

In New York the same problem existed. For almost 3 months the suit in New York was held up pending coordination between the Department of Justice and the U.S. attorney in New York. In the meantime, charter programs were conducted. Tens of thousands of passengers were carried illegally, notwithstanding the efforts of the CAB, scheduled carriers, supplemental carriers, and ASTA. All were thwarted in their efforts to stop this. And it is still going on today.

Senator INOUE. What is your relationship with the Federal Trade Commission, or have you had any relationship?

Mr. QUINN. We have on occasion referred to the Federal Trade Commission, materials which we feel should be investigated. After your questioning of the Federal Trade Commission witness yesterday, I think we would like to help the committee to join with you to see if the FTC can't do more to prevent illegal charters from taking place by a careful examination of improper and misleading advertising.

We have not been impressed by their concern with the problem. We feel they could do a great deal more and would like to be sure they do so.

Senator INOUE. In a nutshell, you are advising this committee that notwithstanding the laws that we may have on our books, you are not quite satisfied with the implementation of such laws?

Mr. KEESLING. That is correct, Senator; yes.

Senator INOUE. And you feel that this measure here will, to some degree, correct that situation?

Mr. KEESLING. That is correct; yes, sir.

Senator INOUE. Now you have told us about injury to your industry. What area of the travel industry has most injury to the public occurred?

Mr. QUINN. I think Mr. Lockwood has an illustration he wants to relate which may answer that question.

Mr. LOCKWOOD. An incident took place in the State of Connecticut. One of our agents had arranged a tour specifically to Nassau for a group of people. The group of people had paid our agents and our agents had paid the wholesaler with whom the arrangements had been made. When the group arrived in Nassau they were faced with a demand for full payment for the services that they expected to have had performed for them.

Of course, the spokesmen for the travel agency said, "Well, we have paid them." But in this case, the hotel said, "Yes, but we haven't received the money. And we will not honor the vouchers you have in your possession until we do receive the money." This necessitated a call back up to Hartford. The agent in Hartford went to her bank—I believe it was her bank because I don't think she had the resources

to cover this particular amount—and in fact did pay the hotel again for the services that were to be performed.

Now, you can imagine the consternation that the group felt when they were suddenly faced with the fact that after they had paid the agent, the agent was being asked for payment again. It sort of shook their faith in the people with whom they had been doing business. To be sure our agent in covering it out of her own funds salvaged the goodwill of the clients and certainly took a great step forward in respect among her fellow travel agents. But if there is anything that can be done to eliminate some of the shaky tour operators, I think it is something strongly desired.

Senator INOUE. Was the agent in question legally required to make double payment?

Mr. QUINN. I might try to answer that, Mr. Chairman. I think probably not. The agent had collected the money from the passengers and forwarded it to the tour operator. I think legally she could have said to the passengers, "Well, it is not my fault, I conveyed the money, and I was only acting as an agent."

As a purely practical matter, as Mr. Lockwood pointed out, to preserve the goodwill of her customers and to maintain her reputation in the community and among other clients, she had little choice but to come up with some \$8,000 of her own money. She made a double payment to preserve her livelihood and to look after the interests of her passengers.

So, in answer to your question, the burden seems to fall mostly on retail agents. The public, fortunately, has not been badly injured in the case of tour operator defaults, only because the agent quite often out of choice, if not necessity, will make good the additional payments out of his own pocket.

Senator INOUE. This committee has been advised that it is a practice of some agents to invest moneys that have been entrusted to them by their customers during that so-called time gap from receipt of payment and subsequent payment of funds to hotels, airlines, et cetera. And we have been further advised that as a result of these speculative investments, some of these agencies have had to go down under in bankruptcy, thereby causing undue loss to customers.

Would you wish to comment on that, sir?

Mr. HERING. Mr. Chairman, I believe that would probably be in the area of the tour operator, primarily, where such a situation might occur. I can't say that I know as a fact that this happens extensively, but I do believe that there have been occasions where tour operators may have invested their money on that basis. This could well have been a contributing factor to the bankruptcy or financial irresponsibility of such tour operators.

Senator INOUE. Under the present law there is nothing to preclude any agents from doing that, is there?

Mr. HERING. There is nothing under the law that I know of that prevents it.

Senator INOUE. Would you object if the committee considered an amendment to the bill that would require that these moneys be kept in escrow?

Mr. HERING. In my opinion, I think if such an amendment were put in the bill, there should be some latitude to allow the tour operators

to pay the suppliers, in the event their payments became due, and perhaps take out whatever commission is earned.

Senator INOUE. Naturally we would expect the tour operator to pay the supplier. But we gather that there is a lag of, say, a month, and during those 30 days investments are made in the hope of making a fast dollar.

Now, would you object if we required that these funds not be used for speculation, but be kept in escrow?

Mr. HERING. I would defer to Tom Keesling on this.

Mr. KEESLING. I think you have a valid point there. I think we would like to study this matter further. The time element can vary substantially, not only for 30 to 60 days, but for as long as 4 months, with the mass movement that is going on in the group concepts of travel. And we would like to reserve the right to present additional testimony if we may concerning this thought to the subcommittee.

Senator INOUE. The committee record will be kept open, and we would be happy to receive that additional information.

Mr. KEESLING. Thank you.

(The following information was subsequently received for the record:)

ASTA has considered this question in light of recent experience in the travel industry and is of the view that it would be appropriate for the Congress to consider amending legislation to establish a federal regulatory program over travel agents to include specific language which would permit the Office Of Travel Agent Regulation to require that tour operators adequately protect the funds of the public and the retail agents. One of several methods of accomplishing this goal may be the establishment of escrow or trust accounts.

Although ASTA wholeheartedly supports the principle that funds collected by tour operators should be paid to the supplier of travel and retail services involved, we believe it is imperative that if escrow or trust accounts are selected as the best means to insure that this is done, the mechanics of separating such funds be carefully considered to assure that it accomplishes their purposes.

There are current studies underway by ASTA as well as groups of tour operators which we believe will provide helpful guidance to the Subcommittee on this most important subject, and we will make the results of this study available to the Subcommittee within the next few weeks.

Senator INOUE. In your testimony, you suggested that a substantial number of foreign countries are presently regulating their agents, and that in some of these countries substantial bonds are required.

Could you at some later time, furnish for the record these countries and the nature of their regulation?

Mr. QUINN. We would be happy to, Mr. Chairman.

Senator INOUE. And the type of bonds required.

Mr. QUINN. In fact, we prepared some memoranda that I think the committee would find helpful as to what is developing, particularly in the European countries, in this area.

(The following information was subsequently received for the record:)

In recent years there has been considerable activity in this area by countries individually and collectively. Many countries have enacted legislation to impose strict licensing and bonding requirements on travel agents, particularly on tour operators. The culmination of joint government effort to establish uniform rules and regulations regarding the liability of travel agents took place in April of 1970 when a Diplomatic Conference on the travel contract was held. Attached is a memorandum reporting on that conference which lead to the adoption of an International Convention on travel agent liability. Meetings and discussions have subsequently been held by countries which participate in the conference

with a view towards ratification of the treaty and it is evident that countries throughout the world particularly European countries and Japan who act as hosts to millions of tourist visitors each year are determined to establish uniformity and consistency with respect to liability of tour operators for the rights of travelers and duties and obligations of both tour operators and retail travel agents.

Related to the question of Government action to regulate Travel Agency Industries, our basic issue is the concern with the legal relationship between Travel Agents and Tour Operators on the one hand and their carrier principle and carrier public on the other. One of the most comprehensive analyses of this legal relationship was published in a specific volume of European Transport Law in 1968, the author of the article Paul S. Quinn is a member of the Washington Law Firm of Wilkinson, Cragun & Barker, General Counsel to ASTA, and the text of the article entitled, The United States Travel Agent and the Status of his Legal Liability, is attached.¹

Senator INOUE. We would appreciate that very much, sir. I presume from your earlier statement that all ASTA members are members of the Air Traffic Conference who sell travel?

Mr. KEESLING. I would have to say the majority, 99 percent. The requirement for membership in the society is that the travel agent hold two conference appointments. We do not specify which conferences they must be. There are a choice of five. If they hold any two, they are eligible to be members of the society.

But I would say 99 percent of the ASTA members are ATC-appointed agents.

Mr. HERING. Mr. Chairman, if I might add to that. We would be willing to make available to the committee, if it so desires, a copy of our roster of membership, as well as the requirements for membership in the various categories.

Senator INOUE. Fine.

For the record, if you could furnish us, within the bounds of the law, information or examples of what you consider to be illegal activity, we would appreciate it very much.

Mr. KEESLING. We would be happy to do so, sir.

(The following information was subsequently received for the record:)

We have consulted with other officials of ASTA, travel agents, and tour operators and have concluded that it does not appear that investment of client funds in outside business ventures occurs to any significant degree.

While we were unable to identify a single factor as the cause of all tour organizers' failures, it appears that in a number of them financial mismanagement and over extension in the development of new tours rather than outside investment caused the greater difficulty.

I am sorry we are unable, at this time, to supply a more definitive answer to your inquiry. However, we at ASTA are continuing to study this matter, and if in the future we are able to develop data in this area, I would be most pleased to communicate it to you.

Senator INOUE. Because one of the first necessities of legislation would be to cite the necessity of such a law. And it would be helpful to us and to you, I would say, if we could bolster our case by setting forth maybe a volume of some of these practices. I believe you are in a better position than this committee to dig up this type of information.

Mr. KEESLING. We would be happy to do it, Senator.

Senator INOUE. We have a few technical-type questions we would like to refer to you and request that your staff respond to us at their convenience in writing.

Mr. KEESLING. We will be delighted to help you in any way we can.

¹ See p. 143.

Senator INOUE. May I say that this committee is most grateful to ASTA for the assistance it has given us. No. 1 in the drafting of this measure, and No. 2, in providing us with the necessary information so we can make some sense out of the mess that some of our people have been involved in.

May I assure you that we will take what steps are necessary to protect the public interest, and if the bill is the way to do it, that is the way this committee will respond.

Thank you very much.

Mr. KEESLING. Thank you, Senator.

I would like to say we appreciate very much your concern and activity in this area.

Senator INOUE. Without objection, several telegrams and letters received by this committee relating to the bill under consideration will be made a part of the record at the appropriate place.

(The following information was subsequently received for the record:)

ANALYSIS OF S. 2577

ASTA agrees generally with the purposes of S. 2577. There are certain specific aspects of the legislation which merit comment.

Section 26(a) provides for the composition of the Travel Agents Registration Board. It provides that two members should be engaged in the travel agency business, one member should represent the public, and there should be one representative each from the Federal Maritime Commission, the Civil Aeronautics Board, the Interstate Commerce Commission, and the Department of Transportation. Finally, the Director or his representative shall be a member of the Board.

ASTA feels that, in light of the purposes of the legislation and in light of past experience in the area of government control, consideration should be given to providing for a greater number of representatives from the travel agency industry. Since the Bureau would be part of the Department of Transportation, having two representatives of that Department on the Board may be unnecessary. ASTA suggests that only the Director or his representative represent the Department of Transportation; that his seat be filled by a representative of the travel industry. Alternatively, two seats could be added from the travel agency industry.

Section 28 provides that a person holding a passenger broker license issued by the ICC pursuant to § 211 of the Interstate Commerce Act shall be granted a registration certificate unless a showing be made that the applicant lacks good character or is not financially qualified. This would grant registration to a number of individuals who currently do not hold appointments from either IATA or the ATC. ASTA does not believe it is wise to issue registration under the grandfather clause to people who would at this time not qualify for appointment as travel agents. For this reason ASTA opposes the last sentence of § 28.

Finally, it should be made clear that it is the intent of the legislation to require registration of those people who sell travel as agents for others. It is not the intent of the legislation to require registration of employees of airlines or hotels who sell transportation for their employers. For example, the following section could be added to the bill:

Application of article. This article shall not apply to railroad, steamship, airline or bus companies, hotels, motels, or other places of public accommodation, or their employees engaged solely in the business of such employers, nor to any person employed by any firm as a transportation officer or employee whose principal duty is to obtain transportation and/or accommodations for such firm or other officers or employees thereof; nor to any person who acquires tickets for travel or reservations or accommodations only as an incidental service or courtesy, without compensation therefor.

EXCERPTS FROM THE COURT'S OPINION IN MONARCH TRAVEL SERVICES, INC., ET AL.,
AND ASSOCIATED CULTURAL CLUBS, INC., ET AL., JUNE 4, 1971, UNITED STATES
DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA AND COPY OF COURT'S ORDER
ENJOINING ILLEGAL CHARTER FLIGHTS

The COURT. I have also read the respective cases—oh, the depositions, and I have looked through the transcript of the proceedings on June 1st, and have examined the cases cited therein by both sides as well as the cases that were cited in the briefs.

So now I feel obliged to rule promptly on this matter. In the first place, Title 49, Section 1371(a), says:

"No air carrier shall engage in any air transportation unless it possesses a Board certificate."

So the first question that we must determine is whether the defendant is an air carrier within the meaning of the Act.

Section 1301, Sub (3), defines an air carrier as:

"Any citizen of the United States who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in air transportation."

And the same section defines air transportation, as you might expect, interstate, overseas or foreign air transportation.

All right. The Court concludes that this defendant did and does engage indirectly in air transportation. It, on its own behalf, charters an airplane for a price. That is certainly evident in the contract with Donaldson.

This defendant is not acting as an agent for the passengers. They are not putting the passengers in touch with the air carrier like a normal travel agent does. It engages, it hires a plane. It says so. The company will let and the charterer will hire the aircraft for a specific price. And once having done so, it seeks to find members of the public that it can put on the plane that it charters. No doubt about that either. The brochures indicate that. The individual applicants indicate that. Even Mrs. Blythe's own testimony—as an example, Mr. Pendry, when he came in, she wrote him up a reservation on a particular flight. So that in that sense the defendant is transporting people in airplanes that it hires and transporting members of the public. I'll come to that in a minute.

It is not a representative of a legitimate group for a charter flight within the meaning of 14 CFR 207.11, Subsections (b) and (c). Those subsections require, among other things, that the person engaging the aircraft be a person no part of whose business is the formation of groups. Certainly the business of this organization is the formation of groups.

"... or the solicitation or sale of transportation services,"
which is exactly what they are doing.

And also there is another provision that no profit can be made by the group that constitutes the charter party. This, of course, is not true here. These people are engaged in the business of selling air transportation to members of the public.

And also, I am not persuaded—although I don't make any specific finding on this—but I think there is a strong indication that members are not bona fide members of any group other than for the purpose of getting air transportation.

There may be some cultural activities once a person gets abroad, but if so, the availability of that is just incidental. I find that not a valid purpose to make a bona fide group apart from the air transportation. And at least from a tentative standpoint, any activities that the group has are only incidental, and are only for the purpose of giving a color of authenticity as far as group aspect is concerned.

Also I find a strong likelihood that the organization does not undertake to enforce the six months requirement. The testimony of Mrs. Blythe with respect to Mr. Pendry is an example of significance. The other affidavits give a similar indication.

And certainly, the organization, as I said before, is not acting as agent for any group. It is forming the group, and it makes its profit from the group. Nor is the organization the agent of a carrier. It is an arms-length contracting party with the carrier, and from that standpoint is not simply a ticket agent.

I was impressed with the C.A.B.'s definition of an indirect air carrier as contained on page 3 of the C.A.B. brief which sets forth the Board's view as contained in the case of Hacienda Hotels v. U.S. Aircoach Enforcement Proceeding. An indirect air carrier is defined as:

"A person not directly engaged in the operation of aircraft, being an indirect carrier if such person sells transportation by aircraft to the general

public, other than an authorized agent of a direct carrier in the consummation of transportation arrangements between the operator of the aircraft and the passengers."

That is exactly what these people do. They sell transportation by aircraft to the general public. They are not doing so as an authorized agent of a direct carrier, and they are not doing so in the consummation of transportation arrangements between the operator of the aircraft and the passengers. There are no arrangements between the operator of the aircraft and the passengers.

The operation of the defendant organization is much like that of a freight forwarder as described in the case of *American Airlines I*, C.A.B. at 178 Fed. 2d 903, Seventh Circuit, in 1949. And also much like the *Consolidated Flower Shipment v. C.A.B.* In all three instances the business of the company is to gather together either articles or passengers, form them in a group, and buy the space in the airline in which either passengers or articles may be shipped. And also make as its profit the difference between the charge for the transportation of the people or articles and the amount that the actual carrier requires.

So the Court finds that the defendant is an air carrier and, by acknowledgment in the deposition of Mrs. Bopp, it is operating without a certificate from the C.A.B. as prohibited under Section 1371(a) of Title 49.

That being the case, Section 1487(a) provides that the C.A.B. could bring the action. But, as was stated here in this matter by the C.A.B. representative, and as was acknowledged in the case of *Eastern Airlines*, the C.A.B. can't bring all actions immediately, and Congress must have intended that under certain circumstances any party in interest may bring the action, and that was done—and in one of those instances—in fact, the only instance is the case of a violation of Section 1371(a), that is, a carrier operating without a certificate, which is the situation here.

I find that the fact that the C.A.B. could bring the action does not preclude other people who come within the statute being able so to do. Otherwise, there is just no meaning to the statutory provision I just referred to.

So the next question is whether or not the plaintiffs here and the travel agents on behalf of whom they seek to bring this action are parties in interest.

Well, the *World Airways v. Northeast Airlines* cases in the First Circuit certainly are strong precedent to the effect that an actual air carrier with whom these so-called charter flights compete are parties in interest because transportation is directly diverted from them to the charter flight carriers in question and, in fact, it even goes farther than that. There is some even indirect effect, namely, whatever effect there is in the difference between taking a vacation in Hawaii and going to Miami.

So that there is no doubt but what, if the plaintiffs here were an actual direct air carrier, that such carrier would have standing as a party in interest.

Now, here the people are not direct air carriers, but are travel agents and, of course, there is no doubt but what, if business is diverted from an actual airline, it is to some extent diverted from travel agents, because the Court will take judicial notice of the fact that many passengers who book passage on airlines do so through travel agents. It is a lesser extent but a substantial extent. At least it is substantial, comparable to the comparison between an Hawaii charter flight and the effects of it upon Miami vacations as is set forth in the *World Airways* case.

So the Court holds that the plaintiffs and the other travel agents on behalf of whom this action is brought are parties in interest within the meaning of the statute. Their interest is not as great as that of the airlines, but it is a substantial interest to the extent of qualifying them to bring this action.

Now the question is, what does the Court do about it?

I find that the whole record shows rather strongly that these defendants are intentionally violating the law and knowingly subverting the law in the manner of their operations, and they are entitled to little sympathy from the Court because of that. I have a considerable greater sympathy with the travelers. It is true that the travelers presumably perjured themselves, but the last affidavit by Mr. Pendry indicates that a considerable amount of this perjury took place under the gun of either being able to climb aboard the aircraft or not, and I think also that a considerable amount of this perjury was induced. In any event, the travelers are entitled to a little more sympathy from the Court, and I am bearing that in mind in making the Order that I propose to make.

I am concerned about a bond. I am proposing to grant an injunction, a preliminary injunction, along the lines reflected in the proposed Order, but making it effective after the June flights have gone. I just don't think the interests of justice require that I interfere with these people who are all set to go on the 15th or on

the later flight in June, and I am proposing—in fact, I do hereby indicate that the Order that I will sign will be effective as of the July 13th flight and thereafter.

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

CIVIL ACTION NO. 71-1176-WPG

MONARCH TRAVEL SERVICES, INC., A CALIFORNIA CORPORATION, BEVERLY HILLS TRAVEL BUREAU, INC., A CALIFORNIA CORPORATION, AND ECKDAHL-SUNDIN TRAVEL BUREAU, A CALIFORNIA CORPORATION, PLAINTIFFS,

Vs.

ASSOCIATED CULTURAL CLUBS, INC., A CALIFORNIA CORPORATION, ALSO KNOWN AS A.C.C.I., UNIVERSAL STUDENTS ORGANIZATION, A CORPORATION, MARIA RITA BOPP, J. W. REID, THOMAS D. MERCOLA AND PAULA BLYTHE, DEFENDANTS.

PROPOSED ORDER FOR PRELIMINARY INJUNCTION

The Motion of Plaintiffs herein for a Preliminary Injunction having come on for hearing on June 1, 1971, and June 4, 1971, at 10:00 A.M. before the Honorable William P. Gray, Judge Presiding in Room 6 of the United States Court House and Plaintiffs appearing through their attorneys, Irsfeld, Irsfeld & Younger and Charles Hobbs, Esq., and Associated Cultural Clubs, Inc., a California corporation, also known as A.C.C.I. Universal Students Organization. Maria Rita Bopp, Thomas D. Mercola and Paula Blythe, Defendants, appearing through attorneys Morris Lavine, and the matter having been argued and evidence oral and documentary having been introduced by both parties and it appearing to the Court that Defendants and each of them have been and now are engaging as indirect air carriers in violation of the Federal Aviation Act of 1958, Section 401(a); that said Defendants, and each of them, are presently engaged in booking passengers for a number of proposed charter flights scheduled to depart June 15, 1971, and after, in violation of the Federal Aviation Act of 1958, and that said Defendants, and each of them, will continue to book passengers on illegal charter flights if they are not restrained by this Court, thus causing continued losses to Plaintiffs' irreparable damage,

It is hereby ordered that Defendants, Associated Cultural Clubs, Inc., a California corporation, also known as A.C.C.I., Universal Students Organization, Maria Rita Bopp, J. W. Reid, Thomas D. Mercola and Paula Blythe and their officers, agents, servants, employees, and attorneys are enjoined from engaging in business as indirect air carriers in violation of Section 401(a) of the Federal Aviation Act of 1958, from soliciting or offering their services as indirect air carriers, from holding themselves, or any of them, out to the public as being authorized to engage in indirect air transportation, and from violating the provisions of Section 401(a) of the Federal Aviation Act of 1958 and the provisions of all pertinent regulations issued thereunder.

It is hereby further ordered that said Defendants, and each of them, are enjoined from doing the following:

1. Mailing to names on commercial mailing lists solicitations advertising their charter flights.
2. Soliciting or accepting the business of persons who are not members of any bona fide club or other organization, for charter flights.
3. Signing up any person for a charter flight who has not in fact been a member of a bona fide organization for at least six months.
4. Signing up any relative of a bona fide member for a charter flight who is not a spouse, dependent, child or parent of said member and living in the member's household.
5. Soliciting or selling one-way tickets to any person in connection with a charter program involving more than three flights.
6. Advertising a fixed single-seat price for any charter flight.
7. Filing untruthful certificates with the carrier in violation of CAB Regulations, e.g. 14 C.F.R. Section 214.35(d).

IT IS HEREBY FURTHER ORDERED that said Defendants, and each of them, until further order of this court, are enjoined from arranging or participating in the handling of any purported charter flights departing July 13, 1971, or after, where passengers on such flights are purported members of the Associated Cultural Clubs, Inc. or the Universal Students Organization, and said Defendants, and each of them, shall cancel forthwith all such purported charter flights giving notice of such cancellation to passengers already booked on such

flights, and Defendants, and each of them, shall make no other arrangements for charter trips through the Associated Cultural Clubs, Inc., the Universal Students Organizations, or any other organization involving any air carrier, supplemental carrier or foreign air carriers.

IT IS HEREBY FURTHER ORDERED that said Defendants, and each of them, are enjoined as set forth above until entry of a final judgment herein.

IT IS HEREBY FURTHER ORDERED that as a condition precedent to the issuance and maintenance of the Preliminary Injunction, Plaintiffs shall forthwith give security of \$100,000.00 conditioned on the payment of such costs and damages as may be incurred or suffered by any defendant who may be found to have been wrongfully enjoined or restrained.

Dated: June 4, 1971.

WILLIAM P. GRAY.

POSITION OF THE AMERICAN SOCIETY OF TRAVEL AGENTS, INC. (ASTA) REGARDING
USE OF TRUST ACCOUNTS OR ESCROW ACCOUNTS BY TOUR OPERATORS

During the hearings held before the Subcommittee on November 17 and 18, several questions were raised about the desirability of imposing through federal legislation or rules and regulations of a government agency a requirement that tour operators maintain a trust or escrow account.

ASTA has considered this question in light of recent experience in the travel industry and is of the view that it would be appropriate for the Congress to consider amending legislation to establish a federal regulatory program over travel agents to include specific language which would permit the Office Of Travel Agent Regulation to require that tour operators adequately protect the funds of the public and the retail agents. One of several methods of accomplishing this goal may be the establishment of escrow or trust accounts.

Although ASTA wholeheartedly supports the principle that funds collected by tour operators should be paid to the supplier of travel and retail services involved, we believe it is imperative that if escrow or trust accounts are selected as the best means to insure that this is done, the mechanics of separating such funds be carefully considered to assure that it accomplishes their purposes.

There are current studies underway by ASTA as well as groups of tour operators which we believe will provide helpful guidance to the Subcommittee on this most important subject, and we will make the results of this study available to the Subcommittee within the next few weeks.

FOREIGN GOVERNMENT STEPS TO REGULATE THE TRAVEL AGENCY INDUSTRY

During the Subcommittee's consideration of the provisions of S. 2577, questions were raised about steps being taken by other governments which manifest an interest in travel and tourism to establish reenactment of legislation or otherwise regulatory program over the actions of tour operators and retail travel agents.

In recent years there has been considerable activity in this area by countries individually and collectively. Many countries have enacted legislation to impose strict licensing and bonding requirements on travel agents, particularly on tour operators. The culmination of joint government effort to establish uniform rules and regulations regarding the liability of travel agents took place in April of 1970 when a Diplomatic Conference on the travel contract was held. Attached is a memorandum reporting on that conference which lead to the adoption of an International Convention on travel agent liability. Meetings and discussions have subsequently been held by countries which participate in the conference with a view towards ratification of the treaty and it is evident that countries throughout the world, particularly European countries and Japan who act as hosts to millions of tourist visitors each year are determined to establish uniformity and consistency with respect to liability of tour operators for the rights of travelers and duties and obligations of both tour operators and retail travel agents.

Related to the question of Government action to regulate Travel Agency Industries, our basic issue is the concern with the legal relationship between Travel Agents and Tour Operators on the one hand and their carrier principle and carrier public on the other. One of the most comprehensive analyses of this legal relationship was published in a specific volume of European Transport Law in 1968, the author of the article Paul S. Quinn is a member of the Washington Law Firm of Wilkinson, Cragun & Barker, General Counsel to ASTA, and the text of the article entitled, The United States Travel Agent and the Status of his Legal Liability, is attached.

The United States Travel Agent and the Status of his legal Liability

by Paul S. Quinn

The major purpose of this article is to discuss the legal liability of the United States travel agents to their clients. In addition, the article will attempt to provide a brief sketch of the United States travel agency industry today and a personal assessment of the draft International Convention of Travel Agency Contract developed by the International Institute for the Unification of Private Law. (1)

I. WORLD TOURISM AND THE UNITED STATES TRAVEL AGENT.

During 1967 more than 14 billion dollars were expended in visits to more than 100 countries by a total of 31 million individual travelers. In addition, 4.5 billion dollars were spent on transportation for international travel. International tourist receipts in Europe alone totaled more than 8.5 billion dollars. Foreign travel by United States residents in 1967 resulted in estimated total expenditures of more than 4.6 billion dollars; 980 million of this was spent by United States citizens traveling in Europe and the Mediterranean. (1a)

Of the more than 3.3 million United States citizens who traveled overseas during 1967, an overwhelming majority of them had one thing in common — the preparation, planning and enjoyment of their trip was made possible through the professional knowledge, advice and assistance of a travel agent.

There are presently almost 6,000 travel agents in the United States. A travel agent is generally described as a person, firm or corporation or other entity engaged in the business of arranging transportation and travel facilities for others for a commission, fee or other valuable consideration.

Travel agents are divided into two general categories. The retail agent who promotes and sells all forms of travel and travel arrangements directly to the public, and the tour operator or wholesaler who is primarily responsible for the preparation,

(1) In the preparation of this article I am indebted to my associate, Jerry C. Straus, for his most valuable assistance.

(1a) « The Big Picture » by W.D. Patterson, *ASTA Travel News*, March, 1968.

packaging and sale, either directly to the public or through retail agents, of various forms of tours. Only a small percentage of the United States travel agents could be classified as tour operators or wholesalers. Some agents function as both tour operators and retail agents, but the overwhelming majority of United States travel agents are classified as retail travel agents.

From 65-90 % of all United States citizens who travel abroad by air use the services of travel agents. Approximately 90 % of all of those who travel by ship from the United States rely on travel agents to arrange their trips.

The average United States travel agent is a small businessman with five employees, four full-time, and one part-time. The median travel agent had gross travel sales totaling \$400,000 in 1965. (2).

There is no direct general regulation of travel agents in the United States by either the Federal Government or state or local governments. However, in the fields of aviation, maritime and motor bus transportation, the Federal Government exercises indirect control over the activities of travel agents as a result of its jurisdiction over those industries.

Under the provisions of the Federal Aviation Act of 1958 and the Shipping Act of 1916, as amended, the Civil Aeronautics Board and the Federal Maritime Commission must approve or disapprove agreements among carriers under their jurisdiction which affect travel agents. Each of these agencies has approved agreements which led to the establishment of the International Air Transport Association and the Air Traffic Conference in the aviation field and the Trans-Atlantic Passenger Steamship Conference and other shipping conferences in the maritime field.

Because of the increased reliance by the traveling public in the United States on travel agents and partially as a result of a few isolated incidents of difficulties experienced by the public in dealing with fly-by-night agents, efforts have been made recently in a few states to impose a state regulatory system on travel agents. This has led the industry's leading trade association, the American Society of Travel Agents, Inc. (ASTA), representing more than 2,500 independent travel agents in the United States and Canada, to seek enactment of a federal self-regulatory bill in the United States Congress. (3) These bills have been pending before the appropriate congressional committees and comments regarding them are being solicited from the regulatory and executive agencies of the Federal Government.

Because of the complexities of the travel agency industry and

(2) Airline/Travel Agent Marketing Study, Systems Analysis and Research Corporation, 1967.

(3) S. 1987 and H.R. 11434.

the fact that travel agents still operate as independent businessmen, not subject to regulation or licensing by a government, their liability to the public and to their principals is based primarily on existing common law in the United States and contractual responsibilities which they incur by entering various sales agency agreements with airlines and steamship companies.

II. TRAVEL AGENTS' LEGAL LIABILITY TO THEIR CLIENTS UNDER COMMON LAW PRINCIPLES.

It is difficult to make categorical statements about the legal responsibility of United States travel agents to their clients for the proper performance of the travel services and accommodations they sell. The significant growth of the travel agency business in the United States has brought with it an inevitable increase in the number of lawsuits brought against travel agents by travelers seeking redress for real or imagined injuries or inconveniences (4). While a number of cases touching on this subject have been decided by the courts of various states in recent years, no court in the United States has yet outlined a basis for liability that comes to grips with the complexities of the various relationships travel agents have with their clients, carriers, hotels and other suppliers of travel services and accommodations (5).

As a reflection of the uncertain state of the law, we can only offer tentative conclusions as to the ambit of the travel agents' legal responsibilities vis-a-vis their clients.

A. TRAVEL AGENTS' LIABILITY FOR THEIR OWN WRONGFUL ACTIONS.

Travel agents, like other businessmen, are subject to common law principles that govern business conduct. If a travel agent engages in wrongful conduct which causes his client injury, the travel agent will probably be liable for damages (6). Thus, if a travel agent engages in intentionally wrongful conduct such as fraud (e.g., deliberately misleading a client about

(4) Claims brought against travel agents are often quite bizarre. In one recent case an agent was sued by a client who was injured when an elephant she was riding in Nepal was charged by a rhinoceros. The client claimed that the agent was negligent in selecting the elephant boy.

(5) It should be noted that the extent of travel agents' liability has not been defined by statute or code in the United States. While proposals have been made in recent years for licensing of travel agents (notably in the States of California and New York) which, through bonding requirements would, in some measure, have statutorily defined travel agents' legal responsibility to their clients and while travel agents are subject to a considerable amount of regulation at the federal level by the Civil Aeronautics Board, the Interstate Commerce Commission and the Federal Maritime Commission (see discussion, *supra*, p. 3), the questions of travel agents' liability have been largely left to the courts of the several states to decide under common law principles without statutory guidelines.

(6) Prosser, Torts § 4 at p. 22 (2nd ed., 1964) (hereinafter cited as « Prosser »).

the quality of a particular hotel) he may be answerable to his client; (7) also the travel agent may be liable if he discharges his functions negligently. For example, a travel agent may be liable for damages if he makes a plane reservation for a client on the wrong flight or incorrectly advises his client that a visa is not required for entry into a particular country (8).

One unresolved question is whether the courts will impose a higher standard of care on travel agents than is customarily imposed on providers of business services. The suggestion has been made by one writer that travel agents, because their calling involves the exercise of considerable skill, are, like attorneys and physicians, subject to suits for malpractice, (9) i.e., they would be liable for failing to exercise the degree of care that is customarily exercised by persons similarly employed in their communities (10). Under this theory, a travel agent might be held liable on "malpractice" principles if he incorrectly advised a client that a particular resort had superior skiing facilities when a reasonably skillful travel agent — as opposed to a layman — would know that the facilities were only average or inferior.

No court has yet adopted this approach in the United States and it is questionable whether travel agents will be held accountable as professionals given the fact that travel agents are presently not required to undergo formal training or examination as to competence (11). However, if current efforts within the industry to increase professionalism are successful, it would not be surprising if the courts someday do apply "malpractice" principles to travel agents (12).

(7) No case involving such conduct by travel agents has been discovered, but liability is clear under general common law principles. See, *Neff v. World Publishing Company*, 349 F. 2d 235, 255 (8th Cir., 1965).

(8) The test of liability for negligence is whether the agent acted as a « reasonable man » in the circumstances. *Ozark Air Lines, Inc. v. Larimer*, 352 F. 2d 9 (8th Cir., 1965); *Romero v. Garcia & Diaz, Inc.*, 286 F. 2d 347 (2nd Cir., 1961), cert. den., 365 U.S. 869 (1961); Prosser § 32. If an agent fails to use due care in making travel arrangements and this lack of care causes foreseeable injury to the client, it is safe to predict, despite the absence of specific cases decided on the point, that the travel agent will be held accountable.

(9) Wohlmut, *The Liability of Travel Agents*, 40 *Temp. L. Q.* 29, 34 (1966).

(10) Prosser, § 32 at 164-165.

(11) Most of the cases decided have dealt with persons employed in callings that require formal training and certification of competency. See cases collected in Prosser 32 at 164-165.

(12) In this regard, the work of the Institute of Certified Travel Agents (« ICTA ») should be noted. The Institute was founded in 1964, has its administrative offices in Washington, D.C., and is a nonprofit corporation whose purposes are to further the education and establish professional standards for the travel agent. The Institute currently administers a program where, after a course of study, examination and thesis, qualified persons can be awarded the designation — Certified Travel Counselor (« CTC »). The Institute also conducts graduate level seminars for travel agents and encourages publication of theses dealing with subjects of interest to the travel agency industry.

B. TRAVEL AGENTS' LIABILITY FOR AIRLINES', HOTELS', OR OTHER SUPPLIERS OF TRAVEL SERVICES' WRONGFUL CONDUCT OR FAILURE TO PERFORM.

The discussion thus far has been limited to difficulties that arise due to a travel agent's own misfeasance. In the more typical case, however, when something goes wrong with the arrangements on a trip it is the fault of an airline, hotel or other supplier of the particular travel arrangement involved.

A passenger is refused passage on a airplane because the carrier involved has overbooked available space. Can the passenger successfully sue the travel agent who sold him the ticket? A hotel refuses to honor a reservation it confirmed through a travel agent because a hotel employee negligently forgot to record it. Is the travel agent who made the reservation liable for damages? A cruise fails to depart because of the bankruptcy of the cruise ship operator who is unable to make refunds to the cruise passengers (13). Must the travel agent who sold passage to a client on the ill-fated cruise make a refund?

The answer to each of the above questions will be "yes" in some circumstances. The fact that travel agents sometimes act as agents for various carriers and hotels does not provide them with a complete shield from liability for the wrongful conduct of such carriers or hotels. It is true that under principles of agency law, an agent is not generally liable for the defalcations of his principals. It is equally true that consumer-oriented courts in the United States are loathe to permit business middlemen such as travel agents to escape liability for injuries practiced on their customers when liability can be found under principles of agency law or otherwise (14).

(13) In the future this situation is unlikely to arise often in the United States. Under the provisions of Public Law 89-777, the Federal Maritime Commission has promulgated regulations which require cruise operators to establish their financial reliability before arranging, offering, advertising or providing transportation on a ship having berths or stateroom accommodations for fifty or more passengers embarking at United States ports.

(14) In many cases the travel agent who sold the trip is the only party amenable to suit. While a foreign hotel or airline maintaining an office and regularly carrying on business in a particular state may be subject to suit — *Frummer v. Hilton Hotels International, Inc.*, 19 N.Y. 2d 533, 227 NE 2d 851; doing business through a travel agent is not generally sufficient to subject a foreign corporation to suit in a particular state. *Miller v. Surf Properties*, 4 N.Y. 2d 475, 151 NE 2d 874 (1958). In the United States a foreign corporation cannot be subjected to the jurisdiction of the court unless it has certain minimal contacts with the state in which suit is brought, i.e. does a certain amount of business in the state. Thus, if an American traveler was injured by a hotel in France which maintained no office in the United States there would probably be no practical way for the traveler to obtain redress from the hotel. He might attempt to secure damages from the travel agent who made the reservation for him. The American Society of Travel Agents, Inc. (ASTA) offers clients of ASTA members an alternative to litigation. The Society has a Grievance and Ethics Department which reviews charges of impropriety made by mem-

C. WHEN THE TRAVEL AGENT ACT AS AGENT FOR A CARRIER, HOTEL, OR OTHER SUPPLIER, HIS LIABILITY IS LIMITED.

Under common law principles an "agent" is someone who agrees to act for another (known as the principal) in the management of some activity in a fiduciary capacity (15). When an agent contracts with a third party on behalf of his principal, and the third party knows that agent is contracting not for himself but for another, the common law in the United States generally refuses to make the agent responsible for the principal's failure to perform adequately. In most of the cases concerning travel agent's liability, the courts have assumed, without analysis, that the travel agent acted as the agent for the carrier or hotel (16). However, it is clear that in some instances travel agents act as agents for their clients and the finding of such a relationship may significantly increase the scope of their liability to their clients.

Confusion exists because of the fact that travel agents generally acts as brokers (17) and their interests are not completely merged with the interests of the carriers, hotels and other travel suppliers whose services they sell to the public. A recent memorandum prepared by the General Counsel's Office of the Civil Aeronautics Board for a Committee of the United States House of Representatives likened travel agents to motor transportation brokers who are directly regulated by the Interstate Commerce Commission :

"The independent travel agent is, in many ways, like the broker. 'Though in each particular transaction the broker assumes a kind of agency, his independent interest is never completely merged in that of the principal as in the case of ordinary agency.' The travel agent too is, in many respects, 'an independent businessman operating from his own place of business.' " (18).

bers of the public against ASTA members. In several instances the investigation of a complaint against a travel agent has led the agent concerned to make a voluntary refund or payment on a client's claim.

- (15) RESTATEMENT (SECOND) AGENCY § 1 defines the relationship as follows:

« (1) Agency is the fiduciary relation which results from consent by one person to another that the other shall act on his behalf and subject to his control and consent by the other so to act. (2) The one for whom action is to be taken is the principal. (3) The one who is to act is the agent. »

- (16) See *Unger v. Travel Arrangements*, 25 App. Div. 2d 40, 266 N.Y.S. 2d 715 (1966); *E.A. McQuade Travel Agency v. Domeck*, 190 S.O. 2d 3 (Fla. 1966); *Sacks v. Loew's Theatre, Inc.*, 47 Misc. 2d 854, 263 N.Y.S. 2d 253 (Sup. Ct. 1965).

- (17) Black's Law Dictionary (3d ed.) defines « broker » as « an agent employed to make bargains and contracts between persons . . . » The fact that someone is a « broker » does not preclude him from being an agent of one party or another to a particular transaction. *Chicago v. Barrett*, 404 Ill. 36, 88 NE 2d 477 (1949).

- (18) The memorandum was addressed to the question of the right of travel agents to assess service charges for their various services.

Since an agency relationship is a consensual arrangement, the question of whether a travel agent is acting as agent for a carrier, hotel or client (or whether he is acting as agent at all) (19) depends on the intention of the various parties to the transaction. An agency relationship may be express (created as the result of the oral or written agreement of the parties) or implied from the conduct of the parties and the surrounding circumstances (20). Where common law courts wish to determine whether an intermediary between two parties is the agent of one or the other, the courts look to such factors as who paid the intermediary compensation, who had supervisory power over him and who first employed him. In such situations it is highly significant that one of the parties has entered into a written "agency agreement" with the intermediary (21).

Under these general principles it seems safe to say that in some circumstances travel agents will continue to be regarded as agents of the carriers or hotels whose services they sell for the purpose of measuring their liability to their clients. Perhaps the clearest of these situations is where a travel agent appointed as agent in writing by a carrier, pursuant to a carrier conference approved sales agency agreement sells transportation over the carrier facilities to a member of the public. The written agreement expressly provides that the travel agent is to serve as the agent of the carrier (22). The carrier contracts for the agent's services for the sale of transportation prior to the transaction with the client. Since the client does not pay a fee for the agent's services, the carrier is the exclusive source of the

(19) The fact that a travel agent calls himself an « agent » does not mean that the United States courts will accord him that legal status. *Kirkland v. Sapphire International Touring, Ltd.*, 262 F. Supp. 309 (SDNY 1966).

(20) 3 Am. Jur. 2d Agency § 18; RESTATEMENT (SECOND) AGENCY § 26.

(21) See *General Accident Fire and Life Assur. Corp. v. Brown*, 217 F.2d 418, 423 (7th Cir. 1954); *Wash. Broadcasting Co. v. Goozh Gifts*, 118 A2d 392 Mun. Ct. App. Dist. Col. 1955).

(22) The ATC Sales Agency Agreement provides in pertinent part:
« ... THIS AGREEMENT, made and entered into this day
of, 19....., by and between,
acting as agent for the several air carriers which are parties to the Air
Traffic Conference Agency Resolution ... »

* * *

« During the term of this Agreement, the Agent shall represent the Carrier for the purpose of promoting and selling air passenger transportation offered by the Carrier. In selling such transportation, the Agent shall conform to and observe the tariffs, rules, regulations and instructions issued by the Carrier, and the applicable terms and conditions of tickets and exchange orders of the Carrier issued or used by the Agent. The Agent shall furnish information to its clients and public concerning the Carrier's air passenger transportation services in conformance with current authorized forms, folders, advertising, schedules, tariffs, rules, regulations and instructions issued by the Carrier. »

In the CAB General Counsel's Office memorandum referred to, *supra*, p. 12, the distinction was made between situations where the travel agent acts in an independent capacity and the situation where the travel agent with respect to « the solicitation or furnishing of air transportation or services in connection with air transportation ... » [acts] « ... on behalf of the air carrier ... »

agent's compensation. Finally, the agent is subject to detailed supervision of the carrier, under the Sales Agency Agreement, as to the manner in which he sells the transportation. The same consideration would seem to apply to agents who arrange charter transportation, even though the agent may not have entered into an express agency agreement (23).

Another comparatively clear situation is presented where a travel agent sells a cruise on a vessel owned and operated by a nonconference owner or operator. While there is, of course, no approved sales agency agreement and while there may or may not be a written agency agreement between the agent and the cruise ship operator, the carrier contracts for the agent's services by offering brochures or other material which indicates a commitment to pay a commission on any bookings. All of this is done prior to any dealings by the agent with the client. The agent looks to the carrier for his compensation (24).

Although it is far from clear, it is likely that when hotel reservations are made by a travel agent for his client, he will be held to be acting as agent for the hotel. This would be an implied agency (25). Generally speaking, hotels do not enter into agency agreements with travel agents, although exceptions occur where travel agents are employed on a regular basis by resort hotels to sell space and answer inquiries generated by local advertising. Usually the agent does not request compensation from the client for making a reservation; he looks to the hotel for payment of a commission. It is believed that a travel agent may more likely escape responsibility if he clearly indicates to the client that he is acting as a representative of the hotel. This would support a court finding that he was agent for the hotel, not for the client.

(23) In *Capitol Airways Enforcement Proceeding* (CAB Orders E-24998 and E-24999, *aff'd* March 8, 1968, D.C. Circ.), the CAB held Capitol Airways, Inc. liable for certain acts of a travel agent in connection with the 1965 charter standings involving the New York State Teachers Study Group. The agent collected the funds for the charter and had converted them to his own use. Capitol Airways contended that it was not liable for the actions of the travel agent on the ground that he was acting as agent for the charter group, even though Capitol had executed a written agency agreement with the agent. Capitol argued that it was not responsible for the agent's misappropriation of funds because contrary to the provisions of both the agency contract and the charter contract — checks were made out by the study group to the agent's own account. The Examiner reached the conclusion that Capitol, because of its acquiescence in the agent's collecting of checks drawn to his own account from members of the charter group for transmission to the airline, had ratified his actions and was bound by them.

(24) The case of *Unger v. Travel Arrangements*, *supra*, involved the question of whether a travel agent was liable for the amount collected and passed on to the nonconference operator of a cruise ship which did not sail. The court ruled that the travel agent was the agent of the cruise operator and was not responsible to the client for the acts of the cruise operator.

(25) See *Frummer v. Hilton Hotels International, Inc.*, *supra*, a case not involving liability of travel agents which implies that travel agents were agents for the hotels whose accommodations they sell.

Having said that travel agents act as agents for carriers, hotels and other suppliers of travel services in some situations, it does not follow that agents can always escape liability for a carrier's or hotel's failure to perform. Under principles of agency law, the agent's immunity from liability can be easily lost if the agent in any way acts inconsistently with his agency status.

If an agent contracts on behalf of an undisclosed principal — i.e., does not disclose to the third party he contracts with that he is not acting for his own account but on behalf of a principal — he will be personally liable for the failure of the principal to perform. This rule has been applied by several courts to impose liability on a travel agent in circumstances where the court has assumed that the agent was acting as an agent for the carrier. (26)

While there are no cases decided on the point, a travel agent may be answerable in damages to his client where he acts without authority or indulges in some activity beyond the agency authority entrusted to him by his principal. An example would be where a travel agent sells confirmed space in a hotel in the mistaken belief that he has authority to do so and the hotel

- (26) In *E.A. McQuade Travel Agency v. Domeck*, 190 SO 2d 3 (Fla., 1966), a travel agent was sued for a refund of the purchase price of a cruise that had been cancelled due to the insolvency of the cruise ship operator. While agreeing that the travel agent was acting as agent for the cruise operator, the court held that the agent was liable to make the refund because the agent had not disclosed the name of the cruise ship operator (the agent had disclosed the name of the ship but not the name of the operator).

Somewhat different circumstances were involved in the case of *Unger v. Travel Arrangements*, *supra*, where the court reached the opposite result concerning a claim arising from the cancellation of a cruise operated by the same cruise ship operator involved in the *McQuade* case. The court ruled that, if, as the agent alleged, the identity of the cruise ship operator was disclosed to the passenger, the agent was not liable to make a refund even though the identity of the principal was not disclosed in the written contract between the agent and the client. The court, moreover, stated that even if the name of the principal was not known, the client could not recover on any « undisclosed principal » theory since « ...most persons know that a travel agency such as the defendant was not the owner or operator of an ocean-going cruise ship ». 266 N.Y.S. 2d at 723. In *Dulac v. D'Esopo* (Civil No. 2476, New Hampshire Superior Court, Jan., 1967 [unreported case]), the travel agency was held liable for the failure of a hotel to honor reservations made as part of an air carrier package tour even though the difficulties were not caused by the agency. The court assumed without deciding that the agency was acting as agent for the airline but ruled that this did not relieve the agency from liability since « the evidence does not establish that before or at the time the contract was made between the parties, the defendant disclosed to the plaintiffs that they were acting as agents of ... [the airline] ... in agreeing to obtain hotel reservations ... ».

See also *Singer v. Mirel*, District Court of Nassau County (Sept. 30, 1965, unreported case) where under similar facts, the court also ruled that the agent could not be held liable to refund the price of a cruise. It should be noted that in both the *Unger* and *Singer* cases the agent was required to refund that portion of the fare he retained as commission. See generally 3 Am. Jur. 2d Agency § 302; Cf., *Instituto Cubano De Estab., etc. v. The SS Theotokos*, 155 F Supp. 945, 947 (SDNY 1957).

refuses or is unable to honor the "reservation". The travel agent would quite likely be held liable for resulting damages to the client (27).

Finally, where an agent purports to bind himself personally he may not escape liability. A travel agent may assume a greater degree of liability than that which normally devolves on him. Thus, if a travel agent gives his personal guarantee that a reservation will be honored by a hotel or that a cruise will definitely operate, he may be liable if the hotel fails to honor the reservation or the cruise ship does not sail (28).

D. WHERE THE TRAVEL AGENT ACTS AS AGENT FOR HIS CUSTOMER, HE PROBABLY INCREASES HIS LEGAL RESPONSIBILITY TO HIS CUSTOMER.

As previously mentioned, there are some situations where the travel agent probably is acting as agent for the client although in the absence of case law it is difficult to define these situations with certainty. The writer knows of no reported case which has reached this result (29).

One example where it seems fairly clear that the travel agent acts as agent for the client is where the agent assembles a Foreign Independent Tour (FIT) tailored to the specifications of the client. While he derives some of his remuneration from the carriers and hotels, it is most likely that a great deal of the agent's remuneration will come from the client. The legal result is considered likely because (1) the agent is subject to detailed direction of the client as to the various components of the FIT and (2) the agent has, by undertaking the assignment, held himself out as possessing special expertise necessary to accomplish the assignment.

The result is less clear with respect to the sale of package tours. Where a travel agent (wholesaler or retailer) sells a package tour assembled by himself, the situation is similar to where the agent sells a FIT except that the agent assembles the tour in accordance with his judgment and not under the specific direction of his client. The tour is offered to the client on a "take it or leave it" basis.

This would tend to negate a claim that the travel agent is acting as agent for the client. This is even more probable if the

(27) *Hampton Roads Carriers, Inc. v. Boston Insurance Co.*, 150 F Supp. 338, 342 (D.M.D. 1957); *Cargo Ships El Yam v. Stearns & Foster Co.*, 149 F. Supp. 754, 763, 764, 765 (SDNY 1955).

(28) *Chagnon Lumber Co. v. Patenaude*, 103 N.H. 448, 174 A2d 415, 416 (N.H. 1961); *Gardner v. The Calvert*, 253 F. 2d 395, 398 (C.A. 3 1958); *cert. den.* 356 U.S. 960.

(29) In the unreported case of *Lipman v. Swardlin* (Peoples Court of Baltimore County, 2326-66-CD, February, 1967), involving a suit against a travel agent arising out of a cruise cancellation, the Court assumed without analysis that the agency was acting as agent for the passengers.

transportation involved is sold pursuant to a written sales agency agreement.

The result may be different, however, if the travel agent derives a good deal of his compensation from the client or if tour guides are utilized. These factors might lead a court to conclude that, as in the case of a FIT, the client is paying for the special expertise of the travel agent in assembling the elements of the tour and providing expert guidance on the tour. Here it could have been intended that the travel agent was to be the agent of the client (30).

In the above situations — and there may be others — where it can be said that agents act as agents for their clients, it would seem that agents have greater duties toward clients than in other circumstances.

An agent, with respect to activities within the scope of his agency acts in a fiduciary capacity. The principal by the very nature of the relationship, is entitled to expect that the agent will exercise the utmost good faith, loyalty and honesty in the discharge of his employment (31).

An agent owes to his principal the use of such skill as may be required to accomplish the object of his employment. If, when acting as agent for the client, he fails to exercise reasonable care, diligence and judgment, as a result of which the client is damaged, he may be held responsible for such damage (32).

A travel agent who holds himself out to the public as having particular skills and talents may assume obligations greater than those expected of the ordinary citizen. Even so, a travel agent with special skills does not guarantee his work and will not generally, be responsible for difficulties that arise where he exercised due care (33).

Finally, an agent may have a greater duty of disclosure to his client when acting as agent for the client. In all cases, as developed, *supra*, the agent has the duty to avoid actual misrepresentation. When acting as agent for the client, the travel agent may have the obligation to disclose all facts and difficul-

(30) A somewhat different situation is presented where a retail travel agent markets a package tour assembled by a wholesaler. Here, unlike the FIT, the retailer does not tailor the tour to the desires of the client. While some of the retailer's compensation probably comes from the client, there would seem to be less reason to suppose that the customer is relying on the expertise of the retailer. This would be more clearly so if it is made known to the client that the wholesaler has assembled the tour. In the *Dulac* case, *supra*, where the tour was sponsored by an air carrier, which had employed an independent wholesaler to make the ground arrangements, the court assumed that the travel agent acted as agent for the airline.

(31) *Rodes v. Shannon*, 222 Cal. App. 2d. 721, 35 Cal. Rept. 339, 342, 343 (Cal. App. 1963).

(32) *Canada Steamship Lines, Ltd. v. Inland Waterways Corp.*, 166 F. 2d 57 (5th Cir. 1948).

(33) 3 Am. Jur. 2d Agency § 205.

ties known to the agent which involve significant risks to the comfort or safety of the client (34).

E. DISCLAIMER OF LIABILITY.

No discussion of travel agents' liability would be complete if it did not touch on the problem of travel agents attempting to disclaim liability for nonperformance by any of the carriers, hotels or other suppliers of travel services or accommodations that they sell. These often take the form of fine print on the back of a tour folder (35). Some agents actually issue written receipts which they have the client sign (36).

To an increasing degree, courts of the United States have refused to enforce such disclaimers to insulate businessmen from liability. It has long been true that such disclaimers are strictly construed against the party who drafted the disclaimer (37). Some disclaimers have not been enforced because (and this applies especially to fine print in the back of tour folders) the injured party is deemed not to have had sufficient notice of the disclaimer and has not consented to it (38).

In recent years courts have struck down such disclaimers on the ground that they are void as against public policy (39). While courts in some states may still give effect to the disclaimers described above, it seems clear that travel agents in the United States cannot rely on such disclaimers to insulate themselves from liability.

(34) *Ries v. Rome*, 337 Mass. 376, 149 NE 2d 366, 370 (Mass. 1958). Of course, the agent would have to exercise care not to defame particular carriers, hotels or other suppliers of travel services about whom he gives advice.

(35) A typical clause reads as follows: Travel Service, Inc., acts as agent only of the various companies, and persons through which or by whom the transportation, hotel accommodations, sightseeing and other privileges, or services are made available, and on the express conditions that Travel Service, Inc., shall not be responsible either directly or indirectly for any loss, accident, injury, delay, defect, omission or irregularity which may occur or be occasioned, whether by reason of any act, negligence or default of any company or person engaged in or responsible for carrying out any of the arrangements, or otherwise in connection therewith.

(36) A representative form, in pertinent part, reads as follows:

« CONDITIONAL RECEIPT

« ... In consideration of the Travel Service transferring my moneys and communicating my instructions, I hereby release the Travel Service from any and all liability for all claims or damages on account of injuries to my person or property which arise from this transaction or arise from any travel services or accommodations which are the subject of or are connected with this transaction.
« I have read, understand and agree to the above.

.....
(Client's Signature) »

(37) *California Tanker Co. v. Todd Shipyards Corp.*, 339 F. 2d 426 (2nd Cir. 1964).

(38) Prosser § 97 at 680.

(39) See *Henningson v. Bloomfield Motors*, 32 N.J. 358, 161 A2d 169 (N.J. 1960) where the court ruled that a disclaimer of any implied warranty of merchantable quality by an auto dealer was not void because the purchaser lacked equality of bargaining power. See also *Haley v. Merritt Chevrolet*, 67 Ill. App. 2d 19, 314 NE 2d 247 (1966).

III. SOME PERSONAL OBSERVATIONS ON THE DRAFT INTERNATIONAL CONVENTION OF TRAVEL AGENCY CONTRACT.

In October of 1967, a Working Committee of the International Institute for the Unification of Private Law (UNIDROIT) held its second session to discuss the relative rights and responsibilities of travelers and travel agencies. I had the privilege of participating in these discussions and found them to be most interesting and informative. In addition to the actual members of the Working Committee who are highly knowledgeable and experienced lawyers in the field of international law, there were many participants and observers in addition to myself representing the travel industries of countries throughout the world.

The Working Committee was charged by UNIDROIT with the responsibility of developing an International Convention designed to establish uniform and equitable guidelines which would determine the rights and responsibilities flowing between the travel agents on the one hand and travelers on the other. The draft Convention which they developed as a result of the two sessions, the first of which was held in April of 1967, is now being circulated among the countries who belong to UNIDROIT. In addition, the travel industries within those countries are studying and evaluating it.

Although the Government and the travel industry in the United States have not yet adopted official positions with respect to the Convention, I do have some tentative personal conclusions regarding it.

The Convention in its current form attempts to establish uniform law among participating nations throughout the world regarding the basic document which would govern the relationship between the travel agent and the traveler, that is, the travel agency contract. In addition, it proposes to spell out the general obligations of the two principal types of travel agents as defined in the Convention, "organizing travel agents" and "intermediary travel agents". Certain obligations of the traveler to the travel agent are also spelled out and the extent of the liability of the travel agents and travelers in dealing with each other would be subject to specific fixed limitations.

It is my view that there are two basic questions in connection with this project. First, is there a need for an International Convention to deal with this subject, and, second, is the Convention, in its current form, the most effective and equitable machinery to determine the rights and liabilities of travel agents and travelers in their relationship with each other?

I believe that in light of the difficulties in delineating precise lines of responsibility between travel agents and travelers plus the fact that international travel and tourism is one of the world's most important and rapidly growing industries, that the subject of the rights and responsibilities of travelers and travel

agents is an appropriate one for an International Convention such as that one proposed by UNIDROIT.

The second question posed, i.e., is the draft Convention in its current form the most equitable and effective way of accomplishing what appears to me to be a desirable objective, is a more difficult one to answer. One thing is clear, there must be very careful study and evaluation given to the provisions of the draft Convention so that it can be evaluated in light of the practicalities of the tourism industry.

The provisions of the Convention with respect to the intermediary travel agent, i.e. the one generally having direct contact with the traveler do not appear to have major defects. Likewise, the proposals with respect to the traveler appear reasonable. However, some questions and potential problems are posed with respect to the treatment accorded the "organizing travel agent" or "tour operator".

That portion of the draft Convention which proposes to delineate the extent and nature of the liability of the organizing travel agent to the traveler is the most important part of the entire proposal. Understandably, this subject was discussed at great length during the meetings of the Working Committee and very interesting proposals were made by individual members of the Committee to deal with it. Such basic questions are involved here as: Should an organizing travel agency be responsible for the acts or omissions of a hotel, common carrier or other persons supplying elements of the complete package? If so, should this liability be unlimited or should it be confined to his responsibilities to perform under the contract? Furthermore, the Convention proposes to place an absolute limit on the extent of liability of an organizing travel agent. The amount proposed may be considered by some to be unrealistically low.

General questions are posed in connection with the Convention such as should it be made to apply for travel wholly within the countries who might become signatories to it? If this were done, it could pose some particularly difficult jurisdictional problems in the United States where each of our 50 states has evolved through judicial decisions and statutes concerning contract and tort liability, which in some instances differ rather markedly from those of other states.

However, I do not wish to end on a note of pessimism but rather to restate my basic conclusion that a great deal of very productive work has gone into the preparation of the draft Convention and it is my belief that the questions and potential problem areas which might be found in the draft Convention can be resolved through careful analysis and further discussion. Furthermore, the mere fact that UNIDROIT has commissioned a Working Committee to develop a Convention on the subject of travel agents and traveler liability is in itself a significant testimonial to the growing importance to travel and tourism among all the countries of the world.



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April 30, 1970

* Admitted in Missouri only

Report by Paul S. Quinn
Member of the United States Delegation

Re: Diplomatic Conference on the
Travel Contract

Brussels, Belgium

April, 1970

On the evening of April 23, the diplomatic conference initiated by the Belgian government to consider the adoption of an international convention on travel agent liability adjourned after adopting an International Convention on Travel Contracts.

The diplomatic conference began April 13. Forty-eight countries sent delegations to the Conference and thirteen countries were represented by observers. In addition, several organizations had observers at the Conference. I will be sending shortly a copy of the list of delegations and observers and a list of the individuals who were elected officers of the Conference. In addition to myself, other members of the delegation included chief U.S. delegate Dean Francis Walsh of the University of San Francisco Law School; advisors Ralph Bresler, Second Secretary to the United States Embassy in Brussels; George Lapham, Assistant General Counsel, Air Transport Association; and Jerry Cusumano, Assistant General Counsel of American Express Company and representative of the Creative Tour Operator's Association.

The size of the delegations ranged from three or four up to seven. Most of the individuals comprising the delegations were government officials, ambassadors, representatives of the foreign office, or ministries of transport or justice of the various governments. Few industry representatives were present. This, coupled with the fact that the representatives of the Universal Federation of Travel Agents' Associations had a bias in favor of imposing absolute liability on travel agents thus creating a prejudicial atmosphere with respect to the interests of the travel industry.

The official meetings of the diplomatic conference were conducted in the Palais de Congres, an efficient facility maintained by the Belgian government primarily for international conferences. French and English were the official languages of the Conference and there were facilities for simultaneous translation of these languages as well as Spanish.

It was obvious from the outset of the Conference that a great deal had been done by the Belgian government, primarily through Mr. Vanderperren who was elected Secretary General of the Conference at the first plenary session, to line up substantial support among the participating countries for ratification of the UNIDROIT draft. This was accomplished through a variety of political and diplomatic steps in advance of the Conference. In addition to Mr. Vanderperren being elected as the Secretary General of the Conference, Mr. Haulot, President of the Belgian delegation, was elected President of the Conference and Dr. R. Loewe of Austria and Mr. G. Faddoul of Lebanon, both sympathetic to the UNIDROIT draft, were elected Vice Presidents of the Conference. The key commission among the six created, i.e., that dealing with liability of travel agents, was placed in the hands of Mr. G. Faddoul.

In addition to the designation of officials of the Conference during the initial plenary session, five commissions were established in addition to the liability commission. They were commissions on credentials, scope and obligations of the Convention; documents and general condition which related to the implementation of the Convention; legal procedures pertaining to the execution of the Convention; and the final provisions commission which pertained to the formalities of ratification of the Convention.

In addition to the commissions, a drafting committee was created, headed by Dr. Ricci of Italy, who was also a strong proponent of the UNIDROIT draft. I represented the United States as a member of the drafting committee and served on the liabilities commission, thereby giving the United States an opportunity to shape the important question of travel agent liability as contained in the Convention.

It was clear from the outset that virtually all of the forty-eight countries which sent official delegations to the Conference were operating on the premise that there was a compelling need for a Convention and the only major question was how the Convention itself should be designed and what should be the manner and extent of the liabilities to be imposed upon travel agents. With respect to the latter question, there was also virtually unanimous support at the outset for the imposition of absolute liability on travel agents who function as travel organizers with respect not only to the execution of the contract, but also with respect to the negligent or improper acts of third parties whom the travel organizers might engage to carry out tours.

The Conference set to work on the opening day of the session and worked diligently for the remaining ten days, taking only March 16 off for an excursion to Liege, sponsored by the Belgian government, and recessing on Sunday, March 19. Most of the work was divided into commissions or work groups. Plenary sessions began at 10:00 a.m., with preliminary meetings by individuals and groups of delegations prior to that time and following a luncheon adjournment, sessions resumed and lasted generally until 6:30 or 7:00 in the evening.

Since the major issue of the Convention concerned determining the nature and scope of the liability to be imposed on travel agents, the work of the liabilities commission was by far the most important undertaken by the various commissions. I led an effort on behalf of the United States in that commission to substitute language which would confine the organizing travel agent or tour operator's liability only to performance on the contract which he or his agent enters into with the traveler and to exempt the organizing agent from liability for the acts of third parties such as carriers, hotel keepers, or sight-seeing companies with respect to activities that occur during the execution of the elements in the tour, for the absolute liability provision of Articles XIII and XIV of the UNIDROIT draft. In a crucial vote on this question in the liabilities commission meeting on March 13, the United States was able to gain support of only four of the countries; the Netherlands, Germany, Sweden and Austria. Twenty-two countries voted against our position

several countries, including the United Kingdom, Canada and Japan, abstained. Following this defeat, the commission by the same margin adopted a provision regarding tour organizer liability which was essentially the same as that in the UNIDROIT draft. This would have imposed absolute liability on the organizer for the acts of third parties in connection with a tour. The outcome of this dispute is discussed below.

The work of the credentials commission was routine except for an effort by the Iron Curtain countries, led by Bulgaria and Hungary, to require the Conference to invite "all sovereign states wishing to participate". This is diplomatic language meaning they wanted to force the invitation of East Germany.

This dispute was resolved temporarily by the credentials committee through restricting participation in the Conference to countries which are members of the United Nations or of the International Atomic Energy Agency, or parties to the statute of the International Court of Justice. During the last plenary session, a further effort was made by the Communist bloc countries to reverse this finding of the credentials commission, but it failed.

The commission on the scope of application and obligations of the Convention was primarily concerned with the first four articles of the Convention which define travel contract, travel organizer and travel intermediary, delineating those conditions under which the Convention shall apply. The commission concluded the the plenary session ratified definitions which distinguish between an organized travel contract and an intermediary travel contract.

A travel organizer is defined as a person who habitually or regularly undertakes to perform an organized travel contract "whether such activity is his main business or not and whether he exercises such activity on a professional basis or not." An organized travel contract is:

"...any contract whereby a person undertakes in his own name to provide for another, for an inclusive price, a combination of services comprising transportation, accommodation separate from the transportation or any other service relating thereto."

A travel intermediary is defined as a person who habitually or regularly undertakes to perform an intermediary travel contract.

An intermediary contract is one whereby a person undertakes to provide for another for a price, either an organized travel contract or one or more separate services rendering possible a journey or sojourn. Consequently, a travel organizer is, in essence, a tour operator and a travel intermediary is a travel agent acting as an agent either for the tour operator or a carrier or the principal.

In a major modification of the draft convention advocated by the United States, Article II of the Convention was revised to read as follows:

"This Convention shall apply to any travel contract concluded by a travel organizer or intermediary, where his principal place of business or, failing any such place of business, his habitual residence, or the place of business through which the travel contract has been concluded, is located in a Contracting State."

The foregoing language, therefore, would prevent the Convention from applying to a travel contract unless the contract itself or the principal place of business or residence of either the travel organizer or the intermediary is located in a contracting state. Consequently, unless the United States ratifies the Convention, the United States tour operator or travel agent whose principal place of business or habitual residence is in the United States, would not be subjected to the Convention unless he entered into a contract with the traveler in a country which has ratified the Convention.

The commissions on documents and general conditions, legal proceedings and final provisions dealt with issues which do not go to the heart of the Convention and shall not be commented on here.

Following intensive negotiations and discussions over a nine-day period, the final plenary session of the Conference was held to ratify the redrafting of the Convention as submitted to the plenary session by the drafting committee. This was done on an article-by-article basis. Aside from the extensive discussion and debate concerning the question of liability, the work of the various commissions was generally ratified without amendment by the plenary session with respect to the other forty-three articles of the Convention.

The most dramatic and crucial session of the Conference was held during the final plenary session on Thursday afternoon. It concerned a decision on the scope and extent of liability to be imposed on a travel organizer. As indicated above, the commission on liability had overwhelmingly adopted a provision which would have imposed absolute liability on a tour organizer for the acts of third parties whom he engaged to perform transportation, hotel or other related travel services, even though the tour organizer had not been negligent in his designation of the third party and had no control over the actions of the third party. The travel organizer liability would be limited to approximately \$17,000.00 for death or personal injury, \$700.00 for property damage and \$1,700.00 for other damage. The consequences of this would have been to impose liability on a tour organizer if a traveler should trip over a torn rug in a hotel in Bangkok and break his leg, or be injured or killed in a bus driven in a negligent manner by an employee of a third party contracted by the tour organizer. Furthermore, the conditions of liability imposed on the tour organizer would be the same as those imposed on the third party. In the case of an aircrash, the Warsaw Convention makes the airline absolutely liable, therefore the travel organizer would be absolutely liable.

The United States was confronted with the choice of either forcing a vote on the position which we had advocated in the commission which would have absolved a travel organizer from responsibility for the acts of third parties unless he was negligent in the selection of the third party, or to seek a middle ground which went somewhat beyond that position but which would not impose absolute liability on the travel organizer. The Dutch delegation offered an amendment making the travel organizer liable if he entrusts to a third party the performance of a journey or sojourn only if he failed to prove that the loss or damage was caused by circumstances which he could not have avoided. This would have the effect of leaving the ultimate responsibility where it belongs, *i.e.*, with the party at fault, but would impose the burden of proof on a travel organizer to establish that he did act diligently in his designation of a third party.

As spokesman for the United States delegation at that juncture, I argued in favor of an adoption of the Dutch amendment, pointing out that we were supporting it in a spirit of compromise. As and would not press for a vote on the version which we had preferred./

a result of the very effective arguments advanced by the head of the Dutch delegation and the support given to it by the United States, many countries which had previously automatically voted with the proponents of absolute liability began to have second thoughts. And with this additional support, the Dutch amendment came within three votes of the necessary two-thirds for adoption. Unfortunately, some of the countries on whom we had counted to support this alternative abstained. As a result, our effort to adopt this alternative failed. Among those countries were Canada, Mexico and Japan. The plenary session then considered the final adoption of an absolute liability provision. I spoke at some length in opposition to this, pointing out that it would destroy the Convention, and would assure that it would not be ratified in many major countries throughout the world, particularly the United States. It would, in fact, not offer travel protection, but rather unduly penalize tour organizers to the extent that they would not be able to offer to people traveling to other countries the benefits of their services.

To our satisfaction, we then blocked an effort to ratify the absolute liability provision. This left the meeting in a deadlock. Almost immediately, the proponents of absolute liability gave up their fight and embraced a second version of a compromise advocated by the Austrian government. That proposal, which was adopted unanimously, did not differ in substance from the Dutch proposal. After refinement by the drafting committee, it reads as follows:

"Where the travel organizer entrusts to a third party the provision of transportation, accommodation or other services connected with the performance of the journey or sojourn, he shall be liable for any loss or damage caused to the traveller as a result of total or partial failure to perform such services, in accordance with the rules governing such services.

The travel organizer shall be liable in accordance with the same rules for any loss or damage caused to the traveller during the performance of the services, unless the travel organizer proves that he has acted as a diligent travel organizer in the choice of the person or persons performing the service."

The plenary session adjourned after it considered and approved with some slight modifications the remaining articles in the Convention. The following day, I participated in an eight-hour session of the drafting committee which put into final form in both French and English the text of the Convention as adopted at the plenary session. The committee had some very good help from the Canadian delegation in this work.

Upon the completion of the work of the drafting committee, the text of the Convention was reproduced and distributed to each of the forty-eight delegations. All of the delegations signed the final act, signifying that the Convention had, in fact, taken place and that the final draft was the one adopted by the Convention. In addition, eleven countries (those underlined in the attached list of countries participating in the conference) signed the Convention, indicating that it was their government's intention to be bound by the Convention and that they would seek prompt ratification by their respective governments of the Convention.

Under the provisions of the Convention, it becomes operative in ninety days following ratification by five or more countries. This is likely to happen rather quickly and therefore become an effective international treaty with respect to those countries who do ratify the Convention and would apply to any travel agency having its principal place of business or residence, or executing contract within a country ratifying the agreement. Many other countries will study the Convention and it can be anticipated on the basis of the enthusiasm shown by the participating countries that a majority of them will eventually ratify it.

It can be expected that the recommendations of the United States delegation to the Secretary of State will include a proposal that prior to making a decision on whether or not the United States should ratify the Convention, it be studied and evaluated carefully by interested parties throughout the United States as well as appropriate governmental bodies.

CONCLUSION

The objectives of the Department of State and the United States delegation were to attend and fully participate in the conference and to undertake all reasonable efforts to

reshape the draft convention to make it as equitable as possible both from the point of view of the American traveler and the American travel industry. At the same time, attempts were made to get the document in as acceptable shape as possible from the point of view of clarity and efficiency, should the United States decide to become a signatory to the Convention.

In my view, the objectives of the United States were generally attained and the final version of the Convention is as acceptable as is possible, taking into account the attitudes of an overwhelming majority of the countries that participated in the conference and the atmosphere in which the conference was conducted.

The reshaping of the Convention, particularly with respect to the liability question, was made particularly difficult in view of the fact that the Belgian, French and Italian delegations had, prior to the commencement of the conference, arranged substantial support from both the African countries and the Communist bloc countries, each of whom voted automatically with the advocates of strict liability notwithstanding repeated warnings by me that they would be the countries that would suffer the most if absolute liability were to be imposed on tour operators.

A substantial degree of credit for improvements in the final document belongs to the Netherlands delegation who, from the outset, evaluated the various proposals on their merits and notwithstanding the pressures from other Western European countries, took the initiative in helping to reshape the UNIDROIT draft. Germany, Great Britain and Israel, as well as the Scandinavian countries, played constructive roles in attaining this objective.

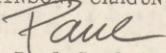
Overall the work of the Convention was, in my view, a generally constructive effort to establish rules and responsibilities of travel agents on the one hand and travelers on the other. The fact that the Convention itself took place and that it was attended by virtually every country in the world with a substantial interest in travel and tourism, is a tribute to the growing importance of travel and tourism, and of the increasing interest being shown by governments with respect to the rights and interests of international travelers. I believe that the travel industry in the United States as well as that in Canada and Mexico and some other non-European countries, could well afford to focus more attention on the important issues which were dealt with in the Convention adopted and to evaluate more carefully the attitudes and concerns expressed by many European governments regarding the general questions of travelers'

rights and the obligations of travel agents now and in the future.

Careful study should now be given to the Convention and I will be forwarding to you shortly a section-by-section analysis with the report of the United States delegation to Secretary of State Rogers.

One fact emerges quite clearly from the Brussels Convention. If international travel and tourism is to remain the most important item in international trade, and to continue to play an increasingly important role in promoting peace and understanding, then travel agents in the United States and Canada and their counterparts throughout the world are going to have to attain a higher degree of professionalism and to undertake necessary steps with or without the benefit of an international convention to justify the tremendous reliance placed on their shoulders by travelers everywhere.

WILKINSON, CRAGUN & BARKER


By: Paul S. Quinn

ASTA REPLY TO ADDITIONAL QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

Question 1. Many of the opponents of S. 2577 say that its enactment would restrict entry into an industry which is now relatively easy to enter. Doesn't the relative ease of entry contribute in great part to what financial instability exists?

Answer 1. It is accurate to say that relative ease of entry into the travel agency industry has contributed to the financial instability which currently exists. In ASTA's view, it should be the objective of both government and the industry to assure that travel agents who sell more than five billion dollars in travel and related services each year are financially qualified and have the necessary experience to perform their important responsibilities in a reliable manner.

There are two ways by which the relative ease of entry into the travel agency industry can be affected. The first would be by creating a public need and convenience test, an approach which ASTA does not support, and which is not provided for in S. 2577. The second would be by designing clear-cut objective standards which any qualified applicant could meet without creating anti-competitive results. These objective financial and experience criteria would preserve free competition while at the same time providing the financial stability which the public and industry deserve.

Question 2. In a situation where a wholesale tour operator is in default, what happens when a hotel refuses a traveler's accommodation coupon which the traveler received from his retail travel agent, who in turn had booked the accommodation through the wholesale tour operator? Is the traveler simply stranded when he is refused accommodations, and against whom does he have recourse? The hotel who refused him accommodations? The travel agent with whom he booked his tour? The wholesaler who sold the tour to his travel agent?

Answer 2. Tour operators' defaults create serious problems for retail agents, the suppliers of the travel or related service, and for the traveler himself. If a hotel does not receive payment from a tour operator, then it could be justified in refusing to provide the traveler with the accommodations for which the traveler contracted with the retail travel agent or the wholesale tour operator.

If as a result of a tour operator default the hotel refuses to honor the accommodation coupon held by the traveler, then quite often the retail agent has no recourse but to provide the additional payment out of his own pocket to assure that the traveler's services are provided. ASTA does not believe the travel agent, who merely collects funds and transmits them to a tour operator, should be held legally liable in the event the tour operator defaults. However, as a practical matter, in order to retail his good name in the community and prevent an innocent traveler from being inconvenienced for having to pay for the same services twice, the agent will often voluntarily make the additional payment out of his own pocket. In such situations the agent very seldom obtains reimbursement from the defaulting tour operator.

From a legal point of view, the wholesaler should be held accountable to the hotel; however, experience has shown that when tour operators go into default they frequently have few if any assets against which these claims can be asserted.

Question 3. With respect to air charters that do not comply with CAB regulations, is it ASTA's position that all such charters are potentially harmful to the traveling public, in the sense of strandings, etc.?

Answer 3. One of the most troublesome areas in the entire transportation industry today results from the number of illegal pro-rata or affinity charters. At present, neither the air carriers, the CAB, nor any other government agency asserts adequate jurisdiction over persons who hold themselves out to the public as being able to arrange for affinity or pro-rata charters. Consequently, when charters are conducted in a manner inconsistent with the CAB regulations it poses serious threats to the traveler, who might be stranded or defrauded of his funds, to scheduled and supplemental air carriers who abide by the regulations and therefore have legitimate business diverted from their services, and to independent travel agents who comply with CAB regulations and lose their customers to illegal charter promoters.

Question 4. (a) In ASTA's judgment, what activity within the travel industry has caused the most injury to the traveling public?

(b) What can be done to safeguard the public?

Answer 4. (a) The growth of illegal affinity or pro-rata charters referred to above has caused the most injury to the traveling public and the legitimate travel industry.

(b) There is much that can be done to safeguard the public from the evils of illegal charters. The single most important step would be to give the CAB or some other federal agency the tools, through enactment of legislation if necessary, to assert jurisdiction over all persons who hold themselves out to the public as being able to promote and sell charter, group, or individually ticketed transportation or other travel services for profit. Once this jurisdiction is asserted, a variety of steps can be taken—such as subjecting such persons to bonding requirements, maintenance of escrow accounts or provision for other indications of financial stability—all designed to protect the public, legitimate travel agents, and the carriers who provide the travel services.

Question 5. S. 2577 requires that applicants for registration certificates submit a showing of financial qualifications to engage in the travel agency business.

(a) What sort of financial showing should be made?

(b) Would this showing be more stringent than is now required of an ASTA member or an ATC-approved travel agent?

Answer 5. (a) There are a variety of ways for travel agents and tour operators to establish financial stability. For example, there could be an objective set of criteria designed to determine the net worth of the applicant—i.e., current assets over current liabilities—plus a formula for determining a minimum amount of working capital which would be required. In addition, tests could be devised to evaluate the business experience of an applicant and to evaluate the history of the applicant's financial stability.

The selective use of a financial guarantee or public indemnity bond could be considered as could a requirement that in given circumstances trust accounts or escrow accounts be maintained by travel agents or tour operators. Such accounts would have specific provisions made for payment only for services actually contracted for by the travel agent or tour operator.

(b) ASTA is a private trade association which does not enjoy antitrust immunity. It is limited in its ability to impose meaningful standards of financial stability on its members. The criteria established by the ATC are inadequate because of their reliance on the ability of an applicant to obtain a bond in the minimum amount of \$10,000 payable to the carriers. Such a bond may be obtained almost automatically if the travel agent agrees to indemnify the bonding company up to the face amount of the bond and to pay the premiums involved. This does not begin, however, to cover the potential loss to the carriers in the event of a tour operator default, nor does it protect the public, since the benefits of the bond run solely to the air carriers.

Question 6. (a) What other activities within the travel industry have caused significant injury to the traveling public?

(b) What can be done to protect the traveling public with respect to those activities?

Answer 6. (a) The recent increase in defaults by tour operators has been another major source of concern for the traveling public, carriers, and retail travel agents as well as the financially sound and responsible tour operators.

(b) The first order of business is for Congress to give to an agency of the federal government the power to exert jurisdiction over tour operators and to bring about, through industry-government cooperation, a program to assure the stability of tour operators, and to establish and maintain good business practices designed to minimize or prevent default, the resulting losses, and the decrease in public confidence in the professional travel agent.

Question 7. Do any states require persons and organizations who sell travel to the public directly or indirectly to be bonded?

Answer 7. The State of California currently has a requirement that persons who arrange for the sale of group air transportation must either be bonded or maintain trust accounts to protect funds collected from the public unless they are authorized in writing by the air carrier who is to provide the services to act as an agent for the carrier.

Many states, including New York, California, Illinois, Michigan, Wisconsin, Connecticut, and Rhode Island, currently have under consideration the enactment of comprehensive licensing legislation which would affect the entire travel industry in those states. ASTA does not believe that entry by states into the business of regulating the travel agency industry would be either desirable or effective from the point of view of the public or the transportation industry.

Question 8. Under S. 2577, the Director of Travel Agent Registration would issue a certificate of registration if he determined that the applicant would "provide a useful public service." Is it ASTA's understanding that "a useful

public service" would be the applicable criterion for issuing a registration certificate? If so, what would be the standards for determining a "useful public service"?

Answer 8. The use of the phrase "provide a useful public service" is admittedly vague and somewhat troublesome. After reconsideration and taking into account the critical comments from several government bodies to the use of this test, ASTA would not object to the abandonment of this phrase in the enactment of S. 2577.

Question 9. One provision in S. 2577 requires the Director of Travel Agent Registration to promulgate rules necessary to carry out the purposes of the act. Another provision requires the Director to promulgate a code of ethics for the travel industry which would be binding on all travel agents. Why would a code of ethics with penal provisions for their violation be necessary if the Director would be required to promulgate rules and regulations to protect the traveling public?

Answer 9. It is ASTA's view that the promulgation of a code of ethics combined with rules and regulations adopted by the Director of Travel Agent Registration would provide a more comprehensive program. The program could prescribe, in an objective fashion, business practices and techniques which would have to be adhered to by professional travel agents in order for them to hold themselves out to the public and industry as providing the travel services.

Question 10. (a) What can newspapers do with respect to selling advertising of illegal charter flights? (b) Should the FTC be active in this area? If it was, would it help deter illegal charters?

Answer 10. (a) At the present time, due to a lack of jurisdiction by any single government agency over persons who sell charter transportation and the consequent absence of definitive standards, newspapers can do very little to screen and prohibit advertising which may involve charter flights. It is for this reason that a single federal government agency should be responsible for promulgating rules and regulations governing the advertising of travel and related services, including of course charter solicitation, by travel agents or anyone else who holds himself out to the public as being able to provide travel and related services.

(b) It is ASTA's view that the FTC should and can be much more effective in screening advertisements in this area which might be false, misleading, or deceptive. An effective program of FTC scrutiny plus quick letters by the FTC to newspapers, airlines and charter promoters when improper advertising is spotted could be a very effective deterrent to the sale of illegal charters.

Question 11. Under S. 2577, any person who was engaged in the business of conducting a travel agency on September 3, 1968, and has engaged in such business for a period of two or more years, and has been approved for appointment as an agent for two or more years by two or more conferences of air or steamship carriers would be granted a certificate of registration unless there was a specific finding that the applicant lacks good character or is not financially qualified.

(a) Under the bill, does this mean that an agent who meets these qualifications would be prima facie entitled to a registration certificate?

(b) If this is so, would it enable individuals to receive a registration certificate even though they may, in fact, not be financially sound?

Answer 11. (a) The provisions of S. 2577 which would grant a certificate of registration to a travel agent with conference approval and in operation prior to September 3, 1968, are designed to shortcut the procedural requirements for qualifying for a registration and would not necessarily mean that an agent who meets these qualifications is absolutely entitled to a registration certificate, but rather they establish a presumption of his qualifications.

(b) It may well be that the Office of Travel Agent Registration would want to satisfy itself as to the current financial stability of an agent coming within the provisions of the September 3, 1968, grandfather date. It could require such an agent to come forward with certain proof of his current financial qualifications.

Senator INOUE. Our next witness is Mr. George Buchanan, the vice president of traffic, Air Transport Association of America.

**STATEMENT OF GEORGE A. BUCHANAN, VICE PRESIDENT, TRAFFIC,
AIR TRANSPORT ASSOCIATION OF AMERICA; ACCOMPANIED BY
JEROME F. HUISENTRUIT, ATA'S ASSISTANT GENERAL COUNSEL**

Senator INOUE. Welcome to the committee, Mr. Buchanan.

Mr. BUCHANAN. Thank you, Mr. Chairman.

My name is George A. Buchanan. I am vice president, traffic of the Air Transport Association of America, the trade and service organization representing virtually all of the scheduled airlines of the United States.

I am also executive secretary of the Air Traffic Conference of America, the marketing and services division of the Air Transport Association.

I am accompanied today by Mr. Jerome F. Huisentrut, ATA's assistant general counsel.

Mr. Chairman, we have prepared a comprehensive statement which has been submitted for the record. It contains much information as to the operation and trade practices of the Air Traffic Conference Agency program.

We have a very large stake, obviously, in the travel agency industry and therefore, have submitted a detailed statement. If it is the will of the committee, sir, I would be more than happy to summarize and skip some of the detail as we go through it.

Senator INOUE. Without objection, your statement will be made a part of the record and this committee will be very happy to receive a summary.

Mr. BUCHANAN. Thank you, sir.

We commend the Senate Committee on Commerce, its Subcommittee on Foreign Commerce and Tourism and its chairman for taking the initiative, through the introduction of S. 2577, to conduct a thorough review of the commercial practices and sales operations of those who directly and indirectly sell travel to the public.

The scheduled airlines of the United States welcome this opportunity to discuss these matters and to provide the airlines' viewpoints on the many ramifications involved in any consideration of the regulation of travel agents.

We would also like to thank you, Mr. Chairman, for your recent remarks at the ASTA convention in which you recognized the desirability of promoting travel and also for asking for greater protection of the traveling public. We thank you, sir.

Travel agents are an extremely valuable sales arm of the airlines. As such, the airlines have an immense stake in the travel agency industry. There are presently approximately 7,400 travel agency locations in the United States which are accredited under an airline-sponsored program administered by the Air Traffic Conference. You will hear differing figures of the number of travel agents, Mr. Chairman, for this reason: Some figures will represent the number of authorized agents, as such, or businesses. The number I have spoken is the number of individual travel agency locations in the United States, by the most recent count, approximately 7,400.

Last year, these travel agencies sold over \$2.25 billion in international and domestic air transportation. Hence, it can be seen that travel agency sales are indeed important to the airlines and air transportation in turn is a vital component of the travel agent industry.

Senator INOUE. May I, at this point, interrupt with a question.
Mr. BUCHANAN. Yes, sir.

Senator INOUE. Would you describe for the committee the requirements of membership in your conference?

Mr. BUCHANAN. Yes, I certainly shall be happy to do so, Mr. Chairman.

If I may ask one question of you, Mr. Chairman: With respect to the membership in the Air Traffic Conference, are you speaking of the standards for ATC-accredited travel agents, as contrasted with the requirements for airline membership in the Air Traffic Conference?

Senator INOUE. That is right, sir, the former.

Mr. BUCHANAN. Yes, sir. I will be happy to do so.

The Air Traffic Conference Agency program had its beginning back in the late 1930's when the airlines recognized that the methods of doing business at that time with outside sellers of air transportation had the potential of leading to difficulties both for the traveling public and for the air carriers.

The Civil Aeronautics Act of 1938 enabled the air carriers for the first time to approach this problem on a joint basis, because it enabled them to arrive at agreements filed with the Civil Aeronautics Board for its approval.

The program was initially introduced following World War II, in 1945, and has undergone an evolutionary process since that time. The program today is made possible by a series of interairline agreements, which are arrived at through the machinery of the Air Traffic Conference and which are filed with the Civil Aeronautics Board for its approval or disapproval, pursuant to Section 412 of the Federal Aviation Act of 1958.

In discharging its responsibilities, the Board, of course, seeks the comments of travel agents and other interested parties when appropriate, before acting on these intercarrier agreements.

In broad concept, the program for accrediting airline travel agents within the United States works as follows: A series of objective standards with respect to experience and some very minimal financial responsibilities have been established and these must be met by anyone desiring to become an ATC accredited agent.

These standards would include such things as experience by the travel agency owner or manager in the promotion and sale of transportation, experience in making airline reservations and in writing tickets—

Senator INOUE. How can one get experience if he could not sell airline tickets?

Mr. BUCHANAN. He could have been an employee in another travel agency or in an airline, in a promotional or sales capacity. That person would not necessarily have to be the owner of the prospective agency but could be the owner or the full-time manager at that location.

Senator INOUE. Please proceed, sir.

Mr. BUCHANAN. Additionally, the travel agent must, of course, have a place of business which is open to the public, and he must obtain a bond payable to the airlines in the amount of \$10,000.

If these and some other minimal standards for accreditation are met, the accreditation is forthcoming automatically.

Senator INOUE. Is that the extent of the financial responsibilities, the \$10,000 bond?

Mr. BUCHANAN. Yes, it is, sir. There are no other financial requirements at this point in time involved in the ATC travel agency program.

The agent must be able to obtain a bond in the amount of \$10,000 as a condition precedent to his receiving appointment. That bond is payable to the airlines for reasons which I will explain later.

The bonding companies, to the best of our knowledge, conduct financial reviews in varying degrees. In some cases, some bonding companies merely require the posting of collateral, such as hard cash or other collateral of that nature, with little or no financial check.

Senator INOUE. This is to cover the price of the ticket in case the agent fails to turn in the money. Is that right?

Mr. BUCHANAN. This is to cover airline moneys in case the agent fails to submit the moneys to the carriers.

However, once the carrier's agent collects the money, the carrier is responsible for performing the transportation, even though the carriers may never receive payment from its agent.

The bond that I have mentioned is a way of partially covering the carrier's exposure to losses of airline funds from travel agency defaults.

Senator INOUE. What would be grounds for expulsion?

Mr. BUCHANAN. Well, there are several grounds, Mr. Chairman. One would be the inability to continue to have a bond—if for some reason the bonding company cancelled the travel agent's bonds, which happens on occasion.

There are a number of rules and regulations which the airlines have established in their travel agency program. For example, travel agents are required to report for ticket sales and to remit for those sales every 10 days with approximately a 4-day grace period.

Continuing infractions of those rules would be grounds for cancellation of the ATC accreditation of the agent.

The ATC program is founded on the basis also that no airline member of the Air Traffic Conference may appoint as its agent for domestic sales a travel agent which is not accredited under the Air Traffic Conference standards.

Senator INOUE. I am certain you have heard the testimony of other witnesses relating to the requirement for bonds, surety bonds, performance bonds.

ASTA has just indicated some reluctance in favoring such a bond, because of an excessive financial burden on the travel agents or upon tour groups, et cetera.

You have a bonding requirement for approval. What do you feel about a bonding requirement in this measure?

Mr. BUCHANAN. Mr. Chairman, our travel agency bonding program has not proven to be wholly successful in our opinion. It has been a point of irritation and contention with the travel agents over the years, and it has not proven to be as successful as we would like to have had it be from the standpoint of the airlines.

Included in my detailed statement there is information regarding the total amount of defaults for 1970 and for this year to date, and the amount paid to the carriers by the bonding companies. It does not cover in any way the total airline losses, in fact it is less than half.

One of the difficulties with the bond is that the bonding companies occasionally are reluctant to make good for various technical reasons.

We would think that, with respect to the legislation under consideration, a bonding requirement would not solve the problems to the extent that some previous witnesses felt it would.

First, as indicated by the representatives of ASTA, if the bond were to cover both air and ground arrangements, it could be very expensive and, in fact, prohibitively expensive for some agents to obtain a bond.

As I believe the ASTA representative mentioned, it could have the effect of limiting entry into the travel agency field.

The amount of the bond required under the ATC program is minimal and it does not have that potential. The airlines have worked out a substitute program for the existing ATC bond requirement. It includes a comprehensive set of financial standards for application to prospective travel agents and also for application to an annual review, from a financial standpoint, of existing travel agents.

That program has been pending for about 3 years with the Civil Aeronautics Board. It was amended once to make it more responsive to the needs of the times and to remove some features which the travel agents and others found objectionable. It has been pending now in its most recent form for about 14 months and, in fact, is now going through certain procedural steps at the CAB.

As the representatives of ASTA have indicated, the Department of Justice has filed rather strong comments in opposition to that program on the basis that the Department of Justice believes it would be used as a means of limiting entry into the travel agency field.

I can assure the committee that there is no intention to do so on the part of the carriers. That program, we believe, would be a significant improvement to the domestic travel agency program.

The new program includes a number of objective standards and its administration would be subject to continual scrutiny by the CAB.

Senator INOUE. Once again, I regret very much that the buzzer has sounded and I will have to go for a vote, so we will stand in recess for about 10 minutes.

(Recess.)

Senator INOUE. We may resume, sir.

As you are aware, this bill designates the Department of Transportation as the agency to regulate travel agents. Do you have any thoughts on that as to what agency would be the proper one?

Mr. BUCHANAN. We have no fixed opinion, Mr. Chairman, as to which agency might be the appropriate one. Certainly the Department of Commerce, through the U.S. Travel Service, has a number of important responsibilities in the promotion of air transportation and it would be reasonable to give consideration to placing the proposed Federal licensing bureau in the Department of Commerce. We would have no objection, however, to having it in the Department of Transportation.

Senator INOUE. Some of the witnesses have suggested that there are enough laws on our books to resolve some of the problems that our passengers have been having in the last few summers. Do you feel our present laws are sufficient to regulate the industry?

Mr. BUCHANAN. Mr. Chairman, there are, of course, a number of laws that would serve to regulate some aspects of the travel industry.

It has been obvious, of course, that those laws have not been wholly successful to date in stopping the unfortunate occurrences which led this subcommittee to conduct these hearings.

We would think that the additional regulations such as proposed in S. 2577, which we would support with certain amendments, would be an important adjunct to present regulations and would represent a further means of providing additional protection for the traveling public.

Senator INOUE. The testimony is sufficient to indicate that the image of our travel industry or, more specifically, the image of the travel agent has been a bit muddled, resulting in a measure of this sort.

Now, it is likely the situation that existed right after the bank failures, the public lost faith in our banks, so we needed a seal of approval, a Good Housekeeping seal of approval so to speak. In the case of the banks it was the FDIC. So I have been advised that studies have been made which indicate that depositors do look for that sign, the FDIC sign, and when they see the sign they go in and deposit their money with full confidence that their money is protected.

If this bill ever becomes law, I presume there will be such a symbol, that this agent is certified or this agent has been approved by the Government of the United States. Therefore this committee wants to be very careful whenever the U.S. Government is called upon to make such a guarantee or such an approval or such an assessment.

I am just wondering if this bill is sufficient to protect the good name of the United States in providing this seal.

Mr. BUCHANAN. Mr. Chairman, we have submitted as appendixes to our prepared testimony a number of suggestions which we feel should be made to the bill in order to strengthen it.

The ultimate value of the program established by this bill will result from the rules and regulations to be promulgated by the Director of the Licensing Bureau established under the law. And it is our opinion that strong rules and regulations will be necessary in order to produce the commendable results as stated in the declaration of purpose of the bill.

We would expect that, when the proposed Bureau is set up, we would be very active through the normal governmental rulemaking procedures in commenting and assisting in the coordination and development of the rules and regulations applicable to travel agents.

The bill contains certain requirements, such as financial guarantees, which must be included in the ultimate rules. We have also suggested some additional features which we think would be desirable to strengthen the rules.

Senator INOUE. Do you think the requirements set forth by this law should be a bit more stringent than that required by your rules?

Mr. BUCHANAN. We do not at the present time have any financial requirements other than the necessity to obtain a bond. We have, as I also described, attempted to implement a financial review program. We think that a financial review is necessary, and that a financial standards program is necessary in the ultimate rules and regulations to be issued.

We think there should also be included experience criteria, et cetera.

However, rather than writing such things in detail into the law, it would be our concept that those should be provided for by the rules ultimately issued by the Bureau.

Senator INOUE. Do you think the word "bond" should be used in the bill, or do you think the language in the bill is broad enough as far as giving powers to the Board to make a requirement for bonds?

Mr. BUCHANAN. We believe the language is broad enough to give the Director of the Bureau the authority to establish whatever financial criteria might be necessary. It might be a bond, it might be an escrow account, which should also be considered.

Senator INOUE. I appreciate your participation this afternoon. Although your statement is rather lengthy, may I personally assure you that will be given very serious consideration and study. And before coming to any conclusion, your views and recommendations will be given consideration.

Mr. BUCHANAN. Thank you very much, Mr. Chairman.

May I ask two things? We would like to submit for the information of the staff a copy of the application kit which contains information for and forms to be completed by prospective travel agents for submission to the ATC. This material will provide a great deal of information for the staff. Also, we would like to leave a copy of the Travel Agent's Handbook which contains the rules, regulations, ticketing procedures, and a great deal of other information that is essential to the operation of an ATC-accredited travel agent.

Senator INOUE. Thank you very much, sir. We will accept these for the subcommittee files with the gratitude of the committee.

Mr. BUCHANAN. Thank you.

May I make one other request, sir?

Senator INOUE. Please do.

Mr. BUCHANAN. This morning Representative Van Deerlin commented with regard to a bill he introduced in the House H.R. 11560. We would like permission, if we may, to submit a statement for the record with regard to that bill, with which we have some problems.

Senator INOUE. Without objection, the committee record will be kept open to receive that statement, sir.

(The statement and appendixes follow.)

STATEMENT OF GEORGE A. BUCHANAN, VICE PRESIDENT, TRAFFIC AIR
TRANSPORT ASSOCIATION OF AMERICA

My name is George A. Buchanan. I am Vice President—Traffic of the Air Transport Association of America, the trade and service organization representing virtually all of the scheduled airlines of the United States. I am also Executive Secretary of the Air Traffic Conference of America, the Marketing and Services Division of the Air Transport Association. I am accompanied today by Mr. Jerome F. Huisentrut, ATA's Assistant General Counsel.

We commend the Senate Committee on Commerce, its Subcommittee on Foreign Commerce and Tourism and its chairman for taking the initiative, through the introduction of S-2577, to conduct a thorough review of the commercial practices and sales operations of those who directly and indirectly sell travel to the public. The scheduled airlines of the United States welcome this opportunity to discuss these matters and to provide the airlines' viewpoints on the many ramifications involved in any consideration of the regulation of travel agents.

Travel agents are an extremely valuable sales arm of the airlines. As such, the airlines have an immense stake in the travel agency industry. There are presently approximately 7,400 travel agency locations in the United States which are accredited under an airline-sponsored program administered by the Air Traffic Conference. Last year, these travel agencies sold over \$2.25 billion in international and domestic air transportation. Hence, it can be seen that travel agency sales are indeed important to the airlines and air transportation in turn is a vital component of the travel agent industry.

BACKGROUND OF THE AIR TRAFFIC CONFERENCE AGENCY PROGRAM

The domestic airline travel agency program has a history of over 30 years in its development. In the middle 1930's, the air transportation industry was still in its infancy and air travel was considered to be reserved for the wealthy and the daring. In their efforts to expand the air travel market, the airlines utilized the services of outsiders such as hotel porters, bell captains, boot-blacks, taxi-drivers, barber shop proprietors and the like to sell tickets.

The airlines recognized that the use of such outsiders had the potential of creating great disservice to the travelling public and to the airlines. The provisions of the Civil Aeronautics Act of 1938, which permitted the airlines to reach joint agreements, provided the industry with its first opportunity to progress solutions to the problem and to develop a standardized travel agency system.

Such a system had been developed by 1941; however, the demands on air transportation created by World War II caused a suspension of the individual airlines travel agency relationships as well as a suspension of the introduction of the standardized industry travel agency program. The program was subsequently updated, revalidated and finally introduced in 1945.

The program had a solid foundation, formed by first-hand experiences of practical business men who knew those practices which should be avoided, those courses of action which should be encouraged, and those qualities which must be present in order to live up to the high standards demanded by the airlines. The solidity of the foundation can best be appreciated when it is considered that the program continued virtually unchanged for the next 14 years. Even today, 26 years later, although a number of improvements have been made to the program and it has been streamlined to recognize today's activity, the same concepts and basic understandings of the 1940's are still inherent in the airlines' Air Traffic Conference Agency Program.

In the interest of time I will not attempt to detail each of the various elements which have comprised the revolutionary changes to the agency program throughout the year. Suffice it to say that the program has been modernized to be responsive to the needs of the times and to provide a basis for a responsible travel agency industry. The Civil Aeronautics Board, whose approval of any program changes has always been required, has played an important role in this evolution, remaining keenly aware of airline and travel agency requirements while, at the same time, keeping the public interest foremost in its deliberations and decisions. One of the most significant program changes, the application of specific objective standards in the accreditation of travel agents, was adopted as a result of a CAB investigation of the program in 1959.

Not all of the program improvements desired by the airlines have been non-controversial. There has been, and perhaps always will be, some differences of opinion between the travel agents and the airlines concerning various aspects of the program. It is our feeling however, that these areas of controversy have declined significantly in recent years. Today, communications between the travel agency organizations and the airline industry and between individual travel agents and individual airlines are being held on a continuing basis.

The program today is made possible by a series of inter-airline agreements unanimously arrived at through the machinery of the Air Traffic Conference and filed with the Civil Aeronautics Board for its approval or disapproval pursuant to Section 412 of the Federal Aviation Act of 1958. In discharging its responsibilities the Board, of course, seeks the comments of travel agents and other interested parties, when appropriate, before acting upon the various agreements.

In broad concept, the program for accrediting airline travel agents within the U.S. works as follows: A series of objective standards with respect to experience and financial responsibility have been established and these must be met by anyone desiring to become an ATC accredited travel agent. If these and other standards are met, accreditation is forthcoming automatically. If the standards are not met, such accreditation cannot be given. Once an applicant has such accreditation, each individual airline chooses whether to appoint that travel agent to represent that airline to the general public as its official agent.

Additional standards are established for the continuing retention of travel agents on the list of ATC accredited agents. These are generally directed toward the reporting of airline ticket sales and the remitting of ticket sale proceeds collected on behalf of the carriers.

A number of the administrative functions of the program are handled by a professional staff within the Air Transport Association. These include such things as the initial screening and processing of applications, follow-up and compliance with the ticket sale reporting and monetary remitting requirements, and continuing compliance with the objective accreditation standards.

DETAILS OF THE PROGRAM

In detail, the ATC Agency Program works as follows: Any person wishing to become a travel agent for the purpose of selling domestic air transportation on a commission basis submits an application in a prescribed form to the Air Traffic Conference. A copy of the application forms has been made available to this Committee. The application requires answers to a number of relevant questions, including such matters as the type of corporate entity and other ownership details, statements as to personnel experience, some antecedent history and the business address with a description of the premises. The application must be accompanied by a financial guaranty bond for \$10,000, a financial statement, letters of reference, photographs of the location and an application fee.

The application is reviewed for completeness and a determination of whether the applicant, on its face, meets the requisite threshold criteria. In the matter of who will operate the agency, it must be shown: (1) that the owner, a partner, an officer or the manager has had two years full-time experience in certain specific phases dealing with passenger transportation; (2) that such person devotes all of his time, at the location for which the application is intended, to the management and administration of the agency and to the promotion and sale of passenger transportation, including air transportation; and (3) that such person, or some other full-time employee, has had, within the past five years, one year's experience in airline ticketing and reservations in the employment of either a certificated route airline or of a travel agency included on the ATC or IATA Agency List. If, as a result of this initial staff review, it appears that the objective standards are met, all ATC member airlines are then advised of the applicant's name and address, and one carrier is designated as official inspector. It is the function of this airline to verify the statements made by the applicant, particularly those related to personnel experience and those concerning the premises at which the business will be conducted. The carriers serving the applicant's area may also perform individual inspections.

A minimum period of forty-five days is allowed in which to complete the various inspections and investigations. If at the end of that period no adverse reports have been received, the ATC Executive Secretary enters into a contract with such agent for and on behalf of all ATC member airlines. The agent is included on the official Air Traffic Conference Agency List, from which each domestic airline, individually, selects those to be appointed as its legal agent. The decision as to whether to recognize a given agent has been carefully left by the Conference and the CAB to the discretion of the individual airline. As a practical matter, most of the approved agents have been recognized by most of the airlines. This recognition is accomplished by an airline issuing a certificate of appointment which authorizes a specific agent, at a specific location, to represent that airline and to sell tickets in its behalf under the rules and regulations of the ATC Agency Program. The agent may also sell tickets on non-appointing airlines, with the appointing airline remaining responsible for such sales.

The majority of applications are approved under these administrative provisions. Under certain circumstances, however, administrative approval of an application cannot be granted and the application must be specifically acted upon by the airline representatives comprising the Agency Committee of the Air Traffic Conference.

The circumstances which require the further review include such findings as the following: a person holding a financial interest in, or employed by the applicant has been affiliated in any way with an agent previously cancelled from the official ATC Agency List; failure to meet the experience criteria; material misrepresentation or inaccuracies in the application or any attachments thereto; the applicant has been adjudged bankrupt, or is the subject of pending bankruptcy proceedings; the applicant is presently under suspension or pending action of any kind by ATC; the premises, or operation of the applicant, fail to meet the definition of a travel bureau or to meet other specific requirements relating to the location of a travel agency; the applicant is owned or controlled by a single entity or person with which the applicant does, or will do, 20% of its gross annual air transportation business.

If such circumstances exist, the application is immediately referred to the next appropriate meeting of the ATC Agency Committee. The applicant and the airlines are advised in such cases, including the specific reasons for the referral. The applicant is afforded ample opportunity to submit any additional comments and rebuttal evidence in support of its application.

In conducting such reviews, the Agency Committee must utilize exactly the same objective standards as are considered in the administrative review. Hence, such reviews generally clarify questions of fact or other misunderstandings stemming from the application.

Approval of an application by the Agency Committee requires a two-thirds majority vote of the airlines represented. If an application is disapproved, the applicant is entitled to arbitration before a neutral arbitration tribunal, the decision of which is binding upon both parties.

During the pendency of an application, procedures are provided whereby an airline can recognize an applicant in a fashion short of actually issuing a certificate of appointment. This interim procedure provides a limited representation on the part of the applicant and permits him to earn commissions which are paid retroactively upon final disposition of the application, whether approved or not.

At the time of approval of an application, the airlines, through the ATC, provide the agent without charge a copy of the Travel Agents Handbook containing all rules, regulations and procedures incidental to the agent/principal relationship, a consolidated passenger rules and fares tariff, and supplies of ticket stock and other forms to cover the agent's sales of all air transportation. A copy of the Handbook and an application kit have been made available to the Committee.

Prior to 1964, each airline provided its travel agents with supplies of its individual tickets and each agent was required to account for and to report ticket sales to each airline. Thus, if an agent was appointed by fifteen carriers and each elected to provide the agent with supplies of its ticketing forms, the agent had to submit separate reports to all fifteen, twice each month.

In 1964, after much study and deliberation, this time consuming and duplicative system of doing business gave way to a greatly improved method of reporting and remitting for ticket sales called the Standard Agent's Ticket and Area Bank Settlement Plan. This system provides for a standard ticket with no carrier identification and one source to which each agent reports. When the ticket is issued, the agent fills in by mechanical means the name of the airline on whose behalf the ticket is issued. Each ten days, the Agent forwards reports of tickets sold and the remittances therefor to a designated bank in the agent's geographical area. The bank then disburses the funds to the appropriate airlines.

This reporting system is required for all domestic air transportation sold by U.S. travel agents. The system may also be used for international ticket sales and forty-three non-ATC member airlines, including every major international airlines which serves the United States, participate in it. This type of system is now being considered by the international airlines, through the International Air Transport Association, for implementation in several other countries.

THE ATC AGENCY PROGRAM PROTECTS THE PUBLIC

The Agency Program also contains a number of other important features for the protection of the public, the agents and the airlines, and which provide for standardized treatment of travel agents by the individual airlines. The contractual arrangements with the individual agents provide for such things as strict adherence by the agent to the rules, regulations and traffs of the carriers, the maintenance of ethical business standards, prohibitions against misrepresentation of carrier services, the airlines and agents mutual responsibilities and liabilities to one another, standardized rates of commissions payable by the carriers, and the circumstances under which commissions for various promotional sales are paid.

Since travel agents act in a fiduciary capacity for the airlines, the program also contains strict requirements for the reporting of and remitting for airline ticket sales. Continuing violations of these requirements subject the agent to suspension, or in extreme cases to cancellation of its accreditation.

It should be emphasized that an airline passenger who purchases a ticket from an accredited travel agent for transportation on the scheduled airlines runs absolutely no risk of losing that transportation dollar even though the travel agent may ultimately not remit the proceeds to the airlines concerned. This is so

because the airline is responsible for the acts of its agents, and the airline is required to perform the transportation even though it may never receive payment therefor.

Because of that responsibility, the domestic airlines require their travel agents to hold a bond in an amount ranging from a minimum of \$9,000 to a maximum of \$47,500 payable to the airlines in the event of agency default. The amount of the bond for an individual agent is determined by the average of its three highest sales months during the past twelve month period. The ability to obtain such a bond is one of the prerequisites to becoming a travel agent, and the ability to maintain such a bond is necessary for the continuing accreditation of the agency.

Despite these financial and bonding requirements, travel agents occasionally are unable to pay the airlines for monies collected on their behalf. In 1970, there were 56 such defaults involving \$1,338,600 in airline proceeds. Of this amount, \$426,800 was offset by the travel agency bond, representing a net loss to the airlines of \$911,800. For the first 10 months of 1971 there have been 38 defaults involving a gross amount of \$843,700 of which \$104,300 was covered by the bond, representing a net loss to the carriers of \$739,400.

Again, it is emphasized that in no case was the travelling public denied transportation because of these defaults by ATC approved agents. The losses all accrued to the airlines, not to the public. In certain of these cases, however, monies paid to the travel agents for non-air transport services such as ground arrangements, tours, and the like may well have resulted in losses to the public or to other travel agents who sold such tours or other ground arrangements provided by wholesalers.

GROWTH IN TRAVEL AGENCIES

The presence and functions of travel agents are widely known, accepted and depended upon by a large segment of the travelling public, as illustrated by a review of the growth of the ATC travel agency program.

In 1945, at the beginning of the program, there were 597 ATC accredited agents. By 1950, there were 2,000 such agents. The numbers grew to about 4,000 in 1960, 5,600 in 1965, and 7,700 in 1970. At the present, there are almost 8,200 ATC accredited travel agents, 7,400 in the U.S. and the balance in Canada. Last year, U.S. agents sold over \$2.25 billion in domestic and international air transportation, excluding sales made against the many available credit plans. And, for the period January to September of this year, agents have already reported an impressive \$1.9 billion in airline sales.

Many persons are interested in becoming travel agents. In 1970, we received 2,000 letters expressing interest in, and requesting information about, becoming a travel agent. 1,200 applications were distributed and 900 completed applications were processed. Of the 900, 770 were favorably acted upon and were included on the Agency List.

A DYNAMIC INDUSTRY NEEDS PROMPT REGULATORY ACTION

The ATC Travel Agency Program has been fairly successful, in our opinion, from the standpoint of the public, the travel agents and the carriers. Although a number of modifications have been made to the program over the years, a number of other proposals which the carriers consider to be of significant benefit to the overall program, to the agents and to the public have either not been approved by the Civil Aeronautics Board or are still pending action by the Board.

In 1966 the carriers launched a detailed study into ways and means to provide travel agents with a computerized system for making airline reservations. System operating standards were developed and bids were solicited and received from a number of potential system vendors. A number of the carriers entered into a contract with one of the bidders for a provision of a common automated system for use by travel agents, which system was supported by large segments of the agency industry.

Because of opposition to the agreement by other potential system vendors and because of anti-trust questions raised by the Department of Justice, the whole matter was set for hearing by the Civil Aeronautics Board. But, in this dynamic industry, with ever-changing technology, neither the common system vendor nor the airlines could afford the uncertainty and the time required in undergoing a protracted hearing. Hence, the agreement was withdrawn from Board consideration—18 months after it was first filed. At this time, there is no industry program for the provision of automated reservations system to travel agents, although individual carriers are making their systems available to high volume travel agents who can utilize such equipment.

We have mentioned the requirement for travel agents to maintain a bond payable to the airlines. This requirement was introduced a number of years ago and, among other things, it provides some minimum financial checks on prospective and existing travel agents. It has been a source of irritation to the travel agents and has not fully accomplished the purposes intended by the airlines. Therefore, the airlines have developed a program, which is currently pending CAB action, to substitute for the existing bonding requirement a comprehensive, airline administered program of financial standards to be applied to travel agency applicants, and with an annual financial review of all accredited travel agents. The program also encompasses an increased level of agency fees to help offset administrative costs. Large segments of the travel agency industry also support this program. The Board has recently been requested by the airlines to act expeditiously in its dispatch of this program, since the agreement has been pending Board action for fourteen months.

The airlines and travel agents are also currently involved in working out jointly the details of a streamlined method of reporting and remitting for sales, utilizing the data processing capabilities of the area banks. The details of this program are now being circulated to all travel agents in a proposed test area so that they may voice their opinions of the program to the CAB. It is hoped that the program may be implemented on a trial basis by mid-1972, although such a schedule will require early approval by the CAB, following its receipt of additional airline and travel agent comments in mid-December.

PUBLIC NEEDS PROTECTION FROM UNREGULATED AGENTS

With regard to the federal licensing of travel agents, the airlines adopted a policy in 1967 which, in essence, stated that since there had been no demonstrated public interest need for the Federal licensing of travel agents the carriers did not then support such licensing.

The policy has been periodically reviewed. Today, the scheduled airlines recognize that, while they deal only with travel agents who meet the high standards of their organized travel agency programs, they have no authority to govern the non-air transport aspects of travel agency activities, nor do the scheduled airlines have control over travel organizers with whom they do not do business. The public has borne the brunt of the losses occasioned by the honest or poorly managed activities of some of these unregulated travel organizers.

We wholeheartedly subscribe to the principles stated in the Declaration of Purpose in this bill to "protect the convenience, safety and well-being of persons who patronize travel agencies." These people need protection, for they can lose large sums of money when irresponsible agents suffer business failures. The problem has become aggravated over the past few years when increasingly large numbers of passengers find themselves stranded, or don't even get started on their trips, because of fraud or the business failures of agents to whom they entrusted their money. While the passenger's air transportation is always protected when the agent deals with ATC or IATA carriers, this is not always true with respect to non-member airlines. Even where the agent made the air transportation arrangements on ATC or IATA carriers, the passengers may still suffer large losses for deposits entrusted to the agent for ground arrangements such as hotels, sightseeing, etc. The customer is seldom protected by the companies performing the ground service where the agent has a business failure. During the past year the airlines have made special arrangements to provide transportation to hundreds of passengers stranded as a result of the failure or fraudulent activity of unregulated agents.

The public strandings and other losses by the public have occurred almost exclusively on charter or tour flights. The Civil Aeronautics Board has attempted to carry out its statutory duty of distinguishing between individually-ticketed services and charter operations. In recent times, however, certain agents have, by distortion or outright violation of the Board's rules, sold individual seats on aircraft under the guise of charters. The proliferation of these illegal charter operations has so taxed the Board's limited staff that enforcement has been slow and difficult and, often, nonexistent. The lack of manpower for broad and effective enforcement has contributed greatly to the entry into the market place of undercapitalized and often unscrupulous persons holding themselves out to the public as travel agents. I am sure the Committee is aware that such persons are not ATC or IATA agents and are, in fact, not regulated in any manner. Many of these self styled travel agents keep themselves in business by income received

due to the volume of passengers involved in packaging groups for air charters, even though they may not offer passengers any other of the usual and helpful services which reputable accredited agents perform.

We believe the public has a right to expect that monies paid to travel agents for interstate or foreign travel, and for ground arrangements in connection therewith, will be protected and that the public will actually receive the services paid for. Unfortunately, there often is no protection for the transportation or non-transportation features of the tour package because of the total lack of regulation of these so called travel agents. If the Congress agrees with us that the public deserves protection in these areas, S. 2577, with some amendments which we will propose, deserves your careful consideration as a means of accomplishing that objective.

The airlines are aware of the interest of several individual states in the regulation of travel agents, the result of which could be a proliferation of individual travel agency regulatory provisions, differing widely from state-to-state and placing undue burdens on interstate and foreign commerce. However, it appears that the states are moving into this field because of the losses and inconvenience suffered by the public and the apparent lack of federal concern.

For these reasons, the airline members of the Air Transport Association would support appropriate legislation to provide for Federal regulation of travel agents. We believe that such regulation could also be an important adjunct to the ATC Travel Agency Program. S. 2577 provides an excellent foundation for such a meaningful travel agency regulation program. As stated previously, a number of important amendments to the legislation which the airlines propose along with the legislative language to accomplish them, are submitted as appendices to this statement for the consideration of the Subcommittee.

Included in that appendix are two significant principles which I would like to discuss further. First, the airlines or other carrier conferences, should not be precluded from establishing or enforcing criteria for the selection, retention or appointment of travel agents which is more stringent than the criteria in the legislation or in the rules ultimately promulgated by the Director of the Licensing Bureau to be established under the law. The carriers feel that they must be able to apply their own more stringent standards through their own travel agency program which is specifically tailored to the needs of the public which use airline services and to the needs of the airlines. The need for such separate criteria in the case of the airlines appears evident when it is considered that the airlines are responsible for the acts of their designated agents, and that the travel agents are entrusted with over \$2.25 billion of airline funds annually. The Committee may be assured that the airlines would make every effort to coordinate the criteria of their program with the rules and regulations promulgated by the Federal Licensing Bureau so as to avoid to the maximum extent possible the application of dual standards to prospective or existing travel agents.

As a continuation of those principles, and for the same reasons, the carriers request that the bill be clarified to provide that no airline be required to appoint a Federally licensed travel agent as an agent of that airline. Such decision should continue to rest with each individual airline. It is understood, of course, that no carrier would be permitted to appoint a non-licensed agent.

Secondly, the airlines urge that the legislation be clarified to provide that the Federal licensing requirements do not apply to Federally regulated common carriers or to employees of common carriers when they are engaged in the business of their employers.

Common carriers are closely regulated by other governmental agencies and the carriers and their employees should not be subject to this additional regulation.

We thank the committee for this opportunity to provide the details of the ATC domestic travel agency program and for the opportunity to present our views on the proposed legislation. We would be happy to answer any questions the committee might have.

APPENDIX "A"

SUGGESTED ADDITIONS AND CLARIFICATIONS TO S. 2577 TRAVEL AGENCY LICENSING

1. The bill should be clarified to assure that the registration certificate runs to the travel agency owner/entity, regardless of the form of business organization. Provision should be made so that the rules and regulations promulgated by the Director provide for technically competent personnel at each place of business operated by the owner/entity.

Reason.—Clarification of understood intent of the bill and to provide additional administrative requirements for the protection of the public.

2. The provisions of the legislation should be in addition to and not in lieu of the rules, regulations and orders of any Federal agency which may by law regulate carriers or conferences of air or steamship carriers. Also, nothing in the legislation should preclude conferences of air or steamship carriers from establishing or enforcing criteria for the selection, retention or appointment of travel agents which are different from or more stringent than the criteria in the legislation or the rules promulgated by the Director.

Reason.—To make it clear that the licensing of travel agents is not intended to preempt the regulatory activities of any Federal agency, and to enable carriers to continue to have travel agency programs specifically tailored to the needs of those carriers and to the public which uses those carriers' services.

3. The legislation should prevent any state from applying additional licensing requirements.

Reason.—Travel agency business is essentially inter-state in nature and should not be subject to state regulation.

4. No carrier should be required to appoint a licensed agent as an agent of that carrier, and no carrier should be permitted to appoint a non-licensed agent.

Reason.—Since a carrier is legally responsible for the acts of its agents, the carrier must retain the ability to determine those agents for which it will undertake such responsibility, but its agents must at least meet the Federal licensing standards.

5. Common carriers or employees of common carriers when engaged in the business of their employers should be exempt from the licensing.

Reason.—The intent of the legislation is to protect the public. Since common carriers are closely regulated by other governmental agencies, the carriers and their employees should not be subject to this additional regulation.

6. The definition of "carrier" should cover only *direct* carriers as distinguished from *indirect* carriers.

Reason.—Editorial clarification considered to be necessary since some travel agents are classified as indirect carriers under certain circumstances.

7. The effective date should be not less than 180 days after enactment.

Reason.—To provide time to establish the "Bureau" and to promulgate rules and regulations.

8. Consideration should be given to reducing the size of the Travel Agents Registration Board to a five-man Board comprised of a representative of each of the regulatory agencies plus the Director.

Reason.—The number of Board members should be kept to a minimum in order to expedite Board actions. Appropriate liaison with the public and the travel industry can be achieved through the Director.

9. Positive findings should be made on all applications, particularly in the case of Section 28 and Section 29 (b).

Reason.—To assure maximum public protection.

10. Compliance with the code of ethics, as well as with other rules and regulations promulgated by the Director, should be required of applicants as well as being a continuing requirement for registered agents.

Reason.—To make the code of ethics applicable to applicants as well as to registered agents.

11. The reasons for suspension or revocation of the registration certificate should be expanded to include any failure to apply funds deposited or paid by the public for the purposes intended.

Reason.—For the protection of the public.

12. The Director should have the right to inspect the books, records and operations of and to demand additional information from any holder of a registration certificate in order to assure compliance with the law and the code, rules and regulations.

Reason.—To assure the Directors continuing ability to oversee travel agency compliance.

13. The penalty provisions of Sections 31 and 34 should be substantially increased. For example, minimum fines should be at least \$2000 and minimum imprisonment at least one year. Maximum penalties for repeated offenses should be at least \$10,000 or five years imprisonment.

Reason.—To provide more meaningful deterrents.

14. If it is the intent that the Board act on each individual application, provisions should be made for the Director to give interim approval to applicants which meet all criteria pending such Board action.

Reason.—To preclude the necessity for frequent Board meetings and so as not to penalize qualified applicants.

Appendix B

SUGGESTED AMENDMENTS TO S. 2577

1. Section 23. (5) should be amended to read as follows: "(5) 'Engage in the business of conducting a travel agency' means and refers to holding out by any person except direct common carriers certificated by an agency of the Federal government or their employees when engaged in their employer's business, to any other person, directly or indirectly, as being able or offering or undertaking by any means or method, whether acting as principal, agent, broker, or otherwise to acquire for a fee, commission, or other valuable consideration, of any sort, travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation, hotel, or other lodging reservations or accommodations, or any other ground arrangements offered in connection with such travel."

2. Section 23. (8) is amended by adding at the end thereof: "as a direct common carrier."

3. Section 24 is amended by deleting that section in its entirety and substituting in lieu thereof: "Section 24. On and after 180 days after enactment of this Act, (a) no person shall, directly or indirectly, engage in the business of conducting a travel agency, as herein defined, without having first received a registration certificate as hereinafter provided. Such registration certificate shall be issued in the name of the owner of the travel agency. (b) No carrier shall authorize or retain any travel agent to represent it unless such travel agent is registered under the provisions of this Act. Provided, however, that no carrier is required to authorize or retain any travel agent to represent it."

4. Section 26. (a) is amended as follows: "To advise the Director and perform such other duties as may be specified in this title, there shall be a Travel Agents Registration Board consisting of [eight] five members appointed by the Secretary of Transportation. [Two members thereof shall actively be engaged in the travel agency business; one member thereof shall be a representative of the general public; and four]. The members thereof shall consist of one representatives from each of the following agencies: the Federal Maritime Commission, the Civil Aeronautics Board, the Interstate Commerce Commission, [and] the Department of Commerce [Transportation], and the Director or his duly authorized representative, [shall be an ex-officio member of the Board with one vote.]"

5. Section 26. (b) is deleted in its entirety.

6. Section 26. (c) is renumbered "26. (b)" and amended to read as follows: "(b) The Director, with the advice of the Board, shall promulgate such rules and regulations, including but not limited to those necessary to assure the competence of travel agents and their employees, to require sound financial practices by registered travel agents and those considered necessary to carry out the purposes of this title."

7. Section 26. (d) is renumbered 26. (c).

8. Section 27. (a) is amended by adding the following sentence at the end thereof: "The Director may grant an interim registration certificate to any applicant who appears qualified under this Act pending Board action thereon."

9. Section 27. (b) is amended to read as follows: "(b) An applicant for a registration certificate shall furnish with his application such proof as may be required to show that the applicant has met the requirements of the rules and regulations, and complied with the code of ethics, promulgated by the Director with the advice of the Board."

10. Section 27. (c) is amended to read as follows: "The Director shall require any applicant to submit a showing that he is financially qualified to engage in the travel agency business and, with the exception of applicants who meet the requirements of section 28 herein, to successfully complete a written examination as to competency in accordance with standards to be established by the Director with the advice of the Board."

11. Section 28 is amended to read as follows: "Sec. 28. Any person who is engaged in the business of conducting a travel agency on September 3, 1968, and has engaged in such business for a period of two or more years and who

has been approved for appointment as an agent for two or more years by two or more conferences of air or steamship carriers shall, upon application, be granted a registration certificate by the Director *if* [unless] the Director makes a specific determination that the applicant [lacks] *is of* good character *and* [or] *is* [not] financially qualified. In addition, any person presently holding a passenger broker license issued by the Interstate Commerce Commission pursuant to section 211 of the Interstate Commerce Act shall be granted a registration certificate *if* [unless] the Director makes a specific determination that the [application] *applicant is of* [lacks] good character *and* [or] *is* [not] financially qualified."

12. Section 29(a) is amended by adding after the word "regulations" appearing on line 11: "*and the code of ethics*" and by amending line 12 to read as follows: "tions 26 (c) *and* 26(d) hereof, and such further inquiry and investigation."

13. Section 29(b) is amended to read as follows "(b) The issuance of a registration certificate *shall* [may] be withheld by the Director *unless* if he makes a specific determination that the applicant [lacks] *is of* good character, [or] *is* [not] financially qualified, *and has complied with the other rules and regulations and the code of ethics promulgated by the Director.*"

14. Section 30 (d) is amended by deleting the period at the end thereof, and adding the following: "[.] *if the Director makes the same determinations as referred to in Sec. 29 (b) of this title.*"

15. Section 31 is amended by deleting from line 10 thereof "\$1,000" and substituting in lieu thereof "\$2,000."

16. Section 31 is further amended by adding the following at the end thereof: "(7) *Failure to apply funds received by the travel agent from any person for the purposes intended.*"

17. Section 32 is deleted and the following is added in lieu thereof: "Sec. 32 (a) In any case where the Director has authority, with or without advice of the Board, to suspend or revoke a registration certificate issued pursuant to this title or to impose a fine, in lieu [thereof] *of suspension or revocation or in addition to imposition of a fine*, he may accept from the holder of the certificate assurance of discontinuance of any act or practice for which the certificate may be suspended or revoked.

"(b) *The Director shall serve the Conferences of air and steamship carriers with notices of suspension, revocation, fine and denial of original or renewal applications of any travel agent.*"

18. Section 34 is amended by change in line 22 of "\$500" to "\$2,000;" by changing in line 23 "six months" to "one year;" by changing in line 24 "\$2,000" to "\$10,000, and by changing in line 25 "two" to "five."

19. Section 35 is redesignated Sec 39

20. A new section 35 is added as follows: "Sec. 35. *The Director shall at all times have access to all buildings and equipment of any travel agent and to all accounts records, and memoranda, including all documents, papers, and correspondence, now or hereafter existing; and he may employ special agents or auditors, who shall have authority under the orders of the Director to inspect and examine any and all such buildings, equipment, accounts, records, and memoranda. The provision of this section shall apply, to the extent found by the Director to be reasonably necessary for the administration of this Act, to persons having control over any travel agent, or affiliated with any travel agent.*"

21. A new Section 36 is added as follows: "Sec. 36. *On and after one hundred and eighty days after the enactment of this Act, no state shall license any travel agent who is subject to the provisions of this Act.*"

22. A new Section 37 is added as follows: "Sec. 37. *Nothing in this Act shall preclude any Conference of air or steamship carriers from establishing or enforcing criteria for the selection, appointment or retention of travel agents which are in addition to, or more stringent than, the criteria in this Act or the rules, regulations, and codes promulgated by the Director.*"

23. A new Section 38 is added hereto as follows: "Sec. 38. *The provisions of this Act shall be in addition to, and not in lieu of, the rules, regulations and orders of any other Federal agency which may by law regulate carriers or Conferences of air or steamship carriers.*"

24. A new Section 40 is added as follows: "Sec. 40. *Except as otherwise specifically provided herein, the provisions of this Act shall become effective upon the date of enactment hereof.*"

(The following information was subsequently received for the record:)

COMMENTS OF AIR TRANSPORT ASSOCIATION OF AMERICA ON H.R. 11560, A BILL
TO AMEND THE FEDERAL AVIATION ACT OF 1958 WITH RESPECT TO INDIRECT
AIR CARRIERS

The bill introduced by Mr. Van Deerlin, H.R. 11560, would create, by statute, a class of indirect air carriers who would consolidate passengers into charter group flights. The Air Transport Association of America (ATA) opposes this bill because there is no need for such statutory enactment, as set forth below:

I.

The CAB already has the power to regulate indirect air carriers. Section 401 of the Federal Aviation Act of 1958, as amended, (Act) provides that no air carrier shall engage in air transportation unless there is a certificate issued to it by the Board. Air carrier is defined under section 101(3) as a citizen of the United States who undertakes, whether directly or *indirectly*, to engage in air transportation. Consistent with this power, the Board has taken a number of actions which indicate it will take whatever steps are necessary to regulate indirect air carriers.

A. REGULATIONS

1. *Charters*.—While the Board does not take jurisdiction over charterers, it does, in fact, regulate specifically the type of entity which can be carried legally as a charter. The Board's regulations concerning chartering activities are found in 14 CFR 207, 208, 212 and 214. Essentially, these sections provide that various types of air carriers may carry single entity or pro rata charters which meet the standards set up by the Board. When the chartering entity does not qualify but is carried by the carrier, the Board has the power to fine the carrier and order the entity to cease and desist from violating. The Board has not taken direct jurisdiction over charters because it has felt that expansion of its jurisdiction in this regard would create an impossible administrative task. Moreover, it is doubtful whether the Congress would want the Board to regulate such entities as the Lions Club, B'nai Brith, the Knights of Columbus, corporation employee clubs, or even the Congress itself as a chartering entity.

2. *Tour Operators*.—The Board has found in cases where the passenger is sold ground accommodations along with the air transportation that it is desirable to license the sellers of such packages. Consequently, the Board issued regulations governing these indirect air carriers which are known as tour operators. (14 CFR 378 and 378a). These regulations include specific financial restrictions and bonding among other things to protect the public.

3. *Students Traveling on Charters*.—One of the major premises underlying H.R. 11560 is that many students were stranded in Europe in the past two years. There are two ways through charter operations that a student flies to Europe and other places. First, he can go with a study group. The Board has recognized problems involving study groups, in particular, resulting from the bankruptcy of World Academy in Cincinnati; it therefore acted by putting into effect a regulation ascertaining the Board's jurisdiction over study group charterers as a class of indirect air carriers. (14 CFR 373) The Board, in effect, distinguishes two types of study group charterers. On one hand, through its definition of "educational institution" it allows legitimate and well established schools, colleges and universities to engage in sending their students overseas for study without having too financial a burden. On the other hand, study group charterers, falling outside of the educational institution definition, are, by the Board's regulations, placed under strict financial responsibility requirements. Included among these are surety bond requirements similar to those in effect for inclusive tour charterers under Part 378.

With respect to students traveling overseas for reasons other than study, the rules for regular charter flights apply. (14 CFR 207, 208, 212 and 214). If the group deals directly with their air carrier, it certainly has adequate financial protection, since the Board in awarding the carrier a Certificate of public convenience and necessity, makes findings of financial fitness which must be kept current. If the group uses a travel agency, the same protection is afforded since air carriers appointing travel agents are responsible for the actions of those agents with respect to the payment of air fares. (*Capital International Airways, Inc. v. CAB*), 129 App. DC 187, 392 F2d 511 (1968).

4. *Enforcement Powers.*—Under section 1004 of the Act, the Board has the power to take testimony and tangible evidence from any person, and has nationwide subpoena power to aid in its investigations. Under section 901 the Board can compromise civil penalties which would otherwise be levied against persons within its jurisdiction, including indirect air carriers. Under section 902 of the Act, the Board could, through the U.S. Attorney seek criminal penalties for willful violations of the statute, Board regulations or Board orders. Finally, under section 1007 of the Act, the Board is authorized to seek judicial enforcement of the Act, the Board's regulations and orders, in the District Court where any person violating carries on his business or where the violation occurred. This, of course, includes violations by indirect air carriers.

B. THE BOARD IS EXERCISING ITS POWERS

1. Since January 1970, the Board through its Bureau of Enforcement, filed thirteen complaints involving hundreds of allegedly illegal flights conducted through forty-five organizations and individuals. The gist of these complaints is that the organization and individual respondents have engaged in "indirect air carriage" without prior Board authority. As a result of these cases, some of which are still pending, the Board has thus far collected \$142,000 in fines and has issued nine Cease and Desist Orders. If the entities involved in these cases engage in similar operations after the issuance of a Cease and Desist Order, the Board may, among other things, seek criminal penalties for willful violations under section 902 of the Act.

2. Consistent with the powers shown above, the Board is presently before the U.S. District Court for the Southern District of New York, with an enforcement case against those persons who were involved in the sale of one way tickets to Europe at round trip prices this past summer.

Consequently, considering the material above, it is obvious that the Board has sufficient statutory and regulatory power over indirect air carriers, and has used these powers.

II.

H.R. 11560 will not solve the existing problems for the following reasons:

A. The proposal would allow an "indirect air carrier of passengers" to purchase air transportation wholesale from a direct air carrier for sale to members of established organizations who qualify as "charterworthy," under the rules and regulations of the Board. Obviously, all this says is that Congress, by passage of the bill, would allow a middle man to come into the market place. It will not change the rules and regulations of the Board which are, as shown above, sufficient. (Although utilizing such middle men would obviously increase air carrier costs.) In order to compete with other persons engaged in the same business, the intermediary would probably have fluctuating prices for charter organizations. Thus, a large organization capable of sponsoring many charters would get a better price for its flights due to quantity discounts. Obviously, this would discriminate against smaller organizations who could sponsor only one or two trips. Such discrimination would probably be unlawful since a charter is the lease of all or part of a single aircraft by a single entity or by a proration of the total cost among the passengers who actually take the flight; it is not the purchase of a series of flights.

B. The "indirect air carrier of passengers," according to the bill, would be able to consolidate members of organizations who qualify as charter worthy. Since organizations must be established and thus know who their members are, there is no need for such an organizer. However, such an organizer would be tempted to add new members to the organization in order to fill up the aircraft. These activities would be nothing more than the consolidation of members of the general public who, had they otherwise flown would have purchased individual tickets. It is clear that Congress never intended charters to consist of individually-ticketed passengers. Such activities under the guise of "charter" would destroy the scheduled transportation system which relies upon individually ticketed passengers. If there is a need by an organization to have its own members pulled together for explaining the details of a charter flight and ground arrangements, there is no reason why existing travel agencies could not perform this service pursuant to whatever regulations the CAB might deem appropriate. In this connection, federal licensing of such travel agents would be appropriate in order to protect the public interest. In any event, under present regulations a travel agent may receive a commission from the carrier for selling

charter flights to legitimate organizations. In summary, if the group has proper affinity as presupposed by Congressman Van Deerlin's bill, then there is no need for a consolidator or organizer; the group is already organized.

C. The proposal does not change the ability of entities, bona fide or otherwise, to purchase air transportation from direct air carriers at *retail* prices. These entities could make ground arrangements for the passengers in such a way as to derive income from hotel and car rental commissions and by sharing in membership or other types of fees.

III

The proponent of H.R. 11560, Consortium International, Inc., recognizes that the CAB has appropriate power to regulate indirect air carriers and has applied for an exemption from the Board from its licensing procedures in Docket 23249. Mr. Theodore P. Harris, Executive Vice President of Consortium International, Inc., testified before the Subcommittee on Foreign Commerce and Tourism of the Senate Committee on Commerce on November 18, 1971, that its exemption application was "compatible" with H.R. 11560. Actually, all that Consortium says is that Congress should become aware that there are illegal charters, and that license and bonding of indirect air carriers operating in strict compliance with CAB rules and regulations should also be recognized by Congress. It is submitted that such a recognition by Congress has already occurred. Congress has shown its interest by conducting hearings on various charter and group problems. What is really needed is continued enforcement of existing CAB regulations. What is not needed is an act of Congress duplicating existing legislation. In short, H.R. 11560 would not create any new, or more enforceable, regulations over indirect air carriers.

Senator INOUE. This committee has received 20 copies of a study made by the Foreign Study League and the American Institute for Foreign Study in connection with this bill. Without objection, this study will be made a part of the record.

(The statement follows:)

STATEMENT OF FOREIGN STUDY LEAGUE AND AMERICAN
INSTITUTE FOR FOREIGN STUDY, INC.

The purpose of this statement is to set forth the views of the Foreign Study League, Inc. (FSL) of Salt Lake City, Utah, and the American Institute for Foreign Study, Inc. (AIFS) of Greenwich, Connecticut, concerning S. 2577. We ask that this statement be made a part of the record of the hearings on this Bill.

FSL, a subsidiary of Transamerica Corporation, is the nation's oldest and largest organizer of foreign study programs for high school and college-age students. Founded in 1964, it currently conducts educational programs at 130 overseas college campuses. Its principal business consists of organizing and operating summer study tours which combine four weeks of formal study abroad with two weeks of organized travel. In addition, it also organizes semester-long foreign study programs. In 1970, 11,300 students participated in FSL's study programs. Since its inception, FSL has provided approximately 55,000 students an opportunity to study and travel abroad.

AIFS, which was also founded in 1964, is engaged in the same type of business as is FSL, and is FSL's principal competitor. It also conducts both full-year and summer academic programs abroad for high school and college students and teachers. Since its inception, AIFS programs have been utilized by almost 35,000 American students and teachers.

Although they are competitors, FSL and AIFS have joined in this statement because they would both be affected in the same way by S. 2577, and because their views concerning this proposed legislation are identical.

It appears that a principal impetus behind this proposal is the bankruptcy of the World Academy, which occurred in 1970 and which resulted in the stranding of a large number of students in Europe. We are in full agreement with the sponsors of this legislation that an incident of this kind must not be permitted to occur again. We take this view not only out of a sincere concern for the welfare of American students, but also out of simple self-interest. World Academy was also an operator of foreign study programs, and its demise was a very severe blow to the entire industry. It resulted in a loss of public confidence in foreign study tour programs in general, which had a very direct and immediate effect on the business of both FSL and AIFS. Therefore, we have as much reason as anyone to want to prevent another disaster of this kind. And we certainly want to keep "fly-by-night" operators out of the study tour field.

However, we do not believe additional legislation is needed for this purpose. After the World Academy disaster, the Civil Aeronautics Board adopted a comprehensive set of regulations which were specifically designed to prevent this sort of incident from recurring. Although FSL and AIFS have always considered themselves to be primarily educational organizations, the CAB has ruled that study group charterers are "indirect air carriers" because they sell air transportation as part of their foreign study programs.

On this basis, the CAB has now issued regulations which control virtually every aspect of this business. Under these regulations, any study tour operator which utilizes charter air transportation (as almost all of them do) must meet the following requirements:

1. It must either post a bond equal to three times the charter price, or provide a bond of \$10,000 plus an escrow arrangement under which all payments from tour participants go into a special segregated bank account. These funds must be held until 60 days before departure, when disbursements of up to 80 per cent may be made only to pay for the transportation and land accommodations to be used in connection with the tour. The other 20 per cent must be held in escrow until the tour is completed.

2. The study tour itself must include at least four weeks of formal academic study of at least 15 hours of classroom instruction per week.

3. The tour price must include, at a minimum, all transportation, all sleeping accommodations, and two meals per day for the entire duration of the tour.

4. Before any study tour can be advertised or sold, the sponsor must file with the Board a complete description of the program, copies of promotional literature, and copies of the charter contracts, bond and escrow documents.

Certainly, FSL and AIFS, which are complying fully with these CAB regulations, should not be subjected to further and possibly conflicting regulation under an entirely separate statute which would be administered by an entirely different federal agency. Yet that would seem to be the result if

S. 2577 were enacted. The Bill's definition of the phrase "engage in the business of conducting a travel agency" (§23(5)) is so broad that it would evidently include the activities of study group charterers and other types of authorized "indirect air carriers" subject to CAB regulation, as well as conventional travel agents. Thus, despite the fact that AIFS and FSL are now operating under specific authority of the CAB, this proposed law would preclude their continued operation unless they could meet whatever requirements the new Bureau of Travel Agents Registration might establish for the issuance of "registration certificates" under this law. And it is quite likely that the rules and regulations which would be established under this statute--and which would be designed primarily for travel agents, not study group charterers--would be different than and perhaps even in conflict with the CAB regulations governing study group charters.

The problem is further exacerbated by the fact that the Bill grants no special consideration to already established "travel agents" unless they have been "approved for appointment for a period of two or more years by two or more conferences of air or steamship carriers." Neither FSL nor AIFS holds such an appointment, for the simple reason that they are not engaged in the "travel agency" business in the conventional sense. Yet both of these companies are much larger, financially stronger, and probably more experienced in their particular field than many travel agents. In our view, it is grossly unfair and discriminatory to make the "grandfather" privileges under the statute wholly contingent on conference appointments--which, after all, are granted by purely private industry associations.

The kind of foreign study programs which FSL and AIFS provide have proved to be enormously popular with American students, and have provided a unique and valuable opportunity for thousands of young Americans to combine a rich educational experience with foreign travel. Any legislation which jeopardizes the future of these programs is certainly contrary to the public interest. Moreover, in view of the recently adopted and comprehensive CAB regulations, there is simply no need for further regulation in this field.

For these reasons, we believe that this legislation--if it is to be enacted at all--should be modified so as to exclude from its coverage organizations like FSL and AIFS which are already subject to comprehensive regulation by the CAB. In view of the ruling of the CAB that study group charterers are "indirect air carriers," an appropriate method of excluding them from S. 2577 would be to add the following proviso at the end of Section 23(5) of the Bill:

"provided, that such term shall not apply to persons whose sole or principal business is that of an "air carrier" within the meaning of Section 101(3) of the Federal Aviation Act of 1958, as amended."

This amendment, in addition to excluding study tour operators such as FSL and AIFS, would also exclude inclusive tour charter operators, who are also regulated in much the same manner by the CAB. It would also exclude airlines themselves, which would otherwise seem to fall within the literal coverage of S. 2577.

We have deliberately refrained, in this statement, from expressing any view as to the wisdom of the underlying concept of S. 2577. We frankly have some doubts as to whether a licensing statute, which would necessarily restrict entry and lessen competition in the travel agency field, is desirable at all. But if the Committee should conclude that such legislation is needed, it should at least exclude from its coverage those types of enterprises, such as study group charterers, which are already subject to comprehensive regulation by the CAB.

Senator INOUE. Our next witness is Mr. Jorgen B. Kolle, president of the Association of Retail Travel Agents.

I welcome you, Mr. Kolle.

STATEMENT OF JORGEN B. KOLLE, PRESIDENT, ASSOCIATION OF RETAIL TRAVEL AGENTS; ACCOMPANIED BY RONALD A. SANTANA, EXECUTIVE VICE PRESIDENT

Mr. KOLLE. Thank you, Mr. Chairman.

I have with me today our executive vice president, Mr. Ronald A. Santana.

Mr. Chairman, I would like to thank you for giving our association the opportunity of appearing here today to present its view on possible regulation of the travel industry. We deeply regret the circumstances which precipitated the introduction of S. 2577 in the instant hearing, but welcome the chance to explore with your committee the necessity of possible means of regulating those engaged in the sale of travel to the public.

The problems in this area are complex, and do not lend themselves to an easy remedy. With regard to the stranding of charter passengers, we would ask that the committee recognize that there are two separate areas to be dealt with.

First, the substantive rules pertaining to eligibility for charter flights, and second, the procedures for regulating those in the business of selling travel.

With regard to the former, we will point out that the Civil Aeronautics Board, under powers designed by the Congress, has established in the public interest certain rules relating to eligibility for participation in charter flights. Unfortunately, these rules have been openly flaunted at will, mainly because the Bureau of Enforcement of the CAB lacks the resources necessary to perform its functions.

The quickest and most direct action that Congress could take in protecting the public interest would be to appropriate the funds sufficient to see to it that every illegal charter operator is put behind bars, and pass legislation revoking the operating rights of any airline conspiring with such charter consolidator. The Congress and the public must realize that the cheapest is not necessarily the best or in the public interest.

We must not be afraid to stand up to those who would flaunt the law and feel that so long as they are getting a bargain the rules do not apply to them. Even if we were to assume that the charter crisis was to stop tomorrow, there would still be the need to look into the means of regulating those selling travel.

When studying such regulation we must recognize several important factors.

First, not only are each class of air carrier, steamship line, hotel, tour operator, and other suppliers of travel services competing for the favor of those who promote and sell travel—the travel agent—but they, too, are selling directly to the public and are therefore directly engaged in the sale of their arrangements to the consumer. It is a dual distribution system that is truly unique.

Second, while there is no single agency, private or public, that has the power or responsibility of regulating this huge service industry,

yet through various conferences that he must deal with, the retail travel agent is probably the most regulated businessman in any unregulated industry that you have ever seen.

The great majority of this regulation comes from the air transportation phase of the industry, where the Air Traffic Conference and the International Air Transport Association have managed to pass appointment and retention standards which lack conformity and in many instances conflict. Unfortunately this regulation comes from those who have seats to sell, and are themselves competing with their agents on the open market, hence the system leaves much to be desired.

To add insult to injury, the International Air Transport Association refuses to maintain an office in the United States, thus regulating approximately 7,000 American businessmen from an office outside our borders.

In the supplemental air transportation field the problem is even worse. There are no regulations whatsoever. The supplemental carriers will pay commission to anybody who holds himself out to be a travel agent without ascertaining his background, qualifications, or financial stability. The joint petition of certain supplemental carriers for the institution of a rulemaking proceeding before the Civil Aeronautics Board, dated July 28, 1969, contains certain references to, and I quote, "participation and active assistance of travel agents" in charter violations.

In the same document the petition is recognized, and I quote again, "that they themselves have a major role to play in the enforcement of the regulations."

We submit that they could better fulfill their role by ascertaining whether these, with whom they are doing business, are in fact bona fide travel agents. We make this observation not only toward the supplemental carriers, but to the general public as well.

In March of this year, Mr. Irving Robinson, publisher of "Travel Weekly," commissioned Louis Harris & Associates, Inc., to perform a basic study of the character and volume of the U.S. travel agency market, and I have here a copy of this study which I am prepared to leave with this committee, with Mr. Robinson's permission. This shows that 6,686 conference-appointed travel agencies in the United States produced a total sales volume in 1970 of just over \$5 billion.

It would seem that the time has come for a uniform set of standards that would be applied to everyone in the business of selling travel to the general public.

Is Federal licensing as proposed in S. 2577 the answer? We think not.

First, let me say here that Federal licensing would definitely be preferable to a myriad of State statutes. Because of the very nature of the travel industry we do not feel it would be possible for the individual States to act as a regulatory body for those who would do business within their boundaries. It would be impractical for a tour operator to obtain a license in each State in which he would sell a tour and impossible for the State agency to control advertisement that may appear in newspapers or national magazines.

With respect to S. 2577, however, we have the following problems:

No. 1, the controls proposed in this legislation would be an extra layer added to the various existing standards. The result would

be that those who are now paying agency fees and abiding by some form of regulation would be getting an added burden, while those who have assumed none of these obligations would only have to register to be legitimated.

Our second problem is that we do not feel that it is in the best interest of the consumer, or the travel agent to be immersed in the bureaucracy of Federal regulation. At best it would have to be the least common denominator that would be the controlling force in the establishment of the particular rules. Enforcement would be less to the economic certainties of the generosity of the Congress at budget time.

A third concern is the fact that the proposed Travel Agent Registration Board would only have two of eight members who are within the travel industry. We do not feel that this is sufficient for the Board to act within the responsibilities given to it under this proposed legislation.

The Association of Retail Travel Agents have long maintained that the best regulation of our industry can be done by the industry itself through an organization modeled to the National Association of Security Dealers.

We would urge that only those belonging to such an organization be recognized for the payments of commissions by the suppliers of transportation, accommodations and other travel services. Conversely, we would expect this to be the one single agency establishing appointment qualifications and standards.

Such a body would immediately extend to those areas where there are now little or no controls at all. Such an organization could serve as the nationally recognized clearinghouse for all consumer complaints relating to travel services. We recognize that such an all-encompassing body cannot be created overnight, but feel that there must be a start somewhere, so that those who would doubt the validity of this proposal would have something to see and judge.

Accordingly, we would ask this committee to consider the establishment of a study committee made up of representatives of all facets of our industry and the various governmental regulatory agencies involved. This committee would be charged with the specific responsibilities of exploring the merits and problems of such a self-regulatory agency as opposed to Federal licensing, as is now proposed, or as may be modified.

We feel that from only such an intense study, which has never been made, can any of us truly judge the best, fairest and most complete form of regulation. We will ask that such a committee be given a limited time to conduct its investigation and report back to Congress.

It is our hope that from this investigation or from this study would come a proposal for a regulatory agency in some form, either self, or governmental, that all areas in the industry would be prepared to support. Regardless of what form this regulatory body would take, we feel there are certain things that are an absolute necessity.

First, all those engaged in the sale of travel to the public whether a principal, nonprofit organization or agent be subject to the same rules.

Second, this regulatory agency must assume the responsibility for establishing, implementing and enforcing uniform appointment and retention standards. By this we do mean various conferences would no longer act as accrediting agency; however, we do not mean that

individual carriers would necessarily lose their right to select those who shall represent them. Representatives of all segments of the industry should have an equal voice in the formulation of policies that are going to affect the ability to remain in business in the future.

In closing, let me say that the Association of Retail Travel Agents stands ready to assist in any way in the formation and the duties of such a committee, and it is our sincere belief that its findings would support our stand in favor of a self-regulatory body.

Senator INOUE. Thank you very much, Mr. Kolle.

In your statement you suggested that a lot of travel agents are openly flaunting laws and your solution would be a bigger appropriation to an agency such as the CAB to regulate or handle these law flauters. Yet, we have had testimony today and yesterday, which suggests that these agencies, one, are not fully aware of their responsibilities for the laws governing regulation of travel agencies, and second, as the CAB indicated yesterday, that they do not feel they have the authority in certain areas to handle strandeers, for example. And we have had conflicting testimony, one, by an agency saying that investigations have been conducted on affinity tours, illegal affinity tours, and that everything is under control. And today we have had testimony indicating that nothing is under control.

So how do you feel we can, shall I say, force these agencies to carry out the mandate of the legislative branch of this Government in protecting the interests of the public?

Mr. KOLLE. Well, in the first place, I believe that the Bureau of Enforcement under the CAB, according to their own information, is not adequately staffed. If I remember correctly, the transatlantic charter traffic this year amounted to about 28 percent of the entire transatlantic transportation.

I think I am correct, but don't hold me to it, that the Bureau of Enforcement has eight enforcement inspectors. I do not think there is any way they can properly even attempt to regulate that fantastic volume of business.

Senator INOUE. The usual excuse by the Government, whether it be this administration or any other administration, for that matter, has been the lack of funds. We have found by experience that if we go along with their requests and add funds, the results are not always forthcoming.

Mr. KOLLE. That is true.

Mr. SANTANA. Mr. Chairman, on the question of whether or not the charter operators are still in business, I would just like to read a short article that appeared in *Travel Weekly* on November 9:

New York's leading charter consolidators, all of them allegedly engaged in illegal organizations, were reported to have averted a price war last week by agreeing to advertise at uniform rates on the same transatlantic flights. In a meeting that included at least one firm named in a Federal court case currently under adjudication, consolidators were said to have decided that anyone advertising at prices above the norm will be denied the privilege of placing passengers on flights advertised by other companies at lower fares.

Sources reported that the discussions were sparked by recent ads in the *Village Voice*, a New York weekly, which quoted different prices for a flight to Europe on a British supplemental.

As reported in *Travel Weekly* earlier, the prices listed were \$75, \$67.50, and \$69. Those offering seats at the lowest price were said to be indignant that competitors were getting higher payments for the same flights.

The agreement is understood to apply only during the current low traffic season.

I think this together with the advertisements that continue to appear in the papers across the country are evidence that the illegal charter operations, the affinity operations, which are a little bit different from the student operations which the strandings were about, are flourishing. They are still going on.

Senator INOUE. I do not deny that. In fact, that was one of the reasons for this committee, for this chairman, introducing this measure.

If you were here yesterday you would have heard the colloquy that I had with the FTC representative, wherein I suggested that the rules and regulations relating to the FTC were sufficient to protect the public interest from false advertising. Now, these ads to anyone just, oh, minimally knowledgeable about the travel industry, they would know at a glance that these ads are fraudulent, that these ads are in violation of a CAB regulation.

You do not have to be expert to figure this out. But somehow with all of the experts we have in the Bureau of Enforcement of the FTC, they must be extremely busy that they do not have time to read the New York Times, the "Travel News," the Washington Post, the "Newsweek" magazine, the "Time" magazine, and so forth.

I do not want to add another layer, as you said, of bureaucracy. But I cannot as chairman of this committee close my eyes to the glaring fact that with all of the laws we have in the books, relief is not forthcoming. And it would be rather weak as far as I am concerned for any agency to plead insufficient funds when we can pick up magazines and newspapers and see in black and white outright violations of the law.

The least they can do, and I am certain they have secretarial help, is to write a letter to these people and say, "Dear Sir, may we refer you to section such and such of the law, you are violating the law."

Mr. SANTANA. We are in perfect agreement with you. We send an average of two complaints a week to the CAB on charter violations.

On the question of self-regulation, Mr. Chairman, we would feel that if the industry were given an encouragement in this area that many segments of the industry would pull together. I think there has been a general reluctance on the part of many of those in the industry because they do not feel that they can either get the legislation that may be needed for antitrust immunities passed, or the Department of Justice would be a roadblock.

This is why we have suggested that perhaps if the governmental agencies would have representatives, including the Justice Department, together with representatives of the industry, that quite possibly some self-regulatory body could be devised that would be acceptable and effective.

Senator INOUE. See, if the problem were in the nature of the type handled by the FBI where you find criminals in 50 States and all of our territories and possessions, that is one thing. But as you know, most of the violations, if not just about all of them, are found in a few major cities. And I do not expect our Government agents—they are overworked—to be going all over the country. There are only a few cities, and not that many newspapers. I cannot see how difficult it is.

And this is why, much as I would like to see self-regulation, I am convinced as of this moment that notwithstanding the laws we have on

our books, self-regulation may not be the answer. But you have the floor, sir, to try to convince me otherwise.

Mr. SANTANA. Quite frankly, we do not see how the licensing bill, as constituted now, would provide any more of an answer. It is a question of who is going to be establishing the rules and who is going to enforce them. We feel from within the industry, since the vast majority of the agents are sincerely interested in curing these ills, number one, they would finance this themselves, we would not have to rely on the Congress to appropriate the money for enforcement. I think that the rules that would come out would probably be stricter and harder, not from the point of view of arbitrary blocks from doing business, but just in objective standards, from those who are within the industry and understand the problems, are going to be a lot stricter than from outside.

Senator INOUE. The question is how long do we have to wait?

Mr. SANTANA. As I said, I feel the reluctance of the industry has been because there is a feeling that either the Congress or the Government as such will not support such a move. I feel confident that if there were to be some indication from the committee, from the Congress, even in the question of just conducting a study as to the feasibility of the two, you would find the majority—

Senator INOUE. For the cause of the travel industry I will miss a vote.

Mr. SANTANA. Thank you.

I think you will find that the industry is ready to move very rapidly to cure these ills. It has been the travel agent by and large that has been going to the CAB, going to the courts to try and stop the charter operators. Whether it be ARTA or any of the other organizations, there is a sincere desire within the industry to clean up its problems. I think that the problem has been a lack of direction and support for some of these things.

With all due respect to the chairman on the question of the problems, I think you will find that more and more the charter violations are being proliferated throughout the country—Jackson, Miss., and every town that has an airport potentially and in most instances has had an illegal charter flight go out of it. I think this is the problem the Bureau of Enforcement has. We support you in saying that perhaps they have not done everything that they could have done. But we have to sympathize with them that we do not think they have the facilities to do what they are trying to do.

I am scheduled to testify Monday in Federal court in Brooklyn on their current case. But they can just do so much with what they have. They only have eight men.

Senator INOUE. This has been very helpful and your statement will be given our very serious consideration, but before closing, would you advise this committee as to the nature of your membership?

Mr. SANTANA. We have about 500 retail travel agents located in the various States across the country. They are all independent, relatively small businessmen.

Senator INOUE. Do you have certain standards relating to membership?

Mr. SANTANA. Two appointments in any two conferences and 70 percent of their business must be retail. We do not accept carriers,

wholesalers; we are strictly retail agents. As I said, any two conference appointments.

Senator INOUE. So you rely on the conference to decide.

Mr. SANTANA. Yes; and we also have a grievance and ethics committee of our own as far as membership. Naturally we are not empowered to do anything beyond our own membership.

Senator INOUE. I thank you very much.

Mr. SANTANA. Thank you.

Senator INOUE. Our next witness is the president of the National Air Carrier Association, Mr. Edward J. Driscoll.

STATEMENT OF EDWARD J. DRISCOLL, PRESIDENT, NATIONAL AIR CARRIER ASSOCIATION

Mr. DRISCOLL. I am president of the National Air Carrier Association, a trade association composed of the eight leading U.S. supplemental air carriers.

I am grateful for this opportunity to present the views of our industry concerning S. 2577.

We have a very real and immediate interest in this legislation, since most of the supplementals' commercial charter business is obtained through travel agents.

We are also in sympathy with what we understand to be the basic goals of this proposed legislation—namely, the elimination of any unscrupulous or financially unstable operators from the travel industry.

The recent incidents involving stranded students, which have received widespread publicity, have injured the reputation of the supplemental carriers perhaps more than any other segment of the aviation industry, since the supplementals are associated in the public mind with charter flights, and these strandings involved charter passengers.

I should add that these incidents were not caused in any way by the member carriers of our association. In fact, some of our carriers went out of their way to attempt to assist the stranded passengers in these situations.

Nevertheless, incidents of this kind tend inevitably to damage public confidence in charter transportation, and thus have a direct adverse effect on the supplemental carriers.

For this reason, we have a very real interest in preventing any recurrence of such incidents.

Before concluding that additional legislation is needed, however, it is necessary to determine whether the problems we are concerned about can be handled under existing law.

It is our opinion that new legislation is not needed. We believe that adequate legal tools are already available to prevent the recurrence of such strandings, as well as the other types of abuses to which this legislation is directed.

For example, one of the incidents which undoubtedly led to the present proposal was the bankruptcy last year of an organization called World Academy, which sponsored study tour charters.

As a result of that bankruptcy, a large number of students were stranded in Europe last summer.

I might point out that one of our carriers was the carrier involved with the World Academy, performing 25 flights for that organization to Europe. The carrier had performed 17 outbound flights when it was advised by World Academy that it could no longer continue the program, and the carrier was asked to cancel the remaining flights.

The students who were in Europe apparently had no money for their hotel or other arrangements, since World Academy was bankrupt.

The carrier involved immediately called upon some of the other supplementals to assist it in the height of the summer season, in returning these students to the United States, since they had no lodgings.

In the meantime, that carrier, out of its own pocket, provided necessary funds for meals and lodgings until they could be returned.

A massive airlift was established, and within a period of 6 days, over 3,000 students were returned to the United States by our group of carriers.

This, I think, sir, was summarized in the Congressional Record in July of 1970, some place around that date.

Senator INOUE. Would you care to advise this committee as to the carrier involved?

Mr. DRISCOLL. Yes, sir; it was Capitol International Airways.

And those who were assisting in returning the students were World Airways, Saturn, and Overseas National.

In response to that event, however, the Civil Aeronautics Board has now promulgated a comprehensive and very strict set of regulations governing study group charters, which, among other things, imposes rigorous bonding and other financial requirements upon them.

These regulations require the charterer either to post a bond equal to three times the charter price, or, in the alternative, to post a minimum bond of \$10,000 per flight and provide an escrow arrangement under which all payments by tour participants are held by a bank until shortly before departure, when up to 80 percent of the funds can be disbursed directly to the air carrier and the companies providing the ground services for the tour.

The remaining 20 percent must stay in escrow until the tour is completed.

The regulations also require the charterer, in advance of any sales, to file with the CAB a detailed description of the tour program and copies of charter contracts, surety bonds, and escrow agreements.

In addition, the tour program itself is regulated—it must include at least 4 weeks of formal academic study, and the price must include all transportation and sleeping accommodations, plus at least two meals per day.

Senator INOUE. May I interrupt you at this point?

Mr. DRISCOLL. Yes, sir.

Senator INOUE. You mentioned Capitol Airways, World Airways, Saturn, and Overseas National.

We have had some strandeers this last summer. What supplementals were involved?

Mr. DRISCOLL. As near as we know, sir, it was the foreign independents. They were tied in with the consolidators in New York who apparently sold the transportation. We cannot identify the foreign independents that were involved.

In fact, it may have only been the consolidators who used their names; we don't know at this point.

I will say this—several of our carriers, coupled with some of the scheduled carriers, investigated and prepared a case to be filed in the New York courts against these consolidators, and handed the case to the Civil Aeronautics Board, who, in turn, has filed it.

I believe it is in the eastern district of New York. That case is still pending.

But it is some of the unscrupulous consolidators, who I want to assure you, Senator, we are as anxious to get out of the business as anyone else. These are the ones that bring about some of the illegal transportation.

Senator INOUE. To the best of your knowledge, the American supplementals were not involved?

Mr. DRISCOLL. That is correct, sir.

I might add, in this regard, that the American supplementals a year ago embarked upon a program of self-regulation which we filed with the CAB. It took a year for approval.

We have implemented it, and our carriers—I only have a report here for the first 6 months of the operation of the program—they canceled some flights, they removed passengers from others, and the total number of illegal passengers removed is someplace close to 1,000.

We have within the association a director of compliance, who has assisted the carriers in setting up these programs of self-regulation, and as I will get to in my testimony here, we are about ready to embark upon the second part of that program and that is the designation of agents.

Now, we will enter on that, I might add, with due regard to the rights of all of the agents that are in the business today, because we do not want to exclude any agent that is a bona fide agent from participating in the sale of charters or the sale of any of the services.

Senator INOUE. Is the authority vested in the CAB sufficient to regulate foreign supplementals?

Mr. DRISCOLL. Yes, sir; we feel it is. I might add in this regard that we of NACA, at the direction of our board, will be filing with the CAB very shortly, a petition requesting it to enforce all of its existing authority concerning the foreign carriers, not necessarily just the independents, but the foreign scheduled carriers also, and possibly require the prior approval of their charter flights.

There are uplift ratios here in the United States which we feel are being violated. There are others that we feel are being violated. We have no evidence at this point, but we believe one way of getting at that is to subject those carriers to the same requirements that we are subjected to in foreign countries, and that is prior approval of charter flights.

Senator INOUE. Can the CAB take away charter rights from foreign supplementals?

Mr. DRISCOLL. Yes, sir; on notice and hearing.

Senator INOUE. In so doing, does it go through the State Department?

Mr. DRISCOLL. Yes, sir. When a foreign supplemental is granted a section 402 permit, that permit is cleared through the President under the section 801 procedure. So that it would require Presidential approval to divest the international right.

Senator INOUE. So it is not as easy as denying American supplementals?

Mr. DRISCOLL. No, sir; but there are things the CAB can do. As I think the Senator realizes, we do not have any rights to enter Europe by treaty. We have to get individual flight approvals.

The foreign supplementals entering this country have 5-year permits, so they can just fly in. And this is not to say all of the foreign entrants are violating, I don't intend to imply that, but there are some violations going on and we believe the way to get at that is for the Board to require prior approval on each and every flight, which it can do by amending the permit. And this I believe it can do unilaterally, under the regulations, by adding a condition to the permit.

This does not have to go through the State Department or the President.

Senator INOUE. Why isn't the CAB doing it now?

Mr. DRISCOLL. Sir, there is one petition. I think, pending before them that was filed by Pan American last year. We will now be filing a petition. Maybe it is the fault of not having a petition to act on.

Senator INOUE. Please proceed, sir.

Mr. DRISCOLL. Returning to my prepared statement, I think it is safe to say that, under these new regulations governing study group charters, another incident like the World Academy debacle simply cannot occur. Serious as that incident was, therefore, it does not, in our judgment, provide a reason for additional legislation.

Another incident which has attracted widespread publicity, and is probably one of the events which led to the proposal of S. 2577, was the stranding this past summer of a number of students who had traveled to Europe by charter, and then found that no provision had been made for their return.

These were, however, illegal charters, organized and sold in blatant violation of the Federal Aviation Act and applicable CAB regulations by unscrupulous "fast buck" operators.

I hasten to say that no members of our association performed these flights, and, indeed, so far as I know, they were not handled by any U.S.-flag carriers.

I might add, in those strandings, sir, our carriers offered to be of assistance and to return students.

One carrier offered to return them free of charge to the extent it had capability and that was Overseas National.

At this point I wish to emphasize here that the flights were already illegal. The charter consolidators were already operating as "indirect air carriers" without CAB authorization, in violation of section 401 of the Aviation Act.

Obviously, the way to deal with such illegal activities is not to pass new laws, but rather to enforce more vigorously the existing ones.

Senator INOUE. May I interrupt at this point?

Mr. DRISCOLL. Yes, sir.

Senator INOUE. Why are the several agencies of the Government slow in enforcing the existing laws?

Mr. DRISCOLL. Sir, I think we have to get to what the charter rules and regulations are. We have gone through lengthy hearings before the Aviation Subcommittee of the Senate.

Chairman Browne has appeared, we have had lengthy discussions in connection with the affinity charter rules and regulations.

I think the consensus of the majority of witnesses, including the Chairman of the Civil Aeronautics Board, is that the affinity rules and regulations do not make sense, they are somewhat illogical, and therefore, to that extent, it makes them very hard to enforce and I think he almost came to the conclusion they are almost unenforceable.

He decided this as a prelude to the statement that the Board was now considering a new class, nonaffinity charter rules and regulations.

This statement was made in January of this year. We understand the nonaffinity charter rules and regulations, according to Chairman Browne's statement to Senator Cannon of about a week ago, will be finalized prior to the end of this year.

This will go a long way toward eliminating some of the problems that have existed and eliminate some of the motivation for the "fast buck" operator.

I think we have to really consider that the affinity charter rules and regulations are similar to prohibition. There is a desire to travel, there was a desire to drink. And both of them are difficult to keep people from doing.

And the Chairman, I believe, used that example, the same as I am using it here. But I think this is on the way to correction, with industry help, sir.

And this is one thing I am getting at in my testimony. We, as an industry, are willing to stand up to our obligations, but I think we have to have a basic regulation that is capable of satisfying the needs of the consumer and not restricting the needs of the consumer.

The affinity requirements such as having to belong to a club for 6 months, one belongs to the club, the other one doesn't. The one that doesn't belong to the club, if he travels on a charter flight, it is illegal.

This was inhibiting a desire to travel and people try to find ways of violating that. This is, I think, the real problem, it is the regulation, which, hopefully, will be corrected.

And, then, again I think the Board has intensified its enforcement activities. We have tried to assist, and I think this summer versus last summer there is no comparison as to the numbers of violations.

As I said, the CAB is taking action on this front as well. For example, the Board—armed with evidence supplied by several member carriers of our association—has moved for injunctions against a number of large illegal charter consolidators in the U.S. District Court in New York.

The CAB's Bureau of Enforcement has also filed complaints with the agency against charter consolidators, seeking the issuance of cease-and-desist orders.

It is our hope that continued, and perhaps even more vigorous, action of this kind will eliminate the most serious offenders from the travel scene.

Another broad objective of this legislation appears to be the establishment of enforceable standards of business ethics for the travel agency industry.

But this is also a matter over which the Civil Aeronautics Board already has jurisdiction. Under section 411 of the Federal Aviation Act, the Board is authorized to investigate and prevent any unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

The language of that section extends expressly to "ticket agents"—a term which is broadly defined in section 101(35) of the act. The CAB's authority under section 411 has been held by the Supreme Court to be as broad as the authority of the FTC under section 5 of the Federal Trade Commission Act. See *Pan American World Airways v. United States*, 371 U.S. 296, 303-308 (1963). Certainly, therefore, no additional legislation or administrative machinery is needed to regulate the business practices of travel agents.

I should also mention that our association is attempting to prevent abuses in the charter field through self-regulation.

A year ago, with the approval of the CAB, we adopted a self-enforcement plan designed to assure that our own carriers adhere to all applicable regulations governing charter travel.

More recently, in connection with a CAB proposal to establish a new type of nonaffinity charter service, we advised the Board that we would attempt to establish a procedure for the appointment of NACA travel agents, which would include minimum standards designed not to limit entry into the field but to assure integrity and reliability.

Just last week, our board of directors adopted a resolution directing the association to proceed with plans, subject to CAB approval, to designate agents in an attempt to eliminate the unscrupulous consolidators, prevent strandings, and to insure that all foreign carriers, both scheduled and independent, adhere to regulations permitting their operation into the United States.

We believe, in short, that adequate means are already available to deal with the problem of unscrupulous or financially unstable travel agents, and that the problem is in fact being dealt with under existing law.

Under these circumstances, we believe that S. 2577 is unnecessary, and would simply confuse the situation by injecting another regulatory statute, and another new regulatory agency, into an area which is already heavily regulated by the CAB.

The prompt and efficient enforcement of existing prohibitions by the CAB can hardly be enhanced by introducing another Government agency with overlapping jurisdiction.

I would now like to turn to the specifics of the legislation which is before you. Apart from our view that no legislation is needed in this area at all, we believe that there are some very serious and fundamental defects in the proposed bill itself.

In the first place, the coverage of the bill is much too broad. It would appear to sweep within its scope not only travel agents in the conventional sense, but also legitimate indirect air carriers—such as inclusive tour charter (ITC) operators and study group charters—which receive CAB authorization and are already subject to comprehensive regulation by the Board under the Federal Aviation Act.

This bill appears also to extend to private organizations—such as bar associations, teacher organizations, and countless others—who merely purchase charter transportation for the use and benefit of their own members.

This is because the term "travel agent" is broadly defined in the bill to include any person, "whether acting as principal, agent, broker, or otherwise," who offers, "for a fee, commission, or other valuable consideration," to obtain "travel reservations or accommodations, tickets for domestic or foreign travel by air * * *

Certainly there is no reason to enact new regulatory legislation for inclusive tour charter operators and study group charters, since these enterprises are already comprehensively regulated by the CAB.

I have already described to you the regulations which the CAB recently adopted to govern study tour operators. The regulations applicable to inclusive tour charters are quite similar, and have been in existence since 1966—14 CFR part 378.

The disclosure, bonding, and escrow requirements for ITC's are identical to those which apply to study group charters.

In addition, the regulations also prescribe the length of stay, the number of overnight stops, and the tour prices of inclusive tour charters.

The imposition of a whole new set of rules and regulations on study group charters and inclusive tour operators, under the jurisdiction of an entirely new and independent Government agency, would serve only to cause conflict and confusion, and thereby inhibit the development of these desirable forms of charter travel.

Nor is there any reason to impose this type of regulation on the literally thousands of legitimate private organizations which arrange charter travel solely for their own members.

Not only is there no demonstrated need for this type of regulation of bona fide private organizations, but there is a real danger that many organizations would simply discontinue their charter activities rather than become embroiled in regulatory red tape.

Certainly a bar association, fraternal lodge, or other legitimate organization should not be deemed to be a "travel agent" simply because it purchases charter transportation for its members, nor should it be required to obtain a license from a Federal agency to do so.

This type of regulation, in our view, would serve no useful purpose, and would tend to discourage a popular form of low-cost travel which has proved beneficial to millions of Americans.

Another serious defect in the legislation is that besides serving no useful purpose, it would tend to limit competition among travel agents by severely limiting entry into the field. At the present time, this is an open and highly competitive industry.

Under the proposed bill, however, a prospective travel agent would not only be required to pass a written examination and establish to the satisfaction of a Travel Agents Registration Board that he will comply with such rules and regulations as the Board may promulgate, but he would also have to prove that his entry into the travel agent business would provide a useful public service.

It is noteworthy that the legislation provides no real guidelines as to the type of rules and regulations which this newly created agency is to promulgate, nor any standard at all to govern the determination of what constitutes a useful public service.

Under these circumstances, we see a great danger that this statute could easily become a device for restricting competition by barring new entrants from the travel agency business.

In this connection, it is noteworthy that the CAB has, in the past, specifically found that a proposal under which entry into the travel agency business would be restricted on the basis of need; was not in the public interest.

This question was presented to the Board in the form of a resolution adopted by the Air Traffic Conference of America (ATC) under

which ATC's Agency Committee, which grants travel agent appointments on behalf of the scheduled airlines, would consider the number of authorized agency locations in the area involved; and the need of members for agency representation in the area involved.

In rejecting this proposal, the Board said, "We are not disposed to interfere with the competitive norms instilled in our economy and in our act. Our functions do not include erection of protective walls to insulate the profits of established agents against the consequences of genuine competition." ATC Agency Resolution Investigation, 29 CAB 258,263 (1959).

We also find it disturbing that the bill discriminates in favor of travel agents who have been approved for appointment as an agent for 2 or more years by two or more conferences of air or steamship carriers. (Section 28.)

A conference appointment in air transportation simply means that the agent is approved by a private organization of scheduled airlines.

Under this bill these agents would automatically be granted a registration certificate, absent a specific finding that a particular agent lacked good character or was not financially qualified.

Other applicants, however, would be required to prove affirmatively that they meet all the prescribed qualifications and that, in addition, they would provide a useful public service.

While it might be reasonable to grant "grandfather" rights to all travel agents who were in business before enactment of the legislation, we see no reason to grant such rights only to those with conference appointments. There are highly reputable and experienced travel agents who do not have such appointments because they specialize in types of transportation—charters in particular—for which no conference appointment is required. It would be highly unfair to discriminate against these agents, and indeed place their continued existence in jeopardy.

In short, Mr. Chairman, while we are in complete accord with what we understand to be the underlying objectives of S. 2577, we cannot support the bill itself.

In our view, the objectives of this proposal can—with adequate enforcement efforts—be accomplished under existing law.

Furthermore, even if we agreed that additional legislation was necessary, we would not favor a bill which would create still another regulatory agency in the transportation field. The proliferation of agencies with overlapping jurisdiction simply leads to conflict, confusion, and inefficiency.

We also think, for the reasons I have indicated, that S. 2577 is far too sweeping in its coverage, and that the licensing approach which this bill would adopt is basically unsound, because it would lessen competition by restricting entry by qualified persons into the travel agency field.

Senator INOUE. Thank you very much, Mr. Driscoll.

First of all, just as a matter of clarification, I believe this bill specifically states that if the organization were acting as a principal agent, broker, or otherwise, and doesn't receive a fee or other consideration, he is not covered.

Mr. DRISCOLL. Yes, sir, but maybe the organizer of that gets free transportation for himself as the organizer or the tour conductor with the group. He is a member of the bar association, but he is acting to

bring the charter into being, therefore, he is getting a valuable consideration.

So we fear that this could extend to something that I don't believe the bill was designed to cover.

Senator INOUE. If I recall, that was one of the ways the World Academy was able to get so successful, they were providing free trips for campus organizers.

Mr. DRISCOLL. Yes, sir; that may be, in that case. I think that is entirely different from what goes on in the case of an organizer of a group.

Senator INOUE. How do you distinguish a good and a bad organization, a bona fide organization?

Would my veterans organization be OK, but not yours?

Mr. DRISCOLL. No, sir, I believe if you examine the ratio of those receiving free transportation, as I understand the World Academy situation, to the number of paying passengers, it could be somewhat disproportionate.

There might be one for an entire charter, or there might be free transportation for about 10 or 15 students there. I am not sure I recall the numbers correctly.

Senator INOUE. But World Academy was not a nonprofit organization.

Mr. DRISCOLL. No, sir; it was not.

Senator INOUE. If you are a nonprofit organization, you are exempt from this bill?

Mr. DRISCOLL. I see.

Senator INOUE. I will state again, that I agree with you, that there are laws in our books that, if properly executed and carried out, would be sufficient to regulate the industry.

Are you satisfied that these laws are being properly executed?

Mr. DRISCOLL. No, sir; this is why we are taking the positive steps we are taking, and we are trying to assist. It is not easy, I guess, to accomplish something overnight. I think that progress is being made. If one compares what happened, let us say, last year, versus this year, the situation is better.

There are still violations going on. I think once the nonaffinity charter rules and regulations are promulgated, you will see that the opportunities for the "fast buck" operator are minimized. The same as when they legalized the sale of liquor, the opportunity for the bootlegger was minimized. So that that, in itself, will eliminate some of the motivations.

Our getting into the designation of agents, our working with the CAB as an industry, and the scheduled carriers are working with the CAB, too, I think those constructive efforts by the industry, working in connection with the existing agencies and in accordance with the existing laws will bring about and rectify the situation.

If it doesn't, then, sir, we possibly would come back and suggest maybe there is a need for legislation, but we are hopeful it will.

Senator INOUE. The whole trouble is if we waited and if the agencies did not effectively execute the laws, the next bill might be even more all-encompassing, and even more abusive of rights.

We are hoping that somehow, whether by legislation or otherwise, we get a message across to the "fast buck" operators, the fly-by-night

operators, whoever they may be, that at least the Congress of the United States will not sit still.

Mr. DRISCOLL. I might add one other thing for you, Senator, if I may.

We have recently in conjunction with the large charter operators throughout Europe and Canada and the Far East, organized an International Association of Charter Carriers known as IACA. This was organized in Strasbourg in June of this year. We are in the formative stages.

Some of the same goals and objectives, however, that NACA stands for and that we have been trying to develop are now the goals and objectives of that organization.

We have banded together with some of the Europeans. I believe you will find that there will be positive steps taken within that organization affecting the foreign independents the same as we are taking here in the United States.

Senator INOUE. Once again, I thank you very much, Mr. Driscoll, for your contribution this afternoon, and you may be assured that your views will be given our very serious consideration, sir.

Mr. DRISCOLL. Thank you sir.

I have that article that I will leave for the record. It is July 13, 1970.

Senator INOUE. Without objection, it will be made a part of the record.

(The article follows:)

[From the Congressional Record, July 13, 1970]

AMERICAN STUDENTS STRANDED IN EUROPE DUE TO BANKRUPTCY OF TOUR ORGANIZATION

(Mr. Slack asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SLACK. Mr. Speaker, many of us were distressed to read last week that more than 3,000 young American students who had gone to Europe to study this summer had become stranded there due to the bankruptcy of the organization that sponsored the tours. Many of my distinguished colleagues have had the same experience that I have had. Phone calls, telegrams, and letters from anguished parents properly concerned about the safety and well-being of their children. The crisis is now over, thanks to the valiant efforts of many public officials here in the United States and in foreign countries, and to the public-spirited sense of responsibility demonstrated by the presidents and staffs of the American charter airlines that organized an emergency airlift. Because of the general interest in this problem, I am pleased to share with my colleagues the information that I have been able to gather thus far.

As we all know, an increasing number of serious-minded students have been using their vacation time for study abroad—in Europe, Latin America, Africa, and Asia. Thanks to the economics of low-cost charter flights, it has become possible for tens of thousands of young Americans to broaden their cultural horizons, to take intensive foreign language studies, and to learn more about the interrelationships of all peoples through these study tours. Many of our universities now sponsor such programs, and give college credit to the participants. Groups like the Institute for International Education, the Experiment in International Living, and Crossroads Africa have been in the forefront of student exchange programs since the end of World War II. The United Nations Educational, Cultural, and Scientific Organization's annual "Study Abroad" directory is well-thumbed by students in many countries who want to satisfy their personal quest for knowledge by having the experience of study and travel in another land.

A proprietary educational organization known as World Academy, headquartered in Cincinnati, Ohio, went into bankruptcy this past week. It has reportedly had a commendable program in the past. None of us can now say what led to this

crisis in its financial affairs; we must wait until all evidence is presented in the courts. World Academy sponsored a number of 4-week study programs at educational institutions in Geneva, Paris, Rome, Athens, Cologne, Berlin, Madrid, Marseilles, and Vienna. Each was followed by a 2-week tour program. Because many students were of high school age, there was one chaperone assigned to every 10 students. Prominent American as well as foreign educators participated. Arrangements for medical care were made at every World Academy study center in Europe. The tuition price included round trip air fare by a charter airline, housing, food, tuition, and the windup sight seeing tour.

For this year's program, World Academy had contracted with Capitol International Airways, headquartered in Nashville, Tenn., for 23 round trip flights from various points in the United States to the nine European cities I mentioned. The flights were to have departed this country in June and early July; the students were to be returned home in late July and August. By July 3, Capitol International had operated 16 European-bound flights for 3,231 students. On that day, just 4 hours before the 17th takeoff, Capitol International, a U.S. certificated supplemental airline, received a telephone call from World Academy officials. These officials were notifying the airline that the Academy could not meet its contractual obligation to complete the program. They requested that the remaining seven flights be canceled. On the next day, July 4, World Academy officials went to Nashville and informed the airline that their organization could not meet its financial commitment to house and feed the 3,000-plus students in Europe. They asked Capitol International to try to bring them home.

As all of us know, this is the height of the North Atlantic travel season. U.S. scheduled and charter airlines have been booked for many months. Capitol International had no contractual obligation to return the students until the end of the summer. Nevertheless, it demonstrated the highest kind of responsible business leadership that we expect from American industry. By rearranging its complex schedules, and by appealing to other U.S. charter airlines, Capitol developed within 36 hours, an emergency airlift out of Europe. Joining with Capitol International by making planes available were World Airways and Saturn Airways of Oakland and Overseas National Airlines of New York City.

The Civil Aeronautics Board, our embassies abroad, and the foreign air ministries responded immediately to the plight of these students by waiving all the restrictive rules governing charters. Uplift rights were granted from foreign airports without the usual bureaucratic redtape. Groups were even comingled; under existing rules every passenger on an affinity charter must return with his own group and not "comingle" with other travelers.

Within 48 hours—that is, by the 6th of July—two flights of standard students had already been airlifted home from Geneva and Paris. In the next 3 days, 1,628 had been returned home. I am further assured that every student who wishes to return at this time will be back in the United States by today. Monday, July 13.

It has been most gratifying to the concerned parents that on its own initiative Capitol International told its European agents to make sure that no student went without food or lodging. Though it has no business relationship with the bankrupt World Academy other than to provide flights under contract, this airline was willing to dig into its own pocket to see that American boys and girls were helped in their time of need. It has even provided rooms, meals, and bus services to students arriving in the United States, until such time as domestic flights could be organized to return them to their original departure points across the country.

Capitol, World, Overseas National, and Saturn stand to lose revenue as a result of moving previously committed equipment into this emergency airlift. I know that my distinguished colleagues will join me in a salute to these truly American companies. Let me add that I was shocked to learn that major scheduled airlines would not participate in the airlift unless each standard student dug down and paid the full, individually ticketed fare.

Mr. President, it is now incumbent on Congress to review this matter in more detail. The facts I have stated draw me to the conclusion that there is need for more protection of young people who travel abroad, without damaging the concept of foreign study. At the same time, the incident revealed the true nature of some of the archaic regulations that have been imposed on low-cost charter travel. Some might argue that the rules are in the public interest, since they can be waived when the public needs to be promptly served. It seems to me that we are faced with a situation in which the exception not only proves the rule—the

exception is the only reason the rule exists. This kind of twisted logic was dealt an eloquent blow by President Nixon's recent statement on international air transportation policy. I commend that statement to every Member of this body, particularly since it was published only 11 days before this terrible situation involving 3,000 people took place.

Senator INOUE. Our next witness was to have been the president of the National Association of Motor Bus Owners, Mr. Charles A. Webb, but due to sudden illness he has asked to be excused and he has left his testimony here.

So without objection, his statement will be made a part of the record at this point.

(The statement follows:)

STATEMENT OF CHARLES A. WEBB, PRESIDENT, NATIONAL ASSOCIATION OF
MOTOR BUS OWNERS

REGULATION OF THE TRAVEL AGENCY INDUSTRY

Mr. Chairman and members of the Subcommittee:

My name is Charles A. Webb. I am President of the National Association of Motor Bus Owners, often referred to as NAMBO.

NAMBO is the national trade association for the intercity motor bus industry. Our headquarters office is at 1025 Connecticut Avenue, Washington, D.C. 20036. We have about 450 members who provide over 90 percent of the intercity motor bus transportation in the United States.

S. 2577 would amend the International Travel Act of 1961 (22 U.S.C. 2121-2126) by establishing a comprehensive plan for Federal registration and regulation of the travel agency industry. All persons arranging for travel reservations or accommodations, or tickets for domestic or foreign travel by air, rail, ship, or bus would be subject to the proposed scheme of regulation.

Persons who presently arrange for interstate transportation by bus and who are not agents or employees of authorized motor carriers of passengers are regulated as brokers pursuant to the provisions of Section 211 of the Interstate Commerce Act. Section 211 prohibits any person from arranging for interstate motor bus transportation unless he holds a license issued by the Interstate Commerce Commission. Licenses are issued in application proceedings in which the Commission finds that the applicant is fit, willing, and able properly to perform the proposed service and that such service would be consistent with the public interest and the national transportation policy.

Regulations of the Interstate Commerce Commission require each licensed broker to furnish a bond of not less than \$5,000.00 to insure his financial responsibility. In addition, brokers are required to designate agents for service of process in each State in which they are authorized to engage in broker operations.

We hope the Subcommittee will consider three major revisions to the pending bill. First, we urge that brokers who arrange for interstate bus transportation be excluded from the provisions of S. 2577. Brokers licensed by the Commission are able, in effect, to expand the operating authority of passenger carriers. A motor carrier authorized to engage in charter operations is not permitted to form the charter group by the sale of individual tickets but is able to do so in cooperation with a broker. Thus, each newly-licensed broker is able, together with an existing charter bus operator, to provide new competition for carriers authorized to sell individual fare tickets. It is essential, in our opinion, for the Commission to control entry into the brokerage field in order to prevent ruinous competition among authorized motor carriers of passengers.

Secondly, if brokers of motor carrier passenger transportation are not excluded from the pending bill, the bill should be amended to prevent a motor carrier of passengers from performing service which, in the absence of broker participation, would be unlawful.

As a third major revision, we urge that consideration be given to elimination of the registration provisions of S. 2577. In our opinion, the basic objective of protecting patrons of travel agents could be accomplished simply by the establishment of Federal bonding and other financial responsibility requirements. Adequate bonding of travel agents should provide prompt and effective relief to students or other groups who might be stranded abroad.

In addition to these major changes in the pending bill, we urge that some of its provisions be clarified. Suggested changes in particular sections will be discussed in the order in which they appear in the bill.

Section 23(4), page 3, lines 1-2

Persons covered by the proposed legislation are defined in Section 23(4) as "an individual, partnership, corporation, association, or other form of business enterprise." Many non-business enterprises such as lodges, churches, and non-profit associations promote and sell travel. Therefore, the word "business" should be deleted from Section 23(4) as unduly restrictive.

Section 23(5), page 3, lines 3-11

"Engage in the business of conducting a travel agency" seems too broadly defined in that it may include agents and employees of carriers who sell tickets. This section should be amended to make it clear that bona fide employees or agents of authorized common carriers are not subject to the provisions of the bill.

Section 23(6), page 3, lines 12-13

By defining "travel agent" as "a person engaged in the business of conducting a travel agency" some regulated common carriers would be subject to the proposed legislation. Section 23(6) should be amended to exclude authorized carriers from the scope of the definition.

Section 27(c), page 6, lines 9-15

Applicants for licenses, other than those covered by the grandfather clause, would be required to successfully complete a written examination as to competency. This section is deficient in failing to specify who would take the examination for an incorporated travel agency.

Section 28, pages 6-7

This section of the bill would extend grandfather rights to agents for two or more conferences of air or steamship carriers but not to agents of railroads or bus companies. We do not understand the reason for such discrimination.

Section 30(a), page 8, lines 5-7

Subsections (a) and (d) of Section 30 provide for the issuance of two-year certificates of registration and their renewal. In our opinion, certificates of registration should not expire at the end of two years but should continue in force until revoked for good cause after notice and hearing.

I deeply appreciate this opportunity to present the views of the intercity bus industry on S. 2577. If there are any questions, I will be most happy to try to answer them.

Thank you.

Senator INOUYE. Our final witness this afternoon is the executive director of the Aviation Consumer Action Project, Mr. K. G. J. Pillai.

Welcome to the committee, Mr. Pillai. I am sorry to have kept you waiting this long.

STATEMENT OF K. G. J. PILLAI, EXECUTIVE DIRECTOR, AVIATION CONSUMER ACTION PROJECT; ACCOMPANIED BY BRANT GOLDWYN

Mr. PILLAI. As for myself, I am director of the Aviation Consumer Action Project, a nonprofit corporation founded by Ralph Nader. It is wholly sustained by public contributions; and the person sitting with me is Mr. Brant Goldwyn.

Mr. Chairman, the Aviation Consumer Action Project (ACAP) is pleased to have the opportunity today to present its views on S. 2577, a bill to provide for Federal regulation of the travel agency industry.

This legislation truly reflects the increasing dissatisfaction of the public over the present state of affairs of the travel agency business. In aviation, thousands of passengers are victimized every year by a

small number of irresponsible travel agents and tour operators. These fraudulent dealers often receive substantial amounts from passengers and simply abscond or become bankrupt to open another agency office in a different city. Such practices tend to undermine the public's confidence in the entire travel agency industry which undoubtedly performs a useful service to consumers and the Nation's economy.

Usually, when a passenger is abused or cheated by an agent, the airline by whom the agent is accredited immediately disclaims responsibility for the malpractice.

Senator INOUE. By airline, are you speaking of scheduled airlines also?

Mr. PILLAI. Both scheduled and nonscheduled. We don't have any specific instance of nonscheduled carriers so far. But we get a lot of complaints regarding tour operators.

Senator INOUE. About scheduled airlines disclaiming responsibility?

Mr. PILLAI. Yes; I have cited a case in the testimony.

Senator INOUE. I ask because we have been assured that if I were a travel agent and I sold you a ticket, and I am an ATC-appointed agent, and if you presented a ticket to a member airline, a scheduled airline, the airline will honor the ticket and would be legally bound to carry you even if not paid by the agent.

Mr. PILLAI. No, that is not the case, at least in this case, and I remember I have seen some other cases. The airlines responsibility ends when the sales agency agreement is terminated. If the ATC knows that travel agent is fraudulent, they simply terminate it and the tickets the passengers are given after the termination are not honored.

Usually this is done through the expedient of attributing a kind of instant contractual relationship between the passenger and the agent. For instance, in a case decided by the New York Supreme Court in 1970—*Antar v. Trans World Airlines*—a passenger sought to recover \$8,119 from a New York travel agent who had issued six TWA tickets that the airline subsequently refused to honor. TWA asserted that the agent was authorized to sell tickets only in Hollywood, Calif., but not in New York City. It was also pleaded by TWA that the agent in that instance was acting as an agent of the passenger. Ultimately, the court ruled against the defrauded passenger and made him pay \$30 in costs to the airline.

Occasionally, consumers are even sold stolen or counterfeit tickets and other transportation documents. According to statistics of the International Air Transport Association (IATA), tickets and other documents worth \$20 million are stolen annually from airlines and agents. Consumers have no practical means to ascertain the genuineness of the tickets they receive or the veracity of the statements and promises made by the person selling those tickets. In cases of fraudulent and unauthorized sales, consumers have no place to lodge a complaint or to have their grievances redressed without suffering the tedium of litigation.

The Civil Aeronautics Board has the specific duty and power to protect the passengers from capricious and negligent acts of carriers and their agents. However, the CAB has long delegated its regulatory authority over travel agents to two private trade associations of airlines, the Air Traffic Conference (ATC) and IATA. The regulatory

system established by these trade associations is dedicated to the exclusive interests of airline members, and totally unresponsive to the interests of the public and travel agents. More seriously, the carrier' private regulation of travel agents breeds corruption and stifles competition in the travel agency business.

As a practical matter, no travel agent can enter the business of selling air tickets and services without licenses from IATA and ATC. The regulations of these associations stipulate that no air carrier shall appoint or retain any person as its agent or any place of business as an "authorized agency location" unless such person or such location appears on the "agency list" then in effect. Any person who desires to be included in the agency list must make written application to the associations which might approve or disapprove the application. The criteria for approval are so imprecise and vague as to permit arbitrary action by the carriers. There have been numerous instances in which the association even failed to notify the applicants of the reasons for disapproving their applications.

There are a number of cases reported recently in the press which are pending in court on this point.

Senator INOUE. Can you submit this for the record?

Mr. PILLAI. Yes, sir, I will.¹

Senator INOUE. We would be very happy to receive that.

Mr. PILLAI. In the event an agent is removed from the agency list, the air carrier associations will terminate the "sales agency agreement" with such agent on behalf of all the air carriers, irrespective of the agent's good standing with one or more carriers. ATC and IATA will terminate the sales agency agreement with an agent if he fails to pay annual dues to the trade associations, as determined by those associations. Upon termination of the agreement, all the member carriers of ATC and IATA are required to withdraw and repossess all tickets, exchange orders, and identification plates from the agent, and thus to ruin his entire business.

As a result of these punitive regulations, competition in the travel agency market by new business entities is rendered difficult, if not impossible.

Senator INOUE. If I may interrupt at this point, if this bill becomes law, it has been suggested that the regulations would be punitive and very likely the requirements would be much more stringent than that required by IATA or ATC.

Mr. PILLAI. I think this is the most modest form of public protection that can be enacted in this business. I was amused when I heard the objections against particular portions of this bill. The restrictions in the IATA regulation are more than what is contained in this bill. IATA can refuse a license to a travel agent if IATA has an idea he hasn't the ability or not willing or if his office is not proper. They are very strict standards.

We are strongly in favor of this bill, this is the most modest bill the consumers can get.

I can answer any questions after I finish this.

Senator INOUE. Please proceed.

Mr. PILLAI. Why is a travel agent required to be included in the agency list of a trade association? The so-called sales agency agree-

¹ See p. 218.

ment is signed by individual air carriers and agents, and the tickets and sales proceeds are held in trust by agents on behalf of individual carriers. We believe that the contractual relationship of an agent with an individual air carrier should not be abrogated by a trade association. It will not be good for any business to discipline the retailers by a monopolistic combine of their suppliers.

Mr. Chairman, we think this is the most crucial antitrust problem involved in this private regulation. This kind of control of retailers by suppliers is prohibited in all industries by antitrust laws.

I can supply for the record some of the cases of this particular combination between the suppliers and retailers.

Senator INOUE. Are you suggesting the Justice Department is not doing its job?

Mr. PILLAI. If they were doing their job, there would have been no occasion for this committee to conduct these hearings.

Our point is we can't just wait for some action from these agencies which is not going to be forthcoming. I have no doubt about that.

The airlines' monopolistic control over the travel agency business has obvious antitrust implications. IATA cartel regulations simply prohibit travel agents selling air transportation in Europe, Asia, and Africa from becoming agents of non-IATA carriers.

They are required to get prior permission to sell tickets for non-IATA carriers.

Similarly, an airline is required to join the Air Transport Association (ATA) in order to become eligible for membership in ATC. If an air carrier ceases to be a member of ATA, the carrier's membership in ATC will automatically terminate. Therefore it is clear that the air carriers utilize their control over travel agents as an important instrument of monopoly.

A substantial amount of money collected as air fares is remitted to travel agents. Yet the fare-paying consumers have no voice in setting travel agents' commissions. The airlines set uniform rates of commission, and the CAB invariably ratifies them without proper analysis or scrutiny. Consumers' stake in the travel agency business extends beyond commissions. Airlines allow thousands of travel agents and their employees and spouses to travel free of cost or on reduced fares. Consumers who subsidize such travel are largely unaware of its economic effects on air fares, and certainly powerless to do anything about it.

Mr. Chairman, the travel agency business of this country is not an insignificant industry to be left under the dominion of airlines or shipping companies. Since the agents are sellers of essential public utility services, consumers have an intimate interest in the orderly development of the agency business. The airlines' single-handed control over the travel agents is not conducive to such orderly development. We believe that the legislation proposed by this committee would bring order and stability to the travel agency business and provide for the machinery to fill the regulatory vacuum that long existed in this industry. Therefore, we strongly favor the enactment of S. 2577.

However, we suggest that the definition of "travel agent" as contained in subsections (5) and (6) of section 23 of the bill be modified to exclude "tour operators" from the jurisdiction of the Bureau of Travel Agents Registration. Or, alternatively, the Bureau should be

granted expanded and exclusive jurisdiction over tour operators by adopting appropriate amendments to the Federal Aviation Act.

We suggest this change for obvious reasons. Tour operators are indirect air carriers within the meaning of the Federal Aviation Act. Their business is akin to, and in many respects indistinguishable from, the business of direct air carriers (see appendix). The CAB has recognized the distinction between tour operators and travel agents, and classified tour operators as indirect air carriers subject to the various provisions of the act. Therefore, the CAB could require tour operators to file for approval tariffs and merger agreements, to disclose information concerning ownership and interlocking relationships, and to obtain operating authorization from the CAB. So far the CAB has refrained from imposing such requirements on tour operators. However, the increasing involvement of tour operators in the air transportation industry and the growing number of consumer complaints with respect to their deteriorating services, might eventually trigger comprehensive CAB control over tour operators. Should such an event occur, the jurisdiction of the regulatory body envisaged in S. 2577 is likely to clash with the concurrent and overlapping jurisdiction of the CAB. The suggested change will avoid such potential jurisdictional conflicts.

(The appendix follows:)

APPENDIX

CAB'S DESCRIPTION OF TOUR OPERATOR

"In its dealings with the air carrier, the tour operator would lease a section of the aircraft in its own name and itself would pay the rental charge. The tour operator would resell the compartment to members of the general public on an individual seat basis as an element of a tour package. This package would be offered in its own name and would include an undertaking to provide air transportation along with the other provisions of a tour. Subject to a minimum package price, the tour operator presumably would charge whatever price it believes would be saleable and profitable. The profit margin which the tour operator might include in its package price would inure entirely to its own benefit and not to that of carrier. It is thus clear that the tour operator's undertaking to transport participants is as principal for its own account and not as agent for carrier."

Senator INOUE. Mr. Pillai, I thank you very much for your contribution this afternoon.

As to your last point that the tour operators be excluded from the jurisdiction of this bill, I find this very interesting considering the testimony we have received to date which indicated most of the problems we have been discussing such as strandeers were caused by tour operators.

Mr. PILLAI. As far as the consumers can see, the problems are two-fold. One is the effect of this monopolistic control of the travel business by some other industry, and the second is the consumers grievances.

The consumers have no place to lodge their complaints whenever a travel agent cheats them.

In the second instance, we did not mention this stranding of passengers last summer and the summer before last because we knew that the committee would be well aware of this.

We suggest the new jurisdiction of the Bureau should be limited to travel agents in the first instance because we thought that would facilitate easy passage of this bill. But we don't think that would solve the entire problem. Once this bill is passed and the Bureau is established, the Bureau can ask for more powers to deal with the problem of tour operators if the CAB has not acted. But, as a minimum, we think this bill should be passed, as a first measure to liberate the travel agents from the control of other business, and to establish a Federal agency to receive consumer complaints concerning travel agents' abuses.

Senator INOUYE. Mr. Pillai, once again, thank you very much for your help and your statement and the other inclusions which you will furnish us will be made a part of the record.

(The following information was subsequently received for the record:)

(The following information was referred to on p. 214:)

17,408

Aviation Cases

Number 475

Caceres v. International Air Transport Association

2-2-70

JOHN CACERES, d/b/a CACERES AGENCY, ET AL. v. INTERNATIONAL AIR TRANSPORT ASSOCIATION, ET AL.

United States Court of Appeals, Second Circuit, January 13, 1970.

(For prior proceedings in the United States District Court, Southern District of New York, see 10 *Avi.* 18,228.)

INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA)—MEMBERSHIP DISAPPROVAL—CLASS ACTION DENIAL—APPEALABILITY.—A lower court ruling that a class antitrust action against the IATA, on behalf of seven travel agents and all similarly situated applicants seeking the IATA's approval as travel agents, could not be maintained as a class action was not a final appealable decision under 28 U. S. C. 1291. The claims involved were not so insubstantial that individual class members would find it unfeasible or uneconomic to maintain separate lawsuits.

Back reference: ¶ 16,349.50.

Martin R. Gold, with whom LoFrisco & Gallagher, Anthony F. LoFrisco, and William D. Gallagher were on the brief, New York, New York, for Plaintiffs-Appellants.

Harold L. Warner, Jr., with whom Chadbourne, Parke, Whiteside & Wolff, Carl S. Rowe, Zachary Shimer, and Eunice E. Whitney were on the brief, New York, New York, for Defendants-Appellees.

[Statement of case]

FEINBERG, Circuit Judge: Plaintiffs, seven travel agents, brought an antitrust action on their own behalf and as representatives of a class of travel agents against major international air carriers and their association, International Air Transport Association (IATA). Plaintiffs appeal from an order entered by the United States District Court for the Southern District of New York, Walter R. Mansfield, J., determining that their action is not maintainable as a class action. [10 *Avi* 18,228] 46 F. R. D. 89 (S. D. N. Y. 1969.) We have concluded that the order appealed from is not a final decision under 28 U. S. C. § 1291 and accordingly dismiss the appeal.

Since we do not reach the merits of plaintiffs' antitrust claims, we will describe the underlying action only briefly. Its gravamen is that plaintiffs and other members of the alleged class have all been prevented from acting as ticket sales agents for defendant airlines by defendants' agreement that none of them will pay commissions to

a travel agent not on IATA's approved list. While such an alleged group boycott has obvious antitrust implications, plaintiffs concede that 49 U. S. C. § 1384 renders defendants "immune" if their action is taken in accordance with procedures approved by the Civil Aeronautics Board (CAB).¹ *Cf. McManus v. Lake Central Airlines, Inc.* [8 *Avi.* 18,042], 327 F. 2d 212 (2d Cir.), cert. denied, 377 U. S. 943 (1964). The fundamental issue in plaintiffs' action, however, is whether such CAB direction has been followed. Plaintiffs claim that it has not, because defendants did not properly notify plaintiffs of the reasons why they were not approved as IATA agents.² Defendants argued to Judge Mansfield that the notices varied from one plaintiff to another; since the question of due notice had to be considered separately as to each plaintiff—and as to each member of the alleged class—class action treatment was inappropriate. Based upon this and other reasons defendants moved for a determination that the suit was not maintainable as a class action. Judge Mansfield agreed with defendants'

¹ In pertinent part, 49 U. S. C. § 1384 provides that:

Any person affected by any order made under sections 1378, 1379, or 1382 of this title shall be, and is hereby, relieved from the operations of the "antitrust laws," as designated in section 12 of Title 15 . . . insofar as may be

necessary to enable such person to do anything authorized, approved, or required by such order.

² The CAB order required that the notice of disapproval should state the reason therefor. 29 CAB 258, 265 (1959); 33 CAB 157 (1961).

principal argument that the adequacy of IATA's notice of disapproval would vary in the case of each complaining travel agent. Moreover, the judge felt that there were no strong reasons for class action treatment and that, on the contrary, use of that device might create "unfortunate . . . confusion . . . [and] inefficiencies" at trial. 46 F. R. D. at 95. Therefore, he was unable to find, as required by Fed. R. Civ. P. 23(b)(3), "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Accordingly, he held that the action could not be maintained as a class action and the allegations of the complaint purporting to create a class action were to be deemed stricken. This appeal followed.

[*Appealability of order*]

Although both sides argue the merits of Judge Mansfield's order, the first question before us is not whether that order was correct, but whether it is appealable. Plaintiffs' notice of appeal was filed in February of this year and the record was docketed in March, but defendants did not raise the issue of nonappealability until filing their brief on the merits in November. In reply, appellants complain that defendants did not choose to move to dismiss earlier before substantial appellate costs had been incurred.² While appellants' irritation is understandable, we must nonetheless deal with a question so squarely raised; indeed, we would have to do so even if no one called it to our attention and we noticed it ourselves. See *Alart Associates v. Apteker*, 402 F. 2d 779 (2d Cir. 1968).

Three recent cases in this court, all decided after the 1966 amendments to Rule 23, deal with the issue of appealability of an order dismissing the class action aspects of a complaint but not in form affecting the individual action. In *Eisen v. Carlisle & Jacquelin*, 370 F. 2d 119 (1966), cert. denied, 386 U. S. 1035 (1967), we denied a motion to dismiss an appeal from such an order. In doing so, we relied on *Cohen v. Beneficial Industrial Loan Corp.*, 337 U. S. 541 (1949), and *Roberts v. United States District Court*, 339 U. S. 844 (1950). Because the claim of Morton Eisen amounted to only \$70, we felt that "the effect of the district court's

order [dismissing the class action], if not reviewed, is the death knell of the action."⁴ *Id.*, 370 F. 2d at 121. We distinguished an earlier decision, *Lipsett v. United States*, 359 F. 2d 956 (2d Cir. 1966), because, among other reasons, the action there would continue even if the class allegations were eliminated.

The problem of appealability of such an order was next considered—albeit only in passing—in *Green v. Wolf Corp.*, 406 F. 2d 291 (2d Cir. 1968), cert. denied, 395 U. S. 977 (1969). Citing *Eisen*, we noted that the order striking the class action aspects of the complaint is appealable at this time, since if a class action is not permitted the litigation will very likely terminate without reaching the merits. . . . Green obviously does not intend to press what will probably be an enormously complex and expensive action to recover less than \$1,000.

Id., 406 F. 2d at 295 n. 6.

However, in *City of New York v. International Pipe & Ceramics Corp.*, 410 F. 2d 295 (2d Cir. 1969), the trend toward appealability halted. That case also involved an order determining that a suit should not be treated as a class action. We held that order nonappealable, distinguishing *Eisen* on the ground that plaintiff (New York City) and various intervenors had "adequate resources to continue the action and with substantial amounts at stake will undoubtedly carry on." *Id.*, 410 F. 2d at 299. For the broad proposition that—absent the "death knell" rationale relied on in *Eisen*—orders striking class suit allegations are not appealable, we relied on two pre-*Eisen* cases: *Lipsett v. United States*, *supra*, and *All American Airways v. Eldred* [4 Avi. 17,211], 209 F. 2d 247 (2d Cir. 1954).

Judge Hays dissented in *International Pipe* on two grounds. 410 F. 2d at 300-01. At least some absent members of the class had claims so small that they would never sue alone; as to them, the order terminating the class action was a "death knell." In addition, there might never be another opportunity to review the order denying class action status; even though a strong plaintiff like New York could continue its suit individually, if it won it would "have no reason to take an appeal from the adverse class action determination." Although these arguments are not without force, their logical end is that an order refusing class action

² Appellants point out that counsel for defendants were also counsel in *City of New York v. International Pipe & Ceramics Corp.*, 410 F. 2d 295 (2d Cir. 1969), when such a motion was made with success.

⁴ When the appeal was heard on the merits, we reversed the district court order and remanded for an evidentiary hearing on the advisability of a class action. *Eisen v. Carlisle & Jacquelin*, 391 F. 2d 555 (2d Cir. 1968).

treatment under Rule 23(b)(3) should almost always be appealable. Such an alleged class will rarely lack at least a few members with claims so small that they cannot sue alone; moreover, the possibility that those who do litigate will win or make a satisfactory settlement exists in every case. Such a rule of broad appealability would run contrary to the various policies behind congressional adherence to the final judgment rule in 28 U. S. C. § 1291, see *American Express Warehousing Ltd. v. Transamerica Insurance Co.*, 380 F. 2d 277, 280 (2d Cir. 1966), to which the *Cohen* doctrine represents a very limited exception. As the cases cited by the majority in *International Pipe* indicate, the weight of authority prior to the 1966 amendments of Rule 23 was that an order striking class suit allegations was not appealable under 28 U. S. C. § 1291.⁶ While the changes in Rule 23 were far-reaching and beneficial, we do not think that they were intended to change that doctrine.⁷ Thus, contemporaneous and highly informed commentary suggested greater use of certifying interlocutory appeals under 28 U. S. C. § 1292(b) "[i]n the early period of interpretation of amended rule 23 . . . to test whether [district court] determinations of the suitability of actions for class treatment have been correctly made." Kaplan, *Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure*, 81 Harv. L. Rev. 356, 390 n. 131 (1967); cf. ABA Special Comm. Federal Rules of Procedure, Report, 38 F. R. D. 95, 104-05 (1966). Such a suggestion would be unnecessary if an appeal were easily obtainable under 28 U. S. C. § 1291.

[Conclusion]

In any event, these arguments for greater appealability were squarely raised and therefore squarely rejected in *International Pipe*, by which we are bound. Accordingly, the

gloss upon section 1291 for alleged classes under Rule 23(b)(3) should not be expanded beyond the type of situation present in *Eisen* and *Green*. In those two cases, the average claim of each member of the class was quite small. Here it is not; Judge Mansfield pointed out that the average claim alleged is \$150,000 per member. In addition, the claim by the representative plaintiff in *Eisen* was only \$70 and in *Green* was less than \$1,000. While the damage claims of the seven plaintiffs here are not yet specific, enough appears in the record to justify Judge Mansfield's conclusion that no claim was of "such a low order of magnitude that it would be unfeasible or uneconomic for the claimant to seek redress." 46 F. R. D. at 95. Therefore, we hold that the judge's order was not a final decision under 28 U. S. C. § 1291.⁷ Accordingly, the appeal is dismissed.

One further thought is in order. While we referred above to the suggestion of scholars that there be greater use of the interlocutory procedure of section 1292(b) to test the suitability of actions for class treatment, we do not mean to suggest such a course here. Now that the case has been briefed and argued on the merits, we would not accept a section 1292(b) certification because we regard the action of the district court as well within its discretion and not at all improper.

Appeal dismissed. In view of appellees' delay in pressing the issue of appealability, costs are to be awarded to appellants.

[Concurring opinion]

HAYS, Circuit Judge (concurring): I concur since I consider myself bound by the decision in *City of New York v. International Pipe & Ceramics Corp.*, 410 F. 2d 295 (2d Cir. 1969) where I dissented.

⁶ See *Lipsett v. United States*, *supra*; *All American Airways v. Eldred*, *supra*; *Rogers v. Alaska S. S. Co.*, 249 F. 2d 646 (9th Cir. 1957); *Jumps v. Leverone*, 150 F. 2d 876 (7th Cir. 1945); *Oppenheimer v. F. J. Young & Co.*, 144 F. 2d 387 (2d Cir. 1944); but cf. *Brunson v. Bd. of Trustees*, 311 F. 2d 107 (4th Cir. 1962), cert. denied, 373 U. S. 933 (1963) (civil rights class action dismissed as to all but first named plaintiff, thus denying in effect injunctive relief extending beyond first named plaintiff, whose case was moot; held appealable as denial of injunction under 28 U. S. C. § 1292).

⁷ Indeed, the specific language of amended Rule 23(c)(1) indicates the contrary.

"As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits." The second sentence would seem to indicate that the drafters of the rule were at least not aiming for immediate appealability.

⁸ Cf. *Hayes v. Sealtest Foods Div. of Nat'l Dairy Prods. Corp.*, 396 F. 2d 448 (3d Cir. 1968) (relying on lack of Fed. R. Civ. P. 54(b) order).

ROBERT M. HEFLER, d/b/a PARTY TIME TOURS v. INTERNATIONAL AIR TRANSPORT ASSOCIATION, ET AL.

United States District Court, Southern District of New York, May 22, 1970.

INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA)—MEMBERSHIP DELISTING—NOTICE ADEQUACY—ANTITRUST IMMUNITY.—Despite the inadequacy of the IATA's written notice terminating a travel agent's membership, the antitrust immunity conferred by the Civil Aeronautics Board's approval of the IATA agreement was not lost when an issue remained as to whether the agent knew the reason for the termination. Therefore, the agent's motion for summary judgment was denied.

Back reference: ¶ 16,349.50.

LoFrisco, Gallasher & Kenny, 10 East 40th Street, New York, New York, for Plaintiff.
Chadbourn, Parke, Whiteside & Wolff, 25 Broadway, New York, New York, for Defendants.

[Statement of case]

McLEAN, District Judge: This is a private treble damage antitrust action by a travel agent against a number of air lines and International Air Transport Association (IATA), an association of air carriers. The first count in the complaint alleges in substance that defendants have violated Sections 1 and 2 of the Sherman Act by boycotting plaintiff and refusing to deal with him in that they removed him from the list of approved passenger sales agents who are authorized to sell tickets for international air transportation. Plaintiff moves for summary judgment on the issue of liability on this first count.

Many of the background facts are undisputed. IATA and the air lines have agreed upon Passenger Sales Agency Rules (known as "TC1 810a"), which provide in substance that in order to be eligible to sell tickets for international air transportation, a travel agent must be on an approved list. An agent originally approved may subsequently be delisted in certain specified instances. These agreements were approved by the Civil Aeronautics Board (CAB), which directed, however, that if IATA terminated an agent's approved status, it must notify him of the "reasons for disapproval, phrased in terms more definite than the standards themselves. . . ." ATC Agency Resolution Investigation 29 CAB 258, 264 (1959).^{*} A travel agent whose approved status has been terminated by IATA may review IATA's decision by arbitration.

[Notice of IATA's delisting]

Plaintiff, originally an approved travel agent, was delisted by IATA. The notice sent to him by IATA on August 8, 1969 stated that his approval had been cancelled

"for the reason that your agency no longer meets the requirements applicable to an original application pursuant to Paragraph (3) of Section B of the Sales Agency Rules (copy of which is attached), and, in particular, on the grounds specified in subparagraph (e)(i)." Attached to this notice was a copy of Paragraph (3) of Section B of the Rules. A circle in ink was drawn around subparagraph (3)(e)(i) which reads:

"(e)(i) that the applicant's financial or credit standing is unsatisfactory;"

It is clear that this notice, which merely quoted the rule and provided no other explanation of IATA's action, did not comply with the CAB's directive. After the effective date of the cancellation of plaintiff's approved status, defendants refused to deal with plaintiff.

Plaintiff's argument on these facts is as follows. Defendants' concerted refusal to deal with him pursuant to an agreement between them was a boycott which in the ordinary case would be a *per se* violation of the Sherman Act.

Klor's Inc. v. Broadway-Hale Stores, Inc., 359 U. S. 207 (1959).

It is true that 49 U. S. C. § 1382 authorizes the CAB to approve agreements of this nature which it finds not to be adverse to the public interest, and 49 U. S. C. § 1384 provides in substance that any person affected by such an order of approval is relieved from the operation of the antitrust laws "insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order." But the action of IATA in delisting plaintiff was not an act "authorized" or "approved" by the CAB's order because the notice given by IATA to plaintiff did not

^{*} This decision applied to another organization known as ATC. It was made applicable to IATA, however, by a subsequent CAB decision.

IATA Agency Resolution Investigation 33 CAB 157, 170 (1961).

comply with the order in that it was not sufficiently detailed. Therefore, the umbrella of CAB approval no longer protects defendants and their refusal to deal with plaintiff constitutes a *per se* antitrust violation.

This argument, logical as it may appear to be, ignores one factor of vital importance here. As this court has already held in a similar travel agent case in which the plaintiff was represented by the same attorneys who represent plaintiff here, *Caceres v. International Air Transport Association* [10 Avi. 18,228], 46 F. R. D. 89, 94 (S. D. N. Y. 1969):

"The CAB purpose in requiring that full notice of reasons be given to the rejected applicant was to insure that the applicant would be provided with an adequate basis upon which to make an intelligent decision as to whether it should attempt to cure its deficiencies or, if it should in lieu thereof desire to invoke arbitration as a means of reversing the IATA Committee, to provide a record or foundation for effective utilization of arbitration procedure. 33 CAB at 170; 29 CAB at 264."

[*Knowledge of reasons for delisting*]

There is a sharp issue of fact here as to whether plaintiff knew the reason for IATA's action, despite the inadequacy of the written notice. Plaintiff says he did not. It appears, however, that before IATA terminated his status, plaintiff submitted to

IATA and to defendant Pan American World Airways, Inc., the carrier primarily affected by plaintiff's activities, an affidavit dated July 11, 1969 in which plaintiff explained those activities and sought to justify them. I cannot and do not decide the issue of fact on this motion. The question for decision here is whether or not this issue of fact is relevant for present purposes. I think that it is.

If plaintiff in fact knew what he was accused of doing, he was in a position to cure his deficiencies or to seek review of IATA's decision by arbitration. He never did request arbitration, for what reason does not appear. It seems to me that plaintiff is seeking to take advantage of a blunder on IATA's part (a blunder, incidentally, which IATA also made in the *Caceres* case) in order to obtain judgment by default, so to speak, without regard to the fact that IATA's error in the form of notice did plaintiff no real harm and deprived him of no substantial rights, if defendants' version of the facts proves to be correct. To grant summary judgment here would emphasize form over substance and would enforce only the letter of the CAB's order without regard to its fundamental purpose. In my view it would be unjust to deprive defendants of an opportunity to offer evidence at a trial as to what actually occurred.

The motion is denied.
So ordered.

ROBERT LEVINE, ET AL. v. BRITISH OVERSEAS AIRWAYS CORPORATION, ET AL.

New York City Civil Court, New York County, April 28, 1971.

NEW YORK—AIR CARRIERS—TICKET REFUNDS—PRACTICE—PAYMENT TO TRAVEL AGENCY.—An air carrier's practice, established unilaterally, of making ticket refunds to passengers through the travel agency that issued the ticket did not immunize the air carrier from liability to the passenger, especially in view of the passenger's express instructions to forward the refund "to me."

NEW YORK—AIR CARRIERS—TICKET REFUNDS—PASSENGER-TRAVEL AGENCY—RELATIONSHIP.—Once a passenger's initial purchase of air tickets from a travel agency has been satisfactorily completed, any possible agency relationship between the passenger and the travel agency is terminated and, even if the relationship existed, the travel agency has no authority to receive a refund requested by the passenger from the air carrier. Accordingly, the air carrier's payment of a refund to the travel agency did not relieve the air carrier of liability to the passenger.

Weiss, Wiener, Levine & Swiedler, and Robert Levine, for Plaintiffs.

Condon & Forsyth, and Thomas J. Whalen, for Defendants.

[Statement of case]

KASSAL, Judge.: Plaintiffs move for summary judgment against defendants, British Overseas [Airways] Corporation ("BOAC") and Leo Lazar, doing business as Comet Travel Agency ("Comet") to recover the sum of \$86 as a refund for a portion of two airline tickets returned unused to BOAC. Comet failed to appear in this action. BOAC does not dispute that plaintiffs are entitled to the refund, but asserts in opposition to this motion that "pursuant to airline custom and regulation", it paid the claimed amount, less the travel agent's commission, to Comet, as "agent" for plaintiffs, and is thus no longer liable to plaintiffs. BOAC's answer, however, does not refer to Comet as plaintiffs' agent but states that BOAC paid the money to Comet pursuant to the said IATA regulations, contract and industry custom.

The essential facts are not in dispute; the issue to be resolved is whether Comet was plaintiffs' agent in this transaction, and, if so, whether payment to Comet discharged BOAC from further liability for the refund.

[Facts]

The facts are these: On September 3, 1970, plaintiffs purchased two round-trip BOAC tickets from Comet for this trip—New York/London/Amsterdam/Copenhagen/Stockholm/London/New York. On September 19th, plaintiffs canceled the Stockholm leg of their trip and were issued a new ticket by British European Airways Corporation. On September 30, 1970, pursuant to BOAC instructions, plaintiff Robert Levine sent the two unused portions of the tickets directly to BOAC for a refund. His accompanying letter is as follows: "We are enclosing herewith two (2) tickets (BEA No. 6942777 and No. 6942778), each for a refund in the sum of \$43. Kindly forward

your check in the sum of \$86 to me at your earliest convenience, and oblige."

BOAC, having determined that plaintiffs were entitled to a refund, sent back a form letter acknowledging plaintiffs' request and advising them the claim had been processed through "your travel agents", who could make the final settlement with them. Simultaneously, BOAC sent a check to Comet, made to Comet's order, for \$79.98, the refund due, less Comet's retained commission of \$6.02. This check was negotiated by Comet on October 13, 1970, but no payment has ever been received by plaintiffs.

In January, plaintiffs again wrote to BOAC to demand the refund. On January 19, 1971, the day this action was instituted, BOAC wrote Comet enclosing a photocopy of its check and requesting that plaintiffs be paid. Since that time, BOAC has repeatedly contacted Comet to make payment to plaintiffs, without avail.

In its answer BOAC does not cite any specific regulations of the International Air Transport Association, a voluntary association of international air carriers, or any binding custom, to substantiate its claim that it has satisfied its obligation of payment by making the refund to the travel agent. Nor do I have knowledge of any IATA regulations regarding such refunds.

[Industry practice]

It is understandable, however, that BOAC and other airlines may have adopted this practice for their own benefit as the most convenient and feasible method of repayment since the travel agent retains a commission on the sale. But such practice, established unilaterally, could not bind plaintiffs or exonerate BOAC from liability to plaintiffs, simply on the ground of its being their own usual procedure. Plaintiffs re-

turned their tickets directly to BOAC, not through their travel agent. They were not in the travel business, and no custom existed between them and BOAC or any other airline as to any further involvement of the travel agent beyond the initial purchase and issuance of the original BOAC tickets. Furthermore, the instructions in plaintiffs' letter are explicit to that effect. "Kindly forward your check in the sum of \$86 to me" (italics added). Thus, the fact that BOAC might have followed its usual "custom" will not immunize it from liability to plaintiffs, especially in view of plaintiffs' express instructions.

[Agency relationship]

The other theory on which BOAC relies is one of agency. It claims that its obligation has been discharged because a travel agent is the agent of the traveler and thus payment to the agent constitutes payment to the traveler, his principal. Plaintiffs, on the contrary, consider Comet to be BOAC's agent.

When a person goes to a travel agency to book transportation and other arrangements with a vague request such as "Get me a flight to London on the 15th and hotel reservations", it may very well be in that situation that the travel agent who is essentially a "broker", becomes the traveler's agent; under those circumstances, he is not the agent of the airline, even though he may have a supply of blank official tickets supplied to him. (*Antar v. Trans World Airlines* [11 Avi. 17,892], N. Y. L. J., Dec. 23, 1970, p. 15, col. 4 (App. Term. 2d & 11th Dists.); cf. *Simpson v. Compagnie Nationale Air France* [10 Avi. 18,434], 42 Ill. 2d 496.) At most, the travel broker is an agent for an undisclosed principal and the agent alone is responsible to the traveler; the airline only becomes liable if it ratifies the transaction made by the broker. (*Antar, supra.*)

In the two cases mentioned above, which are relied upon by BOAC as controlling in this action, the plaintiffs-travelers booked all-inclusive tours through their brokers and the airlines which they sued neither had notice of the flight arrangements nor had they received any of the money collected by the travel agencies. Under such circumstances, the respective courts refused to hold the airlines liable. In confining its conclusions to the facts, the Illinois court further significantly noted that "There undoubtedly are many situations where (the travel broker) could become the agent of (the airline)"

(42 Ill. 2d 500). It has been recognized that once the travel agent pays over the fare to the carrier, the traveler has a valid claim for restitution against the carrier. (*Unger v. Travel Arrangements*, 25 AD 2d 40, 43, (1st Dept., 1966).)

In my opinion, once plaintiffs' initial purchase of the tickets from Comet had been satisfactorily completed, any possible agency relationship which may have existed between them was thereupon terminated. Having used only a portion of their tickets, plaintiffs were entitled to a refund, whether they had purchased their tickets from Comet or across a BOAC counter. They chose to deal directly with BOAC, as a disclosed principal, to ask for a refund. They did not deal with Comet and it was not necessary for plaintiffs to return tickets through the travel agency, as BOAC's acceptance implies; nor was it "necessary" for BOAC to return this money via Comet, except for their own convenience and sole benefit for accounting purposes to avoid the extra step of having to collect the commission Comet had retained on the ticket sale. Plaintiffs never authorized BOAC to remit the refund in this manner; Comet was not authorized to receive this payment; plaintiffs in no way held out Comet as their agent for this purpose.

Assuming *arguendo* that an agency relationship between plaintiffs and Comet continued after initial sale of the tickets, this would not *per se* justify BOAC's refund payment since "an agent has no authority to receive payment merely because of the fact that he represented the principal in the transaction out of which the debt arose" (Restatement 2d, Agency, § 71, comment a; see, also, 12 Am. Jur. 2d, Brokers, § 79). Payment to a party who has no authority, actual or apparent, to receive it does not discharge the debtor. (*Crane v. Gruenewald*, 120 N. Y. 274 (1890); see *Smith v. Kidd*, 68 N. Y. 130 (1877); cf. 2 N. Y. Jur., Agency, § 124, 3 Am. Jur. 2d, Agency; § 130, Restatement 2d, Agency, § 71.)

[Conclusion]

Accordingly, summary judgment is granted against defendant, British Overseas Airways Corporation and against defendant Leo Lazar, doing business as Comet Travel Agency, by default, and judgment may be entered in favor of the plaintiffs for the relief demanded in the complaint.

Mr. PILLAI. I have another request. ATA has suggested some changes in the bill. We would like to comment on their suggestions also.

Senator INOUE. The record will be kept open to receive additional testimony from you, sir.

Mr. PILLAI. Thank you.

(The following information was subsequently received for the record:)

AVIATION CONSUMER ACTION PROJECT,
Washington, D.C., December 20, 1971.

Hon. DANIEL INOUE,
Chairman, Subcommittee on Foreign Commerce and Tourism,
U.S. Senate.

DEAR MR. CHAIRMAN: The Aviation Consumer Action Project (ACAP) submits the following comments on the changes proposed by the Air Transport Association (ATA) to S. 2577.

(1) ATA suggests that section 26(a) of the bill should be amended to reduce the number of members of the Travel Agents Registration Board from eight to five. Specifically, ATA wants to eliminate the provision which provides for representation of the general public and travel agents in the Registration Board. The stated reason for this change is as follows:

"The number of Board members should be kept to a minimum in order to expedite Board actions. Appropriate liaison with the public and the travel industry can be achieved through the Director."—ATA testimony, Appendix A, p. 3.

ACAP strongly resents to this change which suggests, unconvincingly, that the representatives of the Public and travel agents will delay Board actions. We believe that the basic issue here is one of representation and direct participation of affected parties in the decision-making process, rather than one of "liaison" as ATA contends. Section 26(a) of the bill which provides for inclusion of representatives of the public and travel agents in the Board, in fact seeks to remedy the major vice of existing system of unilateral and arbitrary private regulation of travel agents, and therefore, the section should remain unchanged. It is unrealistic to assume that a Board of eight members would be unwieldy or inefficient any more than a Board of five members. In case any change is made to the configuration of the Board, we urge the Committee to assure that at least two representatives of the Public are included in the Board membership to bring about a proper balance between the industries and their agents on the one hand and the consumers on the other.

(2) ATA suggests that a new section 37 should be added to provide for the following:

"Nothing in this Act shall preclude any conference of air or steamship carriers from establishing or enforcing criteria for the selection, appointment or retention of travel agents which are in addition to, or more stringent than, the criteria in this Act or the rules, regulations, and codes promulgated by the Director."

ACAP vehemently opposes this ATA section which, if adopted, would totally undermine the effectiveness of S. 2577. As we see it, one of the important achievements of the bill is to liberate the travel agency business from the control of other businesses such as airlines and steamship companies. More precisely the contemplated legislation will inhibit future control of retailers (travel agents) by their suppliers (airlines and steamship companies). The new section suggested by ATA will perpetuate the unhealthy and anti-competitive relationship which long existed and continues to exist in the regulation of travel agents by airlines.

ACAP is of the opinion that the travel agents should not be regulated by the airlines. If the travel agents are licensed by the Federal Government, the carriers have no reason to require the agents to obtain another license from an industry association of airlines. At present an individual airline does not maintain a screening mechanism of its own to ascertain the qualifications of travel agents. The screening is done by the Air Traffic Conference (ATC) and the individual airlines simply accept the judgment of ATC with respect to the general ability and qualifications of agents. Individual airlines only give certificates of appointments to agents included in the ATC agency list. Therefore, the effect of federal licensing should be to replace the screening process of the ATC. We think that if an individual airline can rely on the ATC list, it can

very well rely on the list issued by the Federal Government. In case the airlines desire more "stringent criteria" for appointing travel agents, they should suggest the desired criteria for inclusion in the federal licensing scheme, instead of seeking to apply such criteria through a parallel private licensing mechanism of the airlines.

It is quite evident that the ATC administration of travel agents is not satisfactory to the agents or the public. The ATC constitution and bylaws are presently subjected to a comprehensive investigation by the CAB (Docket 23542). We are confident that the antitrust and other implications of the ATC administration will be exposed thoroughly in the CAB proceeding.

(3) ATA further wants to add the following:

"Section 38. The provisions of this Act shall be in addition to, and not in lieu of, the rules, regulations, and orders of any other Federal agency which may by law regulate carriers or conferences of air or steamship carriers."

This is another provision designed to protect the airlines' private regulation of travel agents. We do not know of any regulatory agency which in fact regulates the travel agents. What ATA speaks of as regulation is control of travel agents by airlines and steamship companies and the rules and regulations issued by their conferences. These rules and regulations are invariably rubber-stamped by the regulatory agencies almost uncritically. In fact, even the constitution of ATC has never been approved by the CAB, although ATC promulgated rules and regulations for travel agents for the past several years. ACAP urges the Committee to reject all changes suggested by ATA for the alleged purpose of protecting the non-existent regulatory jurisdiction of other Federal agencies over the travel agents.

ACAP has no hesitation to question the ATA contention that the regulation of travel agents by the airline conference is in the interest of the consumers. We have already cited the case *Antar v. Trans World Airlines* which proves otherwise (A copy of decision in this case is attached herewith). Passengers are regularly defrauded and cheated by certain travel agents. However, ATA tries to transfer the entire blame from ATC to travel agents who are not regulated by ATC or IATA. ACAP knows that many non-ATC, non-IATA, travel agents are as honest as the ATC-IATA agents. ATA's contention is contradicted by its own statement that there are many travel agent defaults by ATC-approved agents and that "in certain of these cases, however, monies paid to the travel agents for non-air transport services such as ground arrangements, tours, and the like may well have resulted in losses to the public . . ." (ATA testimony, page 12).

(4) ACAP opposes the ATA suggestion that section 32 of the bill be deleted in its entirety and in its place a new section be inserted. The new section suggested by ATA includes: "(b) The Director shall serve the conferences of air and steamship carriers with notices of suspension, revocation, fine, and denial of original or renewal application of any travel agent." ACAP suggests that the original section be retained. The Director shall be required to make public all decisions entailing suspension, revocation or fine, and to publish those decisions in the Federal Register. Under no circumstance, the Director should be asked to serve notices to private trade associations at the expense of the public.

(5) ACAP agrees with the ATA suggestion that the penalties for fraudulent behavior of travel agents should be increased to \$2,000.

Finally ACAP strongly urges the Committee to discard all suggestions of ATA which would require an applicant to submit evidence of appointment as agent for two or more years by two or more conferences of air or steamship carriers (ATA suggestion No. 11). We think it only fair to issue a license to travel agents who have been in the travel agency business during the past irrespective of the absence of their names in the ATC-IATA lists.

ACAP supports the passage of the bill S. 2577 as it is presently written. In case the regulatory agency constituted under the bill needs more powers or the criteria for licensing agents are subsequently found inadequate, the agency can very well seek appropriate powers in the future as dictated by actual experience.

Respectfully,

K. G. J. PILLAI.

Senator INOUE. Before closing, since charges have been leveled at the Air Transport Association and since I know there are officials of that organization present, do you wish to be heard?

Mr. SEABOLD. I would just like to say we would like to have the opportunity to reply to the statements made in this statement and the particular citations he offered or proposes to offer.

Senator INOUE. Here again the record will be kept open to receive what additional statements you wish to make, sir.

ADDITIONAL STATEMENT OF AIR TRANSPORT ASSOCIATION OF AMERICA IN REPLY TO STATEMENT OF K. G. J. PILLAI

During the course of hearings by the Subcommittee on Foreign Commerce and Tourism of the Senate Committee on Commerce, on Thursday, November 18, 1971, with respect to S. 2577, a bill which would require federal licensing of travel agents, a statement was presented by K. G. J. Pillai, Executive Director, Aviation Consumer Action Project (ACAP). ACAP's statement is so inaccurate and misleading concerning the domestic travel agency program administered by the Air Traffic Conference of America (ATC), a division of the Air Transport Association of America (ATA), that we are constrained to offer this additional statement in reply to ACAP's testimony. Before we comment on specific matters, we would like to raise the question as to who is ACAP. While it purports to represent consumer interests, it does not identify its constituents. This same question was asked by the Civil Aeronautics Board in a recent order denying intervention by ACAP in a proceeding before that agency. (Order 71-11-43, November 11, 1971). In that Order, the CAB stated:

"... It is incumbent on applicants for intervention to disclose sufficient facts to enable the Board to ascertain that they are 'responsible spokesmen for representative groups' having a significant interest in the subject matter of the proceeding. ... While we do not rely on this consideration in affirming the Examiner's denial of intervention here, we are constrained to point out that ACAP's petition is materially deficient in this regard. While we are told that its purpose is to advocate consumer interests in aviation matters, we are not told the names of its founders, the members of its 'distinguished panel of advisors' nor what their role is in determining the policy of the organization, nor the number and geographic distribution of the members of the public who have lent it their support. *Thus, the petition makes no substantial showing that ACAP is in fact a broadly based organization representing a significant segment of the public.*" (Emphasis supplied.)

The major inaccurate statements in ACAP's testimony which we wish to correct are as follows: (ACAP statement in quotes and italicized):

1. "*Usually, when a passenger is abused or cheated by an agent, the airline by whom the agent is accredited immediately disclaims responsibility for the malpractice.*" That statement is not only contrary to fact, but is also contrary to law. A principal is responsible for the acts of its agent performed within the scope of its agency relationship. The scheduled airlines have always assumed the responsibility for the acts of their agents with respect to the sale of air transportation to the general public, even though these agents fail to remit the proceeds of the sale to the airlines.

ACAP cites the case of *Antar v. Trans World Airlines* as an example of an instance where an airline has refused to honor tickets issued by its agent. The fact that the New York Courts upheld the airline in refusing to honor these tickets should be sufficient indication to this Subcommittee that the transaction involved fraud and dishonesty.

Briefly, Mr. Antar, a New York attorney, was approached by a stranger in a New York City cocktail lounge. The stranger offered Mr. Antar several roundtrip tickets to Israel at a substantial discount from tariff rates. As any lawyer knows, the sale of air transportation at less than tariff rates is a rebate in violation of federal law. The person from whom Mr. Antar purchased these tickets was not an agent of the airlines, but rather had obtained possession of these tickets in a fraudulent manner. The airline had never received payment for these tickets. Aside from the rebate aspects of this transaction, the general public is well aware that airline tickets are not sold in cocktail lounges. Mr. Antar should have been immediately alerted by the circumstances of the transaction that it involved fraud. Under separate cover we are sending the complete decision of the Court to the Subcommittee staff.

2. "*Consumers have no practical means to ascertain the genuineness of [stolen] tickets they receive or the veracity of the statements and promises made by the*

person selling those tickets." The stolen ticket problem is indeed a real one to the airlines. A forthright and honest person will never become a victim of the stolen ticket racket because stolen tickets are always sold under extremely suspicious circumstances, e.g., in cocktail lounges, by peddlers on the street, etc. Moreover, the tickets contain printed notices alerting the public to these dangers. These stolen tickets are always sold at substantial discounts from the lawful tariff fare. A person purchasing such tickets cannot help but be aware that these are "hot" tickets. Anyone falling victim to the scheme has a certain amount of larceny in his heart and indeed has himself committed a crime in accepting the stolen property.

3. *"The regulatory system [travel agency program] established by these trade associations is dedicated to the exclusive interest of airline members, and totally unresponsive to the interest of the public and travel agents."* All details of the travel agency program administered by ATC are submitted to the CAB for its approval. The law requires the Board to disapprove any facet of the program that it finds to be adverse to the public interest or in violation of the Federal Aviation Act. Pursuant to the requirements of law, the Board closely regulates the airlines in their administration of the travel agent program. In the late 1950s the CAB conducted an extensive review of the ATC-administered travel agency program. Its decision at the conclusion of that investigation highlights the fact that the conference system is responsive to the interest of the public and travel agents and should be continued. (ATC Agency Resolution Investigation, 29 CAB 258 (1959)). Excerpts from that decision are quoted below:

"There is no dispute that the conference system, as adopted in 1940 and applied in the early days of air transportation, served an important utility. . . . The conference system, with its uniform procedures and high standards, brought progressive improvement in agency representation. The substantial public acceptance of air transportation in the post-World War II period must be credited, at least in part, to the competent and qualified sales agency outlets brought about by the conference system.

"It cannot be seriously argued that, absent the conference system, the airline industry would return to the agency conditions which prevailed in the pre-World War II period. Circumstances are entirely different today. Nevertheless, it is not presumptuous to conclude that, without the conference system, the economic stability of our domestic air transportation system may be placed in jeopardy and the public adversely affected. . . .

"Another feature of the conference system which commends its continuance is the high caliber of sales agency outlets which it fosters. Over the years, the system has produced competent and reliable sales agency representation. This has not been so in the irregular (supplemental) air carrier industry which had no conference system or uniform methods of selection and appointment. The irregular carriers acted individually in the selection and appointment of agents and they experienced very unfavorable results. Many of their agents proved to be almost as irresponsible as those which the certificated carriers hired prior to the advent of the conference system. . . .

"Although discontinuance of the conference system could not be expected to produce the serious agency situation encountered by the irregulars, it probably would bring about a steady decline in agency standards because of competitive pressures. This would indeed be unfortunate for the carriers, the traveling public, and the travel agents because abuses and deceptions and unfair practices would inevitably arise. The Board, of course, can control them under Section 411, but it cannot stop cases from arising. The most effective preventative is to maintain the highest qualifications possible for agents."

4. *"More seriously, the carriers' private regulation of travel agents breeds corruption and stifles competition in the travel agency business."* We find ACAP's assertion of "corruption" highly offensive. Nowhere in the testimony is this allegation supported. The assertion that the conference system stifles competition in the travel agency business is nothing short of ludicrous. The domestic travel agency industry is one of the most competitive industries in the United States. The number of accredited travel agents grew from under 600 in 1945 to over 8,000 travel agency locations today. Last year alone, almost 800 new agency locations were added by ATC. Rather than stifle competition, the conference system significantly promotes competition in the travel agency industry. As noted by the CAB decision in the *ATC Agency Investigation*, *supra*:

"Under the conference system, information relative to the qualification of agents is made available on a nationwide basis, thus facilitating the appointment of many agents who otherwise might not get attention. Thus, the confer-

ence system permits a broader establishment of sales agency outlets than could be provided by carriers dealing independently with agents. . . ."

5. *"The criteria for approval are so imprecise and vague as to permit arbitrary action by the carriers."* All conference-approved travel agent applications are subject to the same objective standards. These uniform standards have been set forth in our testimony at the hearing and are contained in Resolution 80.10, Section IV, pages 3-4 of the Travel Agents Handbook which was distributed to the Subcommittee at the hearing. In its decision in the *ACT Agency Resolution Investigation, supra*, the CAB stated that:

"Another favorable feature of the conference system is its uniform procedures and requirements. As may have been noted, the basic terms and conditions of the carrier-travel-agent relationship are standardized into a single contract . . ."

6. *"There have been numerous instances in which the associations even failed to notify the applicants of the reasons for disapproving their applications."* This is a totally false statement with respect to applicants which were denied approval by ATC. In each case where ATC denies an application, the applicant is furnished with an opinion letter setting forth the bases for finding the applicant unqualified. If the applicant has any reason to contest this decision, it may submit its application to a panel of arbitrators for review. Although the Subcommittee has requested ACAP to furnish specific instances where ATC has failed to notify applicants of the reasons for disapproval, ACAP has failed to do so.

7. *"In the event an agent is removed from the Agency List, the air carrier associations will terminate the 'sales agency agreement' with such agent on behalf of all carriers."* The ATC may remove an agent from the Agency List only for good cause, e.g., failure to retain qualified personnel, dishonest dealings with the general public, and default or delinquencies to the carriers. The agent who believes he was unjustly removed, except in the case of total default, may arbitrate the removal decision. We submit that such removals for cause under objective standards assure the general public of the integrity of travel agents as well as protect the air carriers against or minimize their losses.

8. *"ATC and IATA will terminate the sales agency agreement with an agent if he fails to pay annual dues to the trade associations, as determined by those agents."* At the present time, the costs associated with administering the agency program are approximately \$125 per agency location per year. The ATC agent pays an annual fee of \$20 for each home office and \$10 for each branch (with a maximum of \$300 per agent) partially to offset ATC's costs in administering this program. Although ATC may terminate an agent if it fails to pay this minimal annual fee, there have been no instances of removal for such reason.

9. *"As a result of these punitive regulations, competition in the travel agency market by new business entities is rendered difficult, if not impossible."* The regulations administered by ATC are not punitive in nature but rather are necessary to assure the integrity of the travel agency program. As set forth in paragraph numbered 4 above, the comments with respect to lack of competition are refuted by the facts and, indeed, are ludicrous.

10. *"The so-called sales agency agreement is signed by individual air carriers and agents, and the tickets and sales proceeds are held in trust by agents on behalf of individual carriers."* The sales agency agreement is signed by ATC on behalf of all its members and the agent remits the proceeds of sales to ATC rather than to individual carriers. In addition, there is a standard agency ticket distributed to the agents by ATC rather than individual ticket stock distributed separately by each airline.

11. *"An airline is required to join ATA in order to become eligible for membership in ATC. If an air carrier ceases to be a member of ATA, the carrier's membership in ATC will automatically terminate. Therefore it is clear that the air carriers utilize their control over travel agents as an important instrument of monopoly."* It is true that ATA membership is required in order to be a member of ATC, since ATC is a division of ATA. The expenses of operating ATC are defrayed by ATA members through annual dues, and therefore it is only reasonable that membership in a division of ATA be limited to members of ATA who defray its expenses. However, participation in the various programs administered by ATC is not limited to ATC members alone, but is open to all CAB licensed airlines. For example, 69 U.S. and foreign airlines participate in various segments of the ATC-administered agency program.

12. *"The fare-paying consumers have no voice in setting travel agents' commissions. The airlines set uniform rates of commission, and the CAB invariably ratifies them without proper analysis or scrutiny."* While it is true that the

airlines set uniform rates of commission, the CAB has found that a uniform commission rate is necessary to protect the public interest. The commission rates are subject to CAB scrutiny and to comment by the travel agency industry as well as any interested member of the general public. Any proposed commission rate receives extensive scrutiny and analysis by the CAB. For example, the revision of the commission structure in 1969 was preceded by a \$500,000 study jointly financed by the travel agency industry and ATC. The commission structure proposed by ATC at the conclusion of that study received detailed consideration by the CAB, including written submissions by all interested persons and oral argument thereon prior to formal action by the CAB. The commission structure approved by the CAB as a result of these extensive proceedings was different than the structure submitted by ATC.

13. *"Airlines allow thousands of travel agents and their employees and spouses to travel free of cost or on reduced fares. Consumers who subsidize such travel are largely unaware of its economic effects on air fares, and certainly powerless to do anything about it."* The CAB permits travel agents to travel at reduced fares on the basis of from two to twelve trips per agency per year, depending on the number of employees. In addition, the CAB permits individual airlines to operate familiarization tours to geographical areas of the country at reduced rates or free of charge to travel agents. The reduced rate travel provisions are set forth in Section 15 of the Travel Agents Handbook which has been distributed to the Subcommittee. The provisions with respect to free or reduced rate transportation to travel agents on domestic group familiarization tours are set forth in the CAB Economic Regulations, 14 C.F.R. 223.3(f). The purpose of the various free and reduced rate transportation programs for travel agents is to familiarize travel agents with the product they sell and the various destinations throughout the country in order better to serve the public. We submit that these various programs have enabled the individual travel agents to give valuable advice to the general public in planning their travel programs. In addition, these programs have encouraged travel agents to promote the general public to "discover America" and thereby has had a favorable impact on the balance of payments. In addition to approval by the CAB, these programs have been endorsed by the Department of Commerce as an important contribution to the national interest.

14. *"So far the CAB has refrained from imposing such requirements on tour operators because of collusion with ATA and IATA."*¹ The irresponsible charge that the CAB is colluding with ATA and IATA in failing to regulate tour operators is reprehensible. The fact is that the CAB has an extensive package of effective and proposed regulations relating to tour operators. These regulations are set forth in detail in the accompanying statement of ATA with respect to H.R. 11560, Congressman Van Deerlin's bill proposing to certificate indirect air carriers.

Senator INOUE. With this, the hearings on S. 2577 are adjourned.
(Whereupon, at 4:55 p.m. the subcommittee was adjourned.)

¹ The words "because of collusion with ATA and IATA" do not appear in ACAP's prepared statement, but were added by Mr. Pillai when he read that statement to the Subcommittee.

ADDITIONAL ARTICLES, LETTERS AND STATEMENTS

STATEMENT OF JAMES C. BLACK, PRESIDENT, THE HOUSE OF LLOYD, LTD.

Senator Inouye, members of the committee: My name is James C. Black. I am President of The House of Lloyd, Ltd., a travel agency in Dallas, Texas.

This August and September, I saw on television that hundreds of students from the New York area were stranded in London. On Monday, I tried to charter a plane to bring some of these students back to the United States. This time of the year the United States Supplemental Carriers are empty going to Europe, however, they are full on the return. Failing to find a charter, I then contacted Mr. Joe Bier of the Trans World Airways office in Dallas to see exactly what procedure to follow to reduce the student air fare. The Civil Aeronautics Board had approved a student fare to Europe, however, it was necessary to purchase a round trip ticket. Through Trans World Airways and the Civil Aeronautics Board the air fare for students was lowered to \$95.00 from London to New York one way. The students were not to exceed 26 years of age.

The House of Lloyd, Ltd. does not sell to the student market, however, I felt it was necessary to show that agents are concerned. Too often the agent across the country receives the blame for others misdoing. I was confronted with the fact that I was receiving a certain amount of publicity and this must be the reason for my being in London. I heard this from several people while I was there and many people after I returned. If The House of Lloyd, Ltd. had offices in many parts of the United States and was in the student market I would have agreed. However, there is only one office of The House of Lloyd, Ltd. and that is in Dallas, Texas which is a little out of the way for New York City students to do business. I had to disagree with the publicity for these reasons.

Had I ever sat down and analyzed my reasons for going to London, becoming involved and trying to help, I would probably never had gone. There comes a time when we must commit ourselves and follow through with no plans, no ulterior motives and no thoughts of what or where, only why. That gentlemen was my reason. Rules were changed, fares lowered and students came home. I did not go to save the world or all the students, only to do what I could and with what money I had available.

Approximately 154 students came home because of my direct efforts and by the combined help of Trans World Airways, Pan American, British Overseas Airways and several supplemental carriers. The Canadian Pacific Steamship Line helped several hundred more students to come home also.

The travel industry has been good to me and for me. This was a very small repayment. The only disappointment I felt was the absence of other United States agents in London trying to do the same thing I was.

Accompanied by Joe Bier, who was on vacation at the time, I went to London. I arrived around noon and went directly to the American Embassy where someone referred me to Mr. Ralph Cardeaux, the Consulate General of the United States. Mr. Cardeaux showed me the files on many of the stranded students. To the best of my knowledge the following took place:

Several unorthodox operators opened offices in New York City. They advertised in the newspapers and sold hundreds of people charter trips to Europe. According to C.A.B. Affinity ruling number 208 all participants must be "bona fide members" of an organization for a minimum of six months or more. The operators who sold the trips gave the participants a form to sign saying they had complied with this rule. Many signed the *week* before the charter departed. Some did not sign at all. From the beginning these charters should never have been allowed to move. The students received two coupons. One was to be given to the aircraft upon departure and the other coupon was to be valid for their return flight home. After many weeks in Europe these students returned to London. Many were very short on money and were expecting to be flown back to New York City. Upon arriving in London they would call on the office listed on their return coupon only to find it to be a shoe shop. The owner had never heard of the charterer or any of its

members. To the best of my knowledge the organizers in New York had chartered a one way plan. They then sold it as a round trip. After the students had departed from the United States the operators ceased operation and in many cases declared bankruptcy.

This situation will present itself time and time again unless some strong rules are legislated and more important enforced. This type of business is quite obviously lucrative. The operators who set up the "wildcat" type of charter are only interested in the financial gain. Thus year after year the legitimate travel agent as well as the supplemental carriers are blamed. This hurts the business for future student sales as well as for future business with the parents of these students.

The most important point I can see is the fact that anyone can set up an office, have a phone list, do some advertising sell charters and he is immediately in business. A legitimate agent of the travel industry spends years learning his trade. He must attend schools held by the trade to keep up with the fast changing travel picture. He must post a bond with the Air Traffic Conference for his ticket privileges. His reputation rests on each client who travels through his assistance. His office must follow organized rules and his staff must be skilled in their jobs. The return from such an agency is not large and the complexities of the industry are quite frustrating.

When an agent finds a operator who has total disregard for all rules which the C.A.B. has set forth concerning charters and this operator also has large financial returns from illegal charters, it becomes very frustrating to the agent who is trying very earnestly to "live by the book"! I for one realize the problems which confront the C.A.B. Their rules concerning charterers for the most part are well defined, however; it appears their problems are those of enforcing their rules. It is against the C.A.B. rules to advertise an affinity charter to the general public. This is being done with much regularity in many large city newspapers such as New York City and Washington D.C. Some illegal charters are discovered and the operator is notified of the illegality of his charter. Some fines are enforced but the bulk of these infractions seem to be buried in delays, postponements and good legal maneuvers. Even under indictment some charterers still do business. I realize the many complexities in passing laws, however, unless they are enforced they serve no purpose. Your proposed law for the most part is well planned and workable, however, if I may I would like to offer several suggestions.

You state a fine and/or jail sentence is to be imposed for approximately \$500.00 for a first offender. If I was in the illegitimate charterer position I would gladly pay this and continue to make thousands of dollars until I was stopped again.

My suggestions follow the basic rules set out by the Air Traffic Conference. The first offender would be warned and his books would be audited. Upon his second offence, his license would be removed for a minimum of six months. This puts the offender out of business and there is no recourse, no delays by the courts and no nonsense. Secondly, I would strongly recommend *any* charterer, organization, agent or man on the street should post a bond in an amount guaranteeing the passenger and help payable to him in the case that his charter fails, goes into bankruptcy or any other reason he would be returned to his point of origin. One bond could hold true for a series of charters that follow one after the other. The bond could also be moved from one to return to the other if enough time elapses between charters. If the time element makes one charter overlap the next charter then appropriate bonding should be made to cover each of these charters.

I feel if this is enforced the "fly by night" charterers will be out of business. A service will also be done for the unsuspecting public passenger and the entire travel industry.

I wish to thank you Senator Inouye and the members of the committee for your time and patience. If I can answer any questions I will do so at any time at my expense.



State of Illinois

TRAVEL AGENCY & PASSENGER CARRIER
STUDY COMMISSION
Room 539 State House
Springfield, Illinois 62706

April 15, 1971

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The Honorable Richard B. Ogilvie
Governor, State of Illinois
and

The Honorable Members of the 77th General Assembly

Gentlemen:

Submitted herewith is the report of the Illinois Travel Agency and Passenger Carrier Study Commission created pursuant to House Bill 1947 of the 76th General Assembly.

The report constitutes the findings of the Commission with regard to current problems in the State regarding travel agencies and the travel agency business.

The Commission has also made an objective analysis of the manner in which carriers are presently serving the public by means of travel agents.

A decision to draft a regulatory measure was reached following an exchange of views with qualified spokesmen in the travel industry and those representing government agencies.

We solicit your careful attention to this report and to the recommendations contained therein.

Respectfully submitted,

Edward McBroom
Senator Edward McBroom

John J. Houlihan
Representative John J. Houlihan
Co-Chairmen

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1969

House Bill 1947

(Approved by the Governor August 28, 1969)

AN ACT creating the Travel Agency and Passenger Carrier Study Commission, defining its powers and duties, and making an appropriation therefor.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. There is created the Travel Agency and Passenger Carrier Study Commission, hereinafter in this Act called the Commission. The Commission shall consist of 5 members of the House of Representatives, 3 of whom shall be appointed by the Speaker and 2 by the House Minority Leader; 5 members of the Senate, 3 of whom shall be appointed by the President Pro Tempore and 2 by the Senate Minority Leader; and 4 public members, one each of whom shall be appointed by each of the above appointing authorities. A vacancy does not occur on the Commission because a legislative member is not re-elected to serve in the house from which he was appointed. Vacancies in the membership of the Commission shall be filled in the same manner as the original appointments. Members of the Commission shall serve without compensation but shall be reimbursed for actual expenses incurred in the performance of their duties.

The Commission shall select from its membership a chairman and any other officers it considers necessary.

Section 2. The Commission shall study all aspects of the travel agency business. In its study the Commission shall consider:

- (1) The necessity of legislation regulating travel agencies,
- (2) The desirability of legislation regulating travel agencies, and
- (3) All aspects of the travel agency field that the Commission deems necessary.

The Commission shall also study the practices of inter-city carriers of passengers, including air lines, bus lines and railroads, with particular reference to the reservation practices of such carriers and such other matters as pertain to the manner in which such carriers are serving the public. The Commission shall consider the necessity and desirability of further legislation regulating the practices of passenger carriers.

Section 3. In aid of the Commission's study, all departments, divisions, agencies and offices of the State shall afford to the Commission any requested information, records or advice pertinent to the subject matter of the study.

Section 4. The Commission shall report its findings and recommendations to the 77th General Assembly no later than February 1, 1971.

Section 5. The Commission may, without regard to the Personnel Code, employ and fix the compensation of necessary assistants.

Section 6. The sum of \$10,000 or so much thereof as may be necessary, is appropriated to the Commission for the purposes of this Act.

Section 7. This Act is repealed as of July 1, 1971.

RECOMMENDATIONS

I. STATE LICENSING AND REGULATION

The State of Illinois should take proper steps by means of regulatory legislation to afford the traveling public sound financial safeguards in dealing with the travel industry. Millions of dollars are involved in daily transactions with reputable travel agents and travel agencies. Immediate legislative action at the state level is warranted in view of recent incidents of abuse. The record shows an apparent lack of supervision over persons engaged in both charter and individual travel arrangements. The state should promulgate licensing requirements coupled with the provision of adequate financial safeguards in the form of bonding and trust requirements. This should be accomplished notwithstanding steps taken or planned within the industry by scheduled air carriers in intra-industry conference agreements or by the Civil Aeronautics Board, the federal regulatory agency. Provisions in the proposed licensing bill (HB 1707) have been drafted after a careful study of the facts and an exchange of views with accredited representatives of the travel industry. The Commission is comprised of legislative, industry and non-industry members and is the first of its kind in the nation. It is generally conceded that this bill is a model statute and its passage and approval will place Illinois in the forefront of states interested in a constructive solution of a problem in which the public has a genuine interest.

II. FUTURE STATUS

Members of the Commission share the view it should be authorized by the General Assembly to continue to research all facets of the travel industry, such as licensing, marketing practices, incentive fares, pricing and the selling policies of carriers. They also believe that a continued study is necessary to implement the proposed regulatory act on the basis of operation and experience. Accordingly, this proposal is contained in House Bill 1471.

ILLINOIS TRAVEL AGENCY AND PASSENGER
CARRIER STUDY COMMISSION

REPORT
TO
77TH ILLINOIS GENERAL ASSEMBLY

EDWARD McBROOM
JOHN J. HOULIHAN

Co-Chairmen

REPORT OF THE ILLINOIS TRAVEL AGENCY
AND PASSENGER CARRIER STUDY COMMISSION

In 1969, the 76th General Assembly of the State of Illinois created a Joint Travel Agency and Passenger Carrier Study Commission. The resolution creating the Commission reflected a demand for an objective appraisal of all aspects of the travel agency business and also mandated a study of the possible need for state legislation in this area.

As the first Commission of its kind in the nation, the bi-partisan agency began its work at a time when certain allegedly improper practices in a competitive industry were reported extensively in the news media and the travel agency trade press.

Strong public reaction to the stranding of more than 5,000 American students last summer in European cities dramatized the need for reform and scrutiny of travel procedures. In this instance the students, including a large number from Illinois, were victimized by World Academy, Inc., a Cincinnati-based student-travel organization which suddenly declared itself bankrupt.

As a result of this shoddy practice by a firm that never used the term "travel agency" in its advertising or literature, but rather stressed the "educational tour" as its prime approach, legislators and government officials began to probe basic weaknesses and to seek corrective remedies.

The multi-million dollar bankruptcy was considered by the Commission at a meeting on September 23, 1970. At that session testimony was taken from six students and a teacher from Lincoln High School, all of whom had been stranded in Rome when World Academy could no longer provide accommodations and transportation through Europe and for the return trip to the United States.

The students were a portion of about 30 from the district of Representative Harber Hall, of Bloomington, who also appeared at the meeting and participated in a discussion of the subject.

The World Academy fiasco was not an isolated incident. The Commission also received information regarding a substantial number of alleged malfeasances of travel agencies taken from files of the office of the Attorney General, State of Illinois. The majority of such complaints related to charter flights.¹

Significantly, the episode triggered a response from the Civil Aeronautics Board. That agency proposed new bond rules for operators of bulk and inclusive tour charters. CAB authorizes and regulates air passenger charters and has promulgated detailed regulations concerning the conduct of such charters.

¹See Appendix A (Malfeasances of Travel Agencies -- Attorney General's Report)

STATE REGULATION OF TRAVEL AGENTS AND BROKERS

Generally speaking a majority of states have no statutes dealing with the travel agency business, i. e., the business of selling tickets on a regularly scheduled carrier, helping secure hotel rooms and furnishing advice and other services related to travel.

A research study of state regulation by the Illinois Legislative Council disclosed in seven states travel agents or agencies are licensed or subjected to a special tax apart from any license or taxation requirement applicable to all businesses in the state.

One state specifically prohibits banks from engaging in the travel agency business, two states specifically permit it, and another state has such a strong prohibition against banks engaging in trade or commerce that it is obvious that the operation of a travel agency would be illegal.

Some other states have miscellaneous statutes, such as requirements that the agents display certificates of authority from carriers represented, and requirements that persons selling transportation have regular office locations.

Efforts to pass regulatory legislation in New York, California and other states have not been successful.

But the climate now is favorable for the passage of constructive legislation at the state level to tighten bonding and financial controls, eliminate fly-by-night operators and update qualifications for travel agents. Most responsible and established travel agents now concede a proper state licensing statute with clearcut bonding

provisions would strengthen the character of the industry and afford greater protection to the consumer.

Until recently certain travel trade organizations and lobbying groups have strenuously opposed state regulatory measures for a number of reasons. A primary objection is the fact that the business of a travel agent is interstate and international in scope and therefore basic controls should be established at the federal level and enforced by federal agencies.

This posture has been maintained by the highly reputable American Society of Travel Agents (ASTA), the Civil Aeronautics Board (CAB), the Federal Maritime Commission (FMC) and the Interstate Commerce Commission (ICC).

There is another factor prompting justifiable concern about state regulation. Repeatedly, ASTA and spokesmen for the travel industry have noted the travel industry operates within limits of an unreasonable and narrow commission structure.

This uneasiness about state regulation was underscored by George L. Fichtensbaum, ASTA Executive Director, in a statement before the New York State Joint Legislative Committee on Consumer Protection.

"In an industry such as ours," he stated, "where the margin of profit is extremely low, the costs of licensing and bonding, as proposed, could place local agents at a critical disadvantage. Moreover, and perhaps more important, the interstate nature of the industry would simply not lend itself to up to 50 different sets of regulations governing those who must make travel reservations and commitments in all areas of this country and of the world."

Hence, ASTA moved to support reintroduction of a bill in Congress by Congressman Robert O. Tiernan of Rhode Island with the support of 37 co-sponsors providing for federal regulation of the travel industry. Thus far, however, the Tiernan bill has not gained congressional approval.

Statements by representatives of the travel industry at a meeting of the Commission March 1, 1971, indicated ASTA had altered its views on state licensing legislation.

Referring to an ASTA meeting in January, Mr. Joseph Heitzinger, an ASTA spokesman, made the following statement for the minutes:

"He said that up until that time they were working on a national level to get licensing in. At that time they switched their thinking completely and have gone to a very strong support for licensing of travel agents by bills in various states. He stated that they were pleased and happy that Illinois had taken the initiative in getting a Commission together and working to this end.

"They have acquired all the various bills from states which do have legislation pending now, and through their local chapter in Chicago are working with their law firm and will make a recommendation to and work very closely with this Commission."

When a member of the Commission inquired why ASTA "was now working for licensing legislation when before they had opposed it, Heitzinger reported:

". . . a lot of their members felt that there should be a national licensing bill and that he had worked with the Commerce Commission in Washington, but after some time, they realized that it would take too long for such a process to develop at

the national level and that they have decided that the proper way would be for licensing at the state level. "

CONTROLS AND RESTRAINTS IMPOSED WITHIN THE TRAVEL INDUSTRY

In its approach to the problem of drafting a proper state licensing measure the Commission was aware of a number of responsible and time-tested procedures devised by the American Society of Travel Agents (ASTA) plus rigid restrictions governing travel agents and imposed on them by three principal "conferences" or associations of carriers.

The latter are the Air Traffic Conference of America (ATC), the International Air Transport Association (IATA) and the Transatlantic Passenger Steamship Conference (TAPC). These conference groups represent a substantial majority of all air and ship carriers providing passenger service and transportation between points in the United States and to points outside this country.

Agents acting as authorized ticket sellers cannot function until they secure conference approval and thereafter they are subject to disciplinary procedures of the conference.

A detailed picture of conference operations was presented to the Commission at its sessions by various officials representing accredited carriers and conference affiliates. The list includes Richard R. Saunders, Director of the Agency Department of the Air Traffic Conference of America, a component of the Air Transport Association (ATA); and Allan R. Pollock, ASTA Midwest Chapter Secretary.

An outline of bonding requirements and strict financial safeguards for authorized conference agents was also presented by George R. Buchanan, Executive Director of the International Air Transport Association (IATA), at a meeting with members of the Commission staff.

Conference spokesmen insist state regulation of agents under their jurisdiction would be unnecessary and unwarranted. This viewpoint was expressed by Pollock in a statement to the Commission: "Further regulation of conference approved agents would only add another layer of regulation upon an already well-regulated industry."

But Pollock and other industry spokesmen admit there are loopholes to be plugged, loopholes outside the "conference" domain. "In my opinion," he remarked, "the existing and potential problems -- those on the two coasts which could spread to Illinois -- lie not in the conference controlled travel agent. Rather, they lie in those not under the strong conference thumb; the non-profit organization (legitimate or not) with travel as a sideline that becomes a major source of revenue, and in the individual or company set up outside conference regulations such as the charter solicitor, independent student organizer, etc."

PROPOSED REGULATORY LEGISLATION

Despite promulgation of essential regulations by the Civil Aviation Board plus a further strengthening of standards by the American Society of Travel Agents (ASTA) for its members, the need for certain licensing controls at the state level is now necessary and evident.

Testimony offered at meetings of the Commission and information received by its members, some of whom are engaged presently in the travel business, are factors

providing sufficient justification and a definite need for drafting a reasonable statutory measure. Heretofore, such legislation has been offered in the Illinois General Assembly without a free exchange of views between lawmakers and representatives of a complex but vitally important industry.

Bills on the subject of licensing and bonding of travel agents and brokers in Illinois have been offered on three occasions in the past, and in each instance they were tabled in Committee. Bills were introduced in 1963 (H. B. 233), 1965 (H. B. 650), and 1969 (S. B. 696). The latter was offered by Senator James P. Loukas, who was subsequently appointed a member of this Commission.

Aside from context and essential provisions, there are many new and different factors present with respect to the current measure introduced in this session of the legislature.

The most important background element has been a continuing and friendly exchange of information with accredited representatives of the travel industry preceding actual preparation of House Bill 1707.

This situation did not obtain in previous sessions. It has had the salutary effect of eliminating misunderstandings. In earlier proposals many provisions were included without prior consultation with industry spokesmen. The Commission has maintained an open-door policy and a willingness to give audience to different opinions. Then the members assembled factual data and reached a wholly independent conclusion. Again, the primary consideration has been the public good.

The Commission is fully aware of current problems, primarily a necessity for providing proper bonding procedures and financial controls in the public interest.

At the same time members of the Commission concur in the view that state licensing rules and regulations should not be harsh or restrictive. They should not inhibit the free engagement of ethical travel agents or agencies in the transaction of their business.

There is also an awareness of the highly competitive nature of the travel business and the fact that contrary to common belief, travel agents function within the limits of a narrow profit margin.

The consumer has a real stake in tourism and travel. In all areas ranging from the individual traveler to controversial charter groups, substantial expenditures are involved. In many instances the amounts handled in personal transactions total thousands of dollars. Thus, the need for practical and well-defined bonding, fiduciary or trust controls are certainly apparent. All legitimate and established travel agents, those working regularly with major air and surface carriers, have always favored safeguards to prevent abuses, misuse of funds and the elimination of fly-by-night operators.

This rationalization is indicated in sustained editorial comment in the leading travel trade journals. For instance, in the wake of the World Academy Tour affair, Joel M. Abels, editor of Travel Trade, expressed the viewpoint of industry leaders in an editorial titled, "Before the Mud Sticks."

"The first step," Abels noted, "in attempting to prove to politicians and public alike that travel agents don't like this phoney charter nonsense any better than anyone else should be for a team of industry experts to speedily draft a piece of legislation which would protect both the public and travel agents. We have suffered with the

charter problem for so long that it shouldn't really be that difficult for an attorney-assisted, top level committee of agents, working within the real meaning of the word 'units,' to come up with the right answer."

And he concluded: "We sure don't want the mud from this stranding debacle to stick to the entire industry, and the best and fastest way to wash it off is for the travel industry itself to find the real cure for charteritis. We know what needs doing in the form of necessary bonding, licensing and deposit requirements and it's time we put that knowledge on the line and made it public in the broadest sense of the word."

In its deliberations and study, the Commission made a cautious approach to the problem, mindful of the damage that could result from precipitous action in the drafting of an impractical and hastily contrived measure.

The proposal in its present form (H. B. 1707) (Appendix C) is the product of lengthy discussion in Committee sessions and judgment of individual members. The bill is tailored to meet specific needs of the traveling public in Illinois and provide adequate safeguards against fraud and misuse of funds. At the outset many suggestions were combined into an outline for discussion purposes. Some were included in the final draft and others were discarded.

In an analysis of key provisions it is important to note definitions of "group travel," "travel agent," and "travel salesman" as well as persons against whom the act shall not apply were carefully delineated.

The act creates a seven-member Board of Travel Agent Examiners functioning as an agency of the Illinois Department of Registration and Education. All members will be appointed by the Governor.

Significantly, three members must be travel agents qualified to hold a certificate of registration under the act. The Board will function in the following essential areas: examine and license applicants, and suspend, revoke or refuse to renew a registration if the holder is guilty of the performance or attempt to perform certain prohibited acts or conduct.

In the important area of trust and financial responsibility, the act calls for execution of a \$5,000 performance bond for registered travel agents. In addition, there is a requirement that an agent shall file a report of his financial condition.

Another provision requires a full refund after cancellation of contracted travel services or nonavailability as represented by an agent.

For "group travel" all funds collected by a travel agent or salesman shall be held separately and shall not be used for any purpose other than paying for the group travel.

In a calculated move to prevent abuses in the chartering of student groups, the act requires salesmen to obtain prior written permission from the principal or dean of a school or university before making any solicitation on the grounds of such educational institutions.

The knowing use of misleading advertisements or other solicitations is also prohibited. Further, any advertisement disclosing transportation fares must show the amount of round-trip fare, or if the amount shown is the one-way fare, then the advertisement must so state in print at least one-third as large as the figure showing the fare.

The Commission also moved against nonregistered travel agents who receive

financial consideration, a travel discount, or transportation for soliciting groups of persons. Such individuals must disclose in writing to every person solicited if they are receiving any consideration for such solicitation.

Passage and final approval of an initial state licensing and regulatory measure recommended by the Commission is aimed at protecting the citizens of Illinois from fly-by-night charter operators. It is an affirmative and necessary move in the right direction that could be augmented later with additional legislation in related areas.

In the backwash of editorial comment, speech-making and solemn appraisal of the World Academy episode, there were frequent and vocal demands for more regulatory controls under the aegis of the Civil Aeronautics Board.

Industry spokesmen contended CAB was the logical agency to curb abuses. Apparently, the federal agency was unable to cope with the situation.

In Newsweek Magazine, a story appearing under the heading "Rude Awakening" contained this significant observation:

"With hundreds of thousands of U. S. students flooding Europe in what is expected to be the biggest season for youth travel ever, the collapse of World Academy underlined the kind of speculative wheeling and dealing that can easily occur in the booming student-travel business."

"Unlike some fly-by-night charter organizations, World Academy was a legitimate commercial study-travel program operating within the regulations prescribed by the Civil Aeronautics Board. But the corporation was overextended financially and, in a depressed economy, the roof fell in."

The incident imposed financial hardship and harsh treatment upon many Illinois students and their families. Therefore, the Commission believes that the state is

justified in providing positive safeguards within its boundaries to protect its citizens against exploitation by promoting groups, regardless of their scope or size.

The Commission is not a judicial body and does not indict World Academy for a criminal offense. Any judgment in that area must be made properly after judicial determination. Actually, bankruptcy proceedings are in progress in a federal court.

Members of the Commission also share the view that the body should be authorized by the General Assembly to continue to research all facets of licensing, assess marketing, incentive fares, charter practices, pricing and selling policies of carriers in the travel industry.

The impact of a rapidly expanding multi-million dollar industry that affects the financial well-being of residents of Illinois certainly warrants sustained and further study. Therefore, the Commission respectfully requests the legislature to authorize a full-scale expansion with renewed activity in the next fiscal year.

APPENDIX A

MALFEASANCES OF TRAVEL AGENCIES

During the period from 1961 to 1969 a total of 271 complaints were filed on travel agencies in the office of the Attorney General, State of Illinois. The following are typical cases taken from the files. By agreement with the Attorney General, no names have been used.

A citizen gave a travel agency, that had gone out of business, money to buy round trip tickets to and through Europe. All this money was lost. The travel agent absconded with over \$2,900. "Now I paid a total of \$1,961 to a travel agent for airline tickets. I can't get my money back."

A couple contracted with a travel agent for European accommodations at \$40 per day. They received third-class accommodations and had extreme difficulty in getting a \$400 refund.

An agency booked steamship passage for a customer and the ship never sailed.

A group booked travel and hotel reservations with an agency and paid in advance. Upon arrival at their destination, they found no hotel reservations and no

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return plane reservations.

Another agency told a customer and his wife that they could cancel their trip up to ten days in advance at no charge. They later said that it was thirty days in which to cancel at a charge of \$50. The contract itself showed no cancellation penalty.

An agency booked a vacation (accommodations, air travel, and tours) for a customer and his wife. The accommodations were below those contracted for and various tours were not reserved.

There have been numerous complaints regarding tour packages in which various aspects of the tour are not reserved.

This is a quote from a citizen who had extreme difficulty in getting a \$50 refund from a travel agent: "I still do not understand how these companies can be permitted to operate this way. There should be some kind of penalty for this sort of thing.

An agency cancelled a tour for a customer saying that he had paid a bad check. He had receipts saying that he paid by cash. The company subsequently went out of business and the citizen lost \$375.

Another group booked a tour and paid the agent \$22,500. They had to fight for tickets valued at \$6,000 and got no more for their money. The agent went out of business.

Another group paid a \$5,000 deposit on a tour and lost the entire deposit as the agency folded.

Another couple lost \$200 deposit on a tour after the company went out of business.

APPENDIX B

*STATE REGULATION OF TRAVEL AGENTS AND BROKERS

An exhaustive search of the statutes of all states shows that a minority of states have statutes regulating, licensing, or taxing the business of selling transportation and travel accommodations. There appear to be two major categories of laws -- those dealing with licensing or taxation of travel businesses, and those specifically granting or denying banks the power to engage in the travel agency business. The remaining statutes are lumped together as "General Provisions Relating to Travel Agencies."

Several states license or regulate the business of bringing non-professional drivers together with passengers who wish to share expenses on a trip. Such arrangements are different from those dealt in by ordinary travel agencies, and are not felt to be within the scope of this memorandum.

States Licensing or Taxing Travel Agencies

In those states licensing the business of selling transportation or travel accommodations, the requirements for a license are usually simple, containing requirements that the potential licensee be of good moral character, pay a fairly small license fee, and provide a bond of a reasonable amount.

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As to taxation, the fees vary from trivial amounts to those imposed in Mississippi and Oregon, which are high enough to affect the profits of a marginal business. License fees and taxes are treated together in this section, since they amount to essentially the same thing as they are applied here.

The individual state provisions are as follows:

Delaware -- Delaware imposes a \$30 annual "license tax" on "transportation agents" (Del. Code. Ann., supp. to 1966, title 30, sec. 2301).

Indiana -- Indiana law requires a certificate from the State Treasurer before a person may engage in the business of selling transportation on steamships or railroads. A \$10,000 bond is also required, unless the Treasurer feels that no such bond is needed. Neither of the above provisions applies to banks, trust companies, savings associations, or common carriers (Burns Ind. Stat. Ann., supp. to 1967, sections 55-1101 and following).

Mississippi -- Mississippi imposes a \$200 privilege tax on each "tour agency, travel bureau or other travel organization". There is an annual privilege tax of \$50 for each county served by representatives of such business. The taxes apply whether the business is located in the state or not. The act does not apply to "school systems, fraternal organizations and similar groups, where tours are conducted without remuneration in any form to the organizer, and which do not include the general public." A separate license is required for each place of business. The statutes also set out numerous other provisions dealing with licenses and privilege taxes in general, including those for tour agencies, etc., (Miss. Code Ann., supp. to 1966, sections 9650 through 9673).

New York -- New York requires a license for the sale of steamship tickets or orders for foreign transportation. The license is not required for steamship companies. The license fee is \$25 annually and a bond of \$1,000 to \$2,000 (depending on the size of the city where the office is located) is required (McKinney's Cons. Laws of N.Y., supp. to 1968, General Business Law, sections 150 and following).

Oregon -- Oregon licenses "brokers" who sell transportation on motor vehicles. The license, issued by the State Public Utility Commissioner, shall be issued if the applicant is "fit, willing and able" to engage in such business and if "the proposed service is consistent with the public interest." A bond is required, as is payment to the State of a tax of 6 percent on gross revenues. The statutes also give the Commissioner the power to classify brokers into different groups subject to different regulations (Ore. Rev. Stat., supp. to 1964, sections 767.005 and following).

Tennessee -- Tennessee law provides that "Each person, firm or corporation operating a travel and/or tourist bureau shall pay on each place of business (a tax of \$10 to \$25 depending on the size of City)." It is not clear whether or not the tax is imposed annually (Tenn. Code Ann., supp. to 1967, sec. 67-4203, Item 107).

Virginia -- Virginia law requires a license for the sale of bus transportation but not, apparently, for the sale of any other types of travel accommodations (Code of Va. Ann., supp. to 1966, sections 56-292 and following.)

Laws Relating to Banks in the Travel Business

Only 4 states were found to have laws clearly answering the question of whether a State bank may or may not engage in the business of selling transportation and one of these, Arkansas, does not even mention the travel business but its prohibition

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against banks engaging in trade appears to be strong enough to prohibit the operation of a travel agency by a bank.

In the other 46 states, the statutes do not answer the question. None of their banking laws mention travel agencies by name. Several states specify the powers of their State banks and then have a general provision giving banks the powers to perform other functions incident to the banking business. In the absence of specific cases or statutes, it is impossible to say which states would permit the operation of bank travel agencies on the ground that it is a function incident to the banking process.

The following state laws make provision, directly or indirectly, relating to the sale of transportation by banks:

Arkansas -- "No bank shall employ its moneys, directly or indirectly, in trade or commerce." (Ark. Stat. Ann., supp. to 1967, sec. 67-502).

Indiana -- Provides that any bank or trust company shall have power to act as an agent to buy and sell domestic and foreign transportation (Burns Ind. Stat. Ann., supp. to 1967, sec. 18-1102).

Massachusetts -- "No bank shall engage in the business of operating a travel agency." (Mass. Gen. Laws. Ann., supp. to 1967, ch. 167, sec. 12).

New York -- "Every bank and trust company shall, subject to the restrictions and limitations contained in this chapter, have the following powers: . . . (13) To reserve or order transportation, travel accommodations or other travel services." (McKinney's Cons. Laws of N.Y. Ann., supp. to 1968, Banking Law, sec. 96).

General Provisions Relating to Travel Agencies

Numerous states provide that persons selling transportation must secure certificates of authority from each carrier they represent and display such certificates at their place of business. The fee involved, if any, is nominal (e.g. California, Indiana, New York, and Pennsylvania. Citations available at Legislative Council).

New Jersey and New York -- New Jersey law makes it a criminal offense to receive more than \$1 for resale or procurement of transportation but provides that the provision "does not apply to tickets, reservations or passenger accommodations (a) to or from places outside of the continental United States and Canada, excluding Alaska, nor (b) to existing written contracts between any travel agency and any corporation, firm or government agency covering tourist or travel services." (N.J. Stat. Ann., supp. to 1967, sec. 2A:170-57). New York has an identical law (McKinney's Cons. Laws of N.Y. Ann., supp. to 1968, General Business Law, sec. 127).

Oklahoma and South Dakota -- Oklahoma law provides that any person having an established business in any town or city within the State may deal in railroad steamship tickets. The law specifically points out that regulation of this field by municipalities is not precluded (Okla. Stat. Ann., supp. to 1967, title 66, sections 181 and 182). South Dakota has an identical statute (S.D. Code, supp. to 1963, sec. 52.1001).

Washington -- Every person, corporation or association selling tickets must have a fixed place of business and must there display certificates of authority from

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every carrier whose tickets it sells (Rev. Code of Wash., supp. to 1967, sections 81.56.140 and 81.56.150).

*Illinois Legislative Council. File 6-567 (1969) (RGG:mf) Research report by Robert G. Granda prepared at request of Senator Edward McBroom and Representative John J. Houlihan, Co-Chairmen, Illinois Travel Agency and Passenger Carrier Study Commission.

APPENDIX C

HOUSE BILL 1707

(Introduced April 15, 1971)

1 AN ACT to license and regulate travel agents and travel sales-
2 men, to establish a Board of Travel Agent Examiners, to provide
3 penalties for the violation thereof and to make an appropriation
4 in connection therewith.

5 Be it enacted by the People of the State of Illinois, represented
6 in the General Assembly:

7 Section 1. This Act shall be known and may be cited as "The
8 Travel Arrangers Registration Act".

9 Section 2. As used in this Act:

10 "Board" means the Board of Examiners of Travel Agents and
11 Salesmen;

12 "Department" means the Department of Registration and
13 Education, and "Director" means the Director of that Department;

14 "group travel" means the simultaneous travel by 8 or more
15 persons, unrelated by blood or marriage with a common destina-
16 tion, a common schedule and under an agreement where the group

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1 as a whole is one party. It specifically includes charter transporta-
2 tion and tours;

3 "travel agent" means a person who, for compensation and as a
4 business, arranges or reserves transportation, accommodations or
5 other services incidental to the travel of another person;

6 "travel salesman means any person who acts or aids in any man-
7 ner in the solicitation or negotiation, for or on behalf of any travel
8 agent, for compensation of any transportation, accommodations or
9 other services incidental to the travel of another person.

10 Section 3. No person may engage in the business or act in the
11 capacity of a travel agency or travel salesman within this State with-
12 out having a certificate of registration issued in his name by the
13 Department.

14 Section 4. This Act shall not apply to:

15 (a) an employee or agent of a public utility or transportation
16 company subject to control by some regulatory agency of the State
17 or Federal government, while actually engaged in the business of
18 such company or utility;

19 (b) the clerical employees of a travel agent or salesman regis-
20 tered under this Act, when acting under the supervision and control
21 of such agent or salesman;

1 (c) a person or an employee of a person, partnership or corpora-
2 tion which provides accommodations, meals or tours when acting
3 in behalf of himself or his company and its affiliates.

4 Section 5. A travel salesman may only be registered under this
5 Act if his certificate of registration is endorsed by a registered
6 travel agent by whom he is employed. If such employment termi-
7 nates, the travel salesman's certificate of registration is suspended
8 and shall be forwarded to the Director and shall be held by him.
9 Such certificate of registration shall be reissued upon application
10 made by the salesman and proof that he is employed by a registered
11 travel agent.

12 Section 6. There is created a Board of Examiners of Travel
13 Agents and Salesmen composed of 7 members appointed by the
14 Governor, at least 3 of whom must be travel agents.

15 The travel agents first appointed to the Board shall be persons
16 qualified to hold a certificate of registration under this Act and
17 their successors must hold certificates of registration as travel
18 agents.

19 Initially, 3 members shall be appointed for terms of 3 years,
20 2 for 2 years and 2 for one year. Thereafter the terms of all
21 appointive members shall be 3 years. Any vacancy occurring
22 in the position of an appointive member shall be filled by the
23 Governor for the unexpired term. Appointive members may be

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1 removed by the Director for cause after due notice and hearing.

2 The Board shall meet initially at the call of the Director as soon
3 as may be following appointment and shall organize by the selection
4 of a chairman and a secretary from among its members. Thereafter
5 it shall meet at the call of the chairman.

6 Members of the Board shall receive a per diem allowance of \$15
7 for each day or part of a day spent on Board work, and shall be
8 entitled to their expenses actually and necessarily incurred in the
9 performance of their duties.

10 Section 7. The Board shall aid the Director and the Department
11 by:

12 (a) Preparing subject matter for examinations as provided in this
13 Act,

14 (b) Suggesting rules to govern examinations and hearings for sus-
15 pensions, revocation or reinstatement of certificates of registration
16 as provided in this Act,

17 (c) Holding hearings for the suspension, revocation or reinstate-
18 ment of certificates of registrations,

19 (d) Submitting recommendations to the Director from time to time
20 for the efficient administration of this Act,

21 (e) Grading all tests and examinations for licenses and promptly
22 reporting the results to the Department, and

1 (f) Performing such other duties as are from time to time pre-
2 scribed by the Director.

3 Section 6. In addition to any other powers conferred by this Act,
4 the Director shall have the following functions, powers and duties:

- 5 1. To issue or refuse to issue or refuse to renew any registration
6 certificate provided for in this Act;
- 7 2. To revoke, cancel or suspend for cause any registration cer-
8 tificate issued under this Act;
- 9 3. To keep records of all registration certificates issued, re-
10 voked, cancelled or renewed, which records shall be kept to provide
11 ready information as to the identity of all registrants;
- 12 4. To receive, consider, investigate and act upon written com-
13 plaints made by any person in connection with the performance in
14 this State of the services of a travel agent;
- 15 5. To receive, consider, investigate and act upon written com-
16 plaints that any person not registered as required by this Act is
17 representing or holding himself out to be or is performing the serv-
18 ices of a travel agent or travel salesman;
- 19 6. To prescribe the forms of and receive applications for certifi-
20 cates of registration and all reports required to be made by a
21 person registered under this Act;
- 22 7. To adopt rules and regulations necessary and proper for the
23 administration of this Act;

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1 8. To subpoena witnesses, compel their attendance, administer
2 oaths and in connection therewith, to require the production of any
3 books, papers or other materials relevant to the inquiry.

4 Section 9. A person shall be qualified to receive a certificate as
5 a registered travel agent or a travel salesman who:

6 (1) Is of good moral character and of sound physical and mental
7 health;

8 (2) Has satisfactorily passed a written examination conducted by
9 the Department to determine his fitness to conduct the business of
10 travel arranging;

11 (3) Has paid the required fees;

12 (4) Is financially reliable.

13 Certificates of registration may be issued, upon application and
14 payment of the required fee, without examination to applicants who
15 are of good moral character and who have been engaged in the busi-
16 ness of travel agent or travel salesman for at least 2 years prior to
17 the effective date of this Act.

18 Section 10. All registration certificates under this Act are valid
19 for terms of one year and expire on December 31st of each year.

20 Licenses may be renewed by making application to the Depart-
21 ment by November 1st, accompanied by the required fee. The appli-
22 cation forms for renewal shall be mailed to each licensee by the
23 Department before October 1st of each year.

1 Section 11. The Department shall suspend, revoke or refuse to
2 renew a registration if the Board finds the holder to be guilty of the
3 performance or attempt to perform any of the following prohibited
4 acts or conduct:

5 (1) Knowingly making any substantial misrepresentation; or

6 (2) Knowingly making any false promise of a character likely to
7 influence, persuade induce; or

8 (3) A continued or flagrant course of misrepresentation or making
9 false promises through agents or otherwise; or

10 (4) A conviction in a court of competent jurisdiction of this or any
11 other state of forgery, embezzlement, obtaining money under false
12 pretenses, extortion, conspiracy to defraud or other like offense
13 or offenses; or

14 (5) Any failure to account for or to pay over moneys belonging
15 to others which have come into his possession arising out of the
16 arrangement of travel services for another; or

17 (6) Any misleading or untruthful advertising; or

18 (7) Any willful failure to file reports or information as required
19 by this Act; or

20 (8) Any willful failure to return moneys on cancellation of travel
21 arrangements when such return is clearly dictated under this Act; or

22 (9) Any act or conduct in connection with the sale or arrangement
23 of travel services which demonstrates incompetency, bad faith or

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1 dishonesty; or

2 (10) Failure to file a bond and failure to keep such bond in force
3 as required by this Act.

4 Section 12. All proceedings under this Act to revoke, suspend
5 or refuse to renew a license shall be conducted in the manner pre-
6 scribed by Sections 60b through 60g of "The Civil Administrative
7 Code of Illinois".

8 Section 13. A certificate of registration as a travel agent shall
9 not be granted to any person until the applicant files with the Depart-
10 ment a bond signed by the applicant as principal and by a responsible
11 company authorized to execute surety bonds within this state, or
12 other good and sufficient bond to be approved by the Department,
13 and conditioned upon the faithful performance by the applicant of
14 the duties of a travel arranger or travel agent. Such bond shall be
15 in a principal amount of \$5,000.

16 Such bond shall be made payable to the people of the State of
17 Illinois for the use and benefit any person who pays for travel serv-
18 ices through a travel agent and does not receive such services
19 through some fault of the travel agent and such bond shall not be
20 cancelled during the period for which the license shall be issued,
21 except upon 60 days notice in writing to the Department. If a bond
22 other than a surety bond or cash bond is filed it shall be secured by
23 real estate, stocks, bonds or other personal property approved by

1 the Department having a value of not less than double the amount of
2 such bond over and above all exemptions and liens thereon. A bond
3 secured by real estate shall be recorded and shall be a lien on the
4 real estate for the amount thereof and the recording fees therefor
5 shall be paid by the applicant.

6 Section 14. Every travel agent registered under this Act shall
7 file a report of his financial condition as required by the Depart-
8 ment. If the registered travel agent is a member or employee of a
9 partnership, the report required by this Section shall include a
10 statement of the financial condition of such partnership. If the reg-
11 istered travel agent is a director or employee of a corporation
12 which arranges or provides travel services, the report required
13 by this Section shall cover the financial condition of such corpora-
14 tion.

15 The reports required by this Section shall be in a form pre-
16 scribed by the Department and shall be filed as often as the direc-
17 tor considers necessary, but in no event more frequently than once
18 a year.

19 Section 15. If through the fault or negligence of the travel agent,
20 a contract involving travel services is cancelled or if the services
21 contracted for are not available substantially as represented by such
22 travel agent, the person arranging for such travel services must,
23 at the option of the person whose trip was cancelled, make a full

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1 refund of all moneys paid to him in connection with such travel.

2 Section 16. The moneys which a travel agent or salesman
3 collects from persons arranging group travel through such travel
4 agent or salesman shall be held by the agent or salesman in a
5 fiduciary capacity and shall not be misappropriated or converted
6 to his own use or illegally withheld by the travel agent or salesman.
7 Moneys paid to a travel agent or salesman for group travel shall
8 be held separately by the agent or salesman and shall not be co-
9 mingled or used for any purpose other than paying for the group
10 travel, until after such travel is completed.

11 Section 17. No travel agent or salesman may make or cause to
12 be made in his behalf, any solicitation for travel services on the
13 grounds of any school or university without having first received
14 written permission from the principal or dean of such school.
15 Before giving permission the principal or dean shall ascertain
16 if the travel agent is licensed under this Act.

17 Section 18. The knowing use of misleading advertisements or
18 other solicitations is prohibited. Any advertisement or other
19 solicitation which shows transportation fares must show the
20 amount of the round-trip fare, or if the amount shown is the
21 one-way fare, the advertisement shall so state in print at least
22 1/3 as large as the figure showing the fare.

1 Section 19. Every person, other than a registered travel agent
2 or a registered travel salesman, who solicits, sells or otherwise
3 promotes group travel must disclose in writing to every person
4 solicited, if they are receiving any consideration for such solicita-
5 tion. Consideration includes payment in money, travel, or a dis-
6 count in travel costs.

7 Section 20. All final administrative decisions under this Act are
8 subject to judicial review under the "Administrative Review Act",
9 approved May 8, 1945, and all amendments and modifications
10 thereto and the rules adopted pursuant to such Act. The term
11 "administrative decision" is defined as in Section 1. of the "Ad-
12 ministrative Review Act".

13 Proceedings for judicial review shall be commenced in the circuit
14 court of the county in which the party applying for review resides;
15 but if such party is not a resident of this state the venue shall be
16 Sangamon County.

17 Section 21. The following fees shall be paid to the Department:

- 18 (a) for registration as a travel agent, \$50;
19 (b) for renewal of registration as a travel agent, \$20;
20 (c) for registration as a travel salesman, \$50;
21 (d) for renewal of registration as a travel salesman, \$20;
22 (e) for examination for license, \$25;

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1 Section 22. Any person who violates any provision of this Act
2 shall be fined not less than \$100 nor more than \$5000 or be im-
3 prisoned in a penal institution other than a penitentiary for not more
4 than one year or both.

5 Section 23. The sum of \$60,000, or so much thereof as may be
6 necessary, is appropriated to the Department of Registration and
7 Education for the purposes of this Act.

AMENDMENT TO HOUSE BILL 1707

1 AMENDMENT NO. / . Amend House Bill 1707, on page 1,
2 line 22, by striking "accomadations" and inserting in lieu thereof
3 "accommodations"; and
4 on page 1, line 27, by striking "accomodations" and inserting in
5 lieu thereof "accommodations"; and
6 on page 1, by striking lines 29 and 30 and inserting in lieu thereof
7 the following:

8 "Section 3. No person may engage in the business
9 or act in the capacity of a travel agent or travel
10 salesman within"; and
11 on page 2, by striking lines 8 through 11 and inserting in lieu
12 thereof the following:

13 "(c) the owner or employee of a hotel, motel,
14 inn or other such establishment offering accom-
15 modations to travelers, when making arrangements
16 for accommodations in his own or other such establish-
17 ments or when making arrangements for local sight-
18 seeing tours."; and

19 on page 6, by striking line 13 and inserting in lieu thereof
20 the following:

21 "State of Illinois for the use and benefit of any
22 person who pays for".

PEDERSEN TRAVEL AGENCY, INC.,
New City, Rockland County, N.Y., September 22, 1971.

Senator DANIEL INOUE,
*Chairman, Senate Commerce Subcommittee on Tourism,
 The Senate, Washington, D.C.*

HONORABLE SIR: We understand you are in the process of drafting a bill requiring Federal regulation of Travel Agents. We present the following thoughts for your consideration.

This Agency is not a member of ASTA for many reasons, but we want you to know we are convinced the root of the "Charter and Affinity weakness and violation" is the fact they are not required to be booked through official Travel Agencies. The obvious solution is compulsory placing of all Charters and Affinities through such authorized and duly appointed Travel Agencies. Regulations of the industry-appointed agencies should then stringently enforce immediate dismissal of any member who deviates from the rules.

Why not another simple answer? Government can simply require the industry to see to it that the various airline and steamship agencies such as Air Traffic Conference, International Air Traffic Association, Trans-Atlantic S.S. Association, etc. (as well as the Civil Aeronautics Board), get together and compile rules which are stringently enforced at the request of any appointed Travel Agency.

Please note we pay annual dues to Industry Associations such as the ATC and IATA. If Federal or State licensing is required, why then should we incur the expenses of additional dues to the Industry's Associations without whose okay we cannot get air-line or steamship-line appointments? (Ultimately, of course, all such expenses have to be borne by the public or the Travel Agent would go bankrupt!)

We object to any regimentation which results in no really basic advantage and will require payment of a licensing fee which, considering present commission scales, we can ill afford. Besides, we are creating more and more government jobs, thereby raising our taxes (which are already beyond us). Then, too, if one industry needs policing, *all* do.

Would really appreciate your serious consideration and reply.

Sincerely,

(Mrs.) MARGUERITE PEDERSEN.

SANDERS WORLD TRAVEL, INC.,
Washington, D.C., September 24, 1971.

Senator DANIEL INOUE,
*Old Senate Office Building,
 Washington, D.C.*

DEAR SENATOR INOUE: I feel compelled to write to you following the announcement which I have just read that as Chairman of the Senate Commerce Subcommittee on Tourism you were drafting a bill to require federal regulation of travel agents.

As much as I personally dislike government interference in the normal operation of business, there is no doubt in my mind that the travel agency industry is now being abused by all kinds of shady operators who are giving a black eye to legitimate agents. What compounds the problem is that the public in general does not seem to be able to differentiate a legitimate agent from one who is not.

I feel, therefore, that the time has come for action on the government level and I am writing to lend the support of this agency to what you are trying to accomplish.

Yours sincerely,

A. A. SANDERS, CTC,
President.

AMERICAN JEWISH CONGRESS,
New York, N.Y., September 27, 1971.

Senator DANIEL INOUE,
Chairman, Senate Commerce Subcommittee on Tourism,
Senate Office Building, Washington, D.C.

My DEAR SENATOR: The American Jewish Congress, like many other national Jewish organizations, conducts an extensive travel program to encourage its members to visit Israel and other places of Jewish interest. We are, accordingly, interested in a report that you are drafting a bill to require Federal registration of travel agents. Some of the bills introduced in Congress in the past have required non-profit organizations like ourselves to register as travel agents. Some have even gone further and forbidden non-profit organizations to organize any travel for their members.

May I respectfully suggest that in drafting any legislation you include a specific exemption for tax-exempt agencies. Such an exemption appeared in a New York State bill drafted by a State committee appointed to investigate abuses by travel agents. The full text of the exemption clause in the bill read as follows:

"This article shall not apply to any religious, charitable or educational organization, exempt from taxation pursuant to the provisions of section five hundred one (c) three of the internal revenue code, which organizes for its own members only travel or tours substantially related to its religious, charitable or educational programs, no part of the net proceeds of which may inure to the benefit of any officer, member or employee of such organization and provided that all of the net earnings of such travel or tours are used exclusively for the tax-exempt purposes of such organization. Travel and lodging reservations or accommodations for travel or tours by such organizations may be arranged by a travel agent duly licensed pursuant to this article."

If you have any questions, I should be very glad to try to answer them. If you wish, I can come to Washington to discuss it further with you.

Sincerely,

WILL MASLOW.

EMERSON TRAVEL, INC.,
New York, N.Y., September 29, 1971.

Hon. DANIEL INOUE,
Senator from Hawaii, Senate Office Building,
Washington, D.C.

DEAR SENATOR INOUE: I have just finished reading a front page article in the Oct. 1, 1971 issue of Travel Weekly, reporting that Governor Ogilvie of Illinois had vetoed the Illinois state bill for licensing Travel Agents. Appearing in the same issue is the article stating that you had introduced your own version of a licensing bill in the Senate, employing several points that had been suggested by ASTA.

Even though I am Rec. Sec. of the Greater New York City (NYASTA) Chapter of ASTA, and a member of the NYASTA Licensing Committee, I should like to go on record as a private member of ASTA, Owner, President/Manager of Emerson Travel, Inc., to say that it has always been my personal conviction that the Travel Agency Industry should be registered under the Department of Transportation, where it belongs; and that we are indeed involved in Interstate Commerce (in the broader sense) and that state or local type control would create such unnecessary hardships with each existing travel agency, and accomplish so little in controlling the very elements we all hope to discourage from operating, that to consider such piecemeal legislation is to admit not only to limited vision but incredibly embryonic legislative ability.

As I am planning to attend the Convention in Sydney, where we shall have the rare opportunity to get to know you better and hear, first hand, just what the Congressional thinking appears to be, I shall be doubly hopeful that I may be able to greet you personally and wish you good luck in this current endeavor.

With continuing best wishes, I remain,

Sincerely yours,

HARRIETT EMERSON.

EMPIRE NATIONAL BANK TRAVEL SERVICE,
Newburgh, N.Y., October 7, 1971.

Hon. DANIEL K. INOUE,
U.S. Senator, U.S. Senate,
Washington, D.C.

DEAR SENATOR INOUE: Since our last communication (your letter of March 4, 1971), you have introduced in the Senate your bill S. 2577 with regard to regulation of travel agents.

May I assure you, sir, of my wholehearted approval of your efforts to protect the public as well as legitimate travel agents from an increasing number of unscrupulous operators in the travel field. The proposed Bureau of Travel Agent Registration within the U.S. Department of Transportation will be very effective, no doubt, in elevating the travel agent industry to a new level where public support and confidence in the travel agent will increase. With public confidence we will earn the long-sought professional status among specialized industries.

I feel that federal regulation with reference to qualification can only improve our image, increase business and encourage competition.

Sincerely yours,

JULES S. VALLAY,
Director of Travel Services.

ZONNTOURS, INC.,
San Francisco, Calif., October 8, 1971.

Hon. DANIEL INOUE,
U.S. Senate, Capitol Hill,
Washington, D.C.

DEAR SENATOR INOUE: I strongly support your efforts for obligatory Federal licensing of Travel Agents. As one connected with the tourist industry for the last fifteen years, it is my opinion that such a measure should be instituted as soon as possible to protect the American public and contribute toward orderly development of Tourism in the United States.

The lack of licensing of Travel Agents has resulted in innumerable abuses and I see clear obligation of the Federal authorities to initiate nationwide registration to put "the house in order."

Should you be interested in further information or opinion I shall be pleased to hear from you.

Very truly yours,

JULES G. ZONN.

UNITED TRAVEL SERVICE, INC.,
Springfield, Ill., October 9, 1971.

Senator DANIEL K. INOUE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR INOUE: In connection with the bill you plan to introduce which would require federal regulation of travel agents, enclosed please find copy of text of Governor Ogilvie's veto of the Illinois State Licensing bill, an excellent analysis of the problems which exist in this industry.

It has become increasingly obvious that legislation is necessary to eliminate those who threaten to undermine this industry, and it is equally obvious that it should be at national level.

Good strong regulations using ATC, IATA, CAB, and all other governmental agencies concerned with travel and transportation, with suggestions from American Society of Travel Agents, Inc., is the only logical answer.

I hope you will pursue this legislation to its final conclusion.

Sincerely,

Mrs. DOROTHY WERNER.

Enclosure.

TEXT OF GOVERNOR'S VETO OF ILLINOIS AGENCY LICENSING MEASURE

SPRINGFIELD—The bulk of the governor's veto message of the Illinois state agency licensing measure is reprinted below:

The bill was the product of the Illinois Travel Arranger and Passenger Carrier Study Commission which held hearings and, on the basis of the information elicited, formulated House Bill 1707 . . . According to the Commission, the major wrong that the bill was designated to cure is misrepresentation and fraud

worked upon the traveling public by travel arrangers, including tour promoters, who provide cut-rate air fares by forming groups to take advantage of low charter rates authorized by the CAB.

In their report, the Commission cited as a prime example the case of World Academy Inc. of Cincinnati, Ohio, which failed last year to provide return transportation for over 5,000 students who, as a result, were stranded in Europe. These students had paid in advance for round-trip tickets but, due to World Academy's financial failure, found they had to pay another return fare at the higher commercial rate. Unfortunately, the bill fails to solve this problem.

The interstate commerce clause of the U.S. Constitution would preclude the State from effectively regulating a travel arranger who operates in Illinois by mail or other instrumentality of interstate commerce and who does not establish an office within the state. The lure of low-cost travel through membership in groups which exist solely to provide such benefits is so great that many people willingly join knowing nothing about the organization. They fail to determine if there are any assurances that the money which they pay in advance will ever be used to pay the cost of their travel. World Academy was such an organization, formed solely to supply cheap air transportation for its "members" through charter rates. The CAB regulations clearly prohibit an organization being formed for the purpose, but operations like World Academy are found throughout the country, often operating by mail with no branch offices. The Illinois Department of Registration and Education would be powerless to reach these groups if they only operate in interstate commerce.

The commerce clause would also prohibit the effective regulation of the travel wholesaler. Almost all of the travel wholesalers are located outside the State and it is they who arrange tour packages which are then sold nationwide through retail travel agents and large organizations. Many of these wholesalers have failed financially in recent months and have not applied the payments from retail travel agents or large organizations to pay for the services which have been sold. Due to the overwhelming problem arising from the interstate commerce nature of arranging interstate and international travel, the answer must lie in stronger federal control over the entire field.

The bill is also deficient in that it provides in Section IX that a certificate of registration may be issued without examination to anyone who is of good moral character and who has been engaged in the business of being a travel agent or a travel salesman two years prior to the effective date of this act. Under this broad grandfather clause, even the principals of World Academy Inc. could be granted a license. A grandfather clause which grants a license to anyone who has been in the field for two years prior to the effective date of the act would not furnish any meaningful protection to the people of the State of Illinois.

As has been noted, the main purpose of this legislation is to prevent fraud and misrepresentation upon the people of the State of Illinois. The citizens of the State of Illinois are already protected under the provisions of the Consumer Fraud Act administered by the attorney general's office and the provision of the Criminal Code pertaining to criminal fraud. An individual would also have his full common law remedies for fraud and could complain to the CAB for violations of their regulations pertaining to charter groups and common carriers.

BURDEN ON AGENT

In addition to not correcting abuses which this legislation was designed to correct, it would also put a burden on the local travel agent who would bear the brunt of regulation. The local travel agent has a good reputation in most communities. These individuals are primarily small businessmen who are closely controlled by either the ATC or IATA and are required to submit regular reports of all air transportation tickets sold. These individuals would be needlessly burdened by the provisions of this bill since it would require considerably more paperwork, lack of freedom of recruiting personnel and the normal restraints that go with any governmental regulation.

All of this will come at a time when there will hopefully be increasing federal supervision over the entire field of travel arrangements. The tour promoters who are located outside the State of Illinois and who offer cut-rate fares, under an illegal use of charter flights or the fly-by-night operators who sell in Illinois for a short period of time will not voluntarily register. The only remedy that the State will have will be to bring costly and time-consuming lawsuits attempting to force those individuals who actually set up offices in the State of Illinois to register. As pointed out above, the interstate commerce clause will protect those operating from outside the state.

MR. Q TRAVEL, INC.,
Grosse Pointe Woods, Mich., October 25, 1971.

Sen. WARREN G. MAGNUSON,
U.S. Senate,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: This letter is being written with reference to the proposed legislation for the Federal Licensing of travel agents per bill S2577 proposed by Senator Daniel K. Inouye of Hawaii. I am, in most cases, in agreement with the Senator and feel it would be to the benefit of the American public to have Federal Licensing, although I do feel it somewhat unfair in legislating the travel agents who are not really the culprits. It's the "fly by night" charter operators who need legislation. All in all, I feel the bill is justified and the end results should be good.

I have owned and operated my agency for three years as of this January. We meet and have met all the financial criteria as set up by I.A.T.A. and A.T.C. and hold these appointments as well as various steamships and other conferences. We conduct a most ethical agency, primarily being in the retail market. The proposed legislation stipulates for licensing without exams, etc., and that an agency be in existence for three years as of September 1968. This section seems most unfair. I recommend your committee consider a two-year stipulation as of that date of the bill's enactment. Having talked with a number of congressmen and travel agent officials, the consensus of opinion is that we are correct and that this would be an unfair, burdensome procedure on the legitimate agent whose business has been operating for this length of time.

All legitimate, appointed agents will be most anxious to support this legislation, but with the stipulation as mentioned above, we would find it difficult to endorse it. Won't you please consider this point of view. Anxious to give you our full support, I am . . .

Yours most appreciatively,

ROBERT E. QUARTERS, *President.*

AMERICAN JEWISH CONGRESS,
New York, N.Y., November 8, 1971.

Senator DANIEL K. INOUE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR INOUE: I just got back to the country and found your letter of October 22nd awaiting me.

I quite agree that some allegedly non-profit organizations are really rackets and have fleeced innocent travelers. However, I make a distinction and hope that the Senator will also between an un-regulated non-profit group and a tax-exempt organization. The Jewish organizations listed in my letter of October 18th are reputable, well-established national organizations which do not exist solely for the purpose of organizing travel. Indeed, travel programs for their members are a small portion of their activities.

I would urge, therefore, that you consider the questions of exemption for tax-exempt organizations and take the liberty of calling to your attention once more the following suggested exemption clause:

"This article shall not apply to any religious, charitable or educational organization, exempt from taxation pursuant to the provisions of section five hundred one of the internal revenue code, which organizes for its own members only travel or tours substantially related to its religious, charitable or educational programs, no part of the net proceeds of which may inure to the benefit of any officer, member or employee of such organization and provided that all of the net earnings of such travel or tours are used exclusively for the tax-exempt purposes of such organization and provided further that the travel and lodging reservations or accommodations for travel or tours by such organizations are arranged by a travel agent duly licensed pursuant to this article."

Sincerely,

WILL MASLOW.

PUTNEY STUDENT TRAVEL INC.,
Putney, Vt., November 11, 1971.

U.S. Senator DANIEL INOUE,
Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR INOUE: It seems to me that a simple regulation making it mandatory for those who charter aircraft or who sell space on charter flights to pay the carrier in full for the roundtrip passage prior to the departure of the eastbound leg would eliminate the possibility of stranding students or other passengers abroad. Being required to make this roundtrip payment in full before the trip begins, the same sort of payment exactly that an individual traveler must make to an airline before departing from the United States with a round-trip ticket, would have prevented the World Academy strandings and the stranding of thousands of other students who were sold tickets by fraudulent agencies. I am suggesting that the carrier should be prevented from delivering the east-bound flight until the westbound flight has also been paid for. I suspect that the CAB already has the authority to put such a regulation into effect: if not, they should be given that authority.

Further, it is my understanding that there are already laws on the books which make it possible to prosecute fraudulent travel agents in the same way that fraud in any other business can be prosecuted.

I am opposed to general licensing of travel agents. I do not believe that a licensing procedure would be as effective in protecting the public as simple regulations such as the one described above. Licensing, it seems to me, would be just one more form of control but with little effect. (It is disturbing to me to see this nation moving more and more toward government control of so many areas of living.)

Although Putney Student Travel has provided successful educational programs abroad for 20 years and we cherish our reputation for reliability, we probably could not pass a travel agent's licensing examination because we are not travel agents, no one in our office writes airline tickets or any other sort of ticket and we have no knowledge about the kinds of paper work and reporting that are routine in a travel agency. Having such knowledge would be small proof of reliability.

Respectfully yours,

GEORGE SHUMLIN, *President.*

PEDERSEN TRAVEL AGENCY, INC.,
New City, Rockland County, N.Y., November 16, 1971.

Senator DANIEL INOUE,
Chairman, Senate Commerce Subcommittee on Tourism, Senate Office Building,
Washington, D.C.

HONORABLE SIR: Appreciate the phone call. Anticipating a bronchial cold may keep me from attending the November 18th hearing, will make the following comments regarding possible proposed Federal licensing of the Travel Industry.

1. Basically, we ask the questions: Can any licensing and/or regulation cover *every* segment of the Industry? What would be the over-all cost? Will the entire cost be passed on to the licensee? If so, can the individual unit so licensed afford the fee? If not—and the licensing and/or policing of the law requires Federal or State subsidy—how can we foist on the general public another expense which may or may not benefit only the traveling public?

2. Why is it now only the Travel Industry which needs licensing and policing? Or should we ask "Where will licensing and policing stop?" When will we concede we have come to the point where we can no longer create monstrous departments of government which can only ultimately consume us? Haven't we been led far enough down the garden path which took us from Democracy to Socialism and possibly now to ultimate restrictive Communism? Shall we about face—or is it already too late?

3. You may state the public must be protected. Should we not rather teach the public to protect itself? This applies to every Industry. But, since this hearing relates only to travel, why not make it mandatory that the CAB and the existing Industry Conference, as well as Hotel organization, Tour Operators, etc.—together with a few selected knowledgeable and practical Travel Agents—formulate new and thorough rules which are clear-cut (and not double-edged)—

such rules to be strictly enforced without favor by the Industry controlling body; any resultant dissatisfaction to be brought before the CAB for prompt hearing and final decision.

4. There are many facets to this Industry—but the major problem affecting the traveling public is the improperly policed air-charter segment. Perhaps a very simple solution may be the requirement that all charters be placed through reputable Travel Agencies which have been appointed by the affected Airline Conference for a minimum of five years. Think about it! Or is it perhaps too simple in our complex world? But would it not avoid the possibility of a "quick-kill" charter program on the part of "Johnny-Come-Lately" who con the public and then disappear or turn up under another name for another killing (at public expense) time after time?

Trust these few thoughts may be of interest. I would be only too happy to appear at a future hearing on this matter. Or, if I can serve you in any way to the betterment of the Travel Industry, you need only call.

Sincerely,

(Mrs.) MARGUERITE PEDERSEN.

CAIAZZA TRAVEL AGENCY,
 Middletown, Conn., November 19, 1971.

Senator DANIEL K. INOUE,
 Senate Office Building,
 Washington, D.C.

DEAR SENATOR INOUE: As Vice President of Connecticut A.S.T.A. and a member of the Connecticut A.S.T.A. Legislative Committee, please be advised that we of Connecticut A.S.T.A. support your hearing to the bill, which would endorse Federal Licensing of Travel Agents.

Yours very truly,

F. ROBERT FRITZ.

INTERNATIONAL COMMITTEE OF PASSENGER LINES,
 New York, N.Y., November 23, 1971.

Re S. 2577

HON. DANIEL K. INOUE,
 Chairman, Subcommittee on Foreign, Commerce and Tourism, U.S. Senate, Washington, D.C.

DEAR SENATOR INOUE: The International Committee of Passenger Lines, comprised of 18 of the major foreign flag carriers providing ocean steamship passenger services and pleasure cruises from United States ports; submits herewith its comments in connection with S. 2577 which would protect the travelling public by providing for regulation of the travel agency industry. A list of the members of our Committee is attached.

Generally speaking, travel agents are honest and dependable, but unfortunately some occasions have arisen in recent years involving a few (particularly tour organizers) who have failed to meet adequate standards of dependability and trustworthiness with consequent financial loss and inconvenience to the travelling public. This, in turn, has reflected adversely on the travel industry as a whole. For this reason our Committee supports the aims of S. 2577.

However, we should emphasize that in contrast to travellers utilizing all other modes of transportation, all persons booking accommodation on passenger ships are already in a preferred position. Ever since the passage in 1966 of Public Law 89-777 (46 U.S.C. § 817e), these passengers have been fully protected for refunds of steamship fares, whether collected by the ocean carriers themselves or by their appointed travel agents, in the event of non-performance of scheduled ocean transportation. Each passenger ship operator is required to obtain a certificate of financial responsibility, issued by the Federal Maritime Commission, which is based on bonds or insurance guarantees filed with the Commission. The amounts involved are very substantial. Under the Commission's regulations (46 CFR 540.5) the coverage must represent no less than 110% of the unearned passenger revenue of the steamship company on the date within the two fiscal years immediately prior to the filing of its application which reflects the greatest amount of unearned passenger revenue. In many instances, the amount involved is as high as \$5,000,000. In the event of a charter, the coverage provided by the steamship Line continues, unless it notifies the Commission to the contrary in which case

the charterer himself must provide coverage in an amount satisfactory to the Commission.

Although we consider that HR 2577 is unnecessary insofar as passenger ship transportation is concerned, we nevertheless recognize that such transportation is often sold in combination with other forms of travel arrangements. We, therefore, support the adoption of S. 2577 or any amendment thereof which would protect passengers against the loss of revenue for extraneous services provided in connection with steamship travel.

We would appreciate having the foregoing comments made a part of the record.

Yours sincerely,

VINCENT A. DEMO,
*Chairman, New York Committee,
International Committee of Passenger Lines.*

Enclosure.

MEMBERS OF NEW YORK COMMITTEE OF THE INTERNATIONAL COMMITTEE OF PASSENGER LINES

Canadian Pacific
Chandris America Lines S.A.
Costa Line, Inc.
Cunard Line Limited
French Line
German Atlantic Line
Greek Line
Hapag-Lloyd AG
Holland-America Line

Home Lines, Inc.
Ingres Line
Italian Line
Norwegian America Line
Paquet Line
P & O Lines, Inc.
Royal Caribbean Cruise Line
Sun Line
Swedish American Line

AMERICAN HOTEL & MOTEL ASSOCIATION,
Washington, D.C., November 24, 1971.

HON. DANIEL K. INOUE,
*Chairman, Subcommittee on Foreign Commerce and Tourism, Senate Committee
on Commerce, New Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: The American Hotel & Motel Association is a federation of hotel and motel associations located in the fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands, having a membership in excess of 7,750 hotels and motels containing in excess of 850,000 rentable rooms. The American Hotel & Motel Association maintains offices at 888 Seventh Avenue, New York City, and at 777 14th Street, N.W., Washington, D.C.

We appreciate this opportunity to briefly comment on S. 2577, a bill designed to provide for Federal regulation of the *travel agency industry*.

After continued reading of S. 2577, we are still unclear as to whether the definition of "travel agency" as found in Section 23(5) could be construed to also apply to a hotel or motel which makes a reservation.

Specifically, we direct your attention to the words "or other valuable consideration, of any sort" [Section 23(5)]. This type of language is so broad that we can foresee certain situations which, as they arise, could lead the bureau of Travel Agents to later rule that a certain hotel or motel is also a "travel agency" for purposes of Federal coverage.

Here are two examples:

(1) Where a member of a chain or referral group places a reservation with an affiliated member as per their agreement.

(2) Where a customer is told that there are no vacancies but because of "custom" a reservation is nonetheless made for him at another's property.

In order to avoid these problems, we would urge the Subcommittee to adopt the following or similar language so that the intent of this legislation is clear:

"This Act shall not apply to the owner or employee of a hotel, motel, inn, or other establishment offering accommodations to travelers when making arrangements for accommodations in his own or other such establishment or when making arrangements for local sight-seeing tours."

We request that the letter be included in the printed record of the hearings.

Sincerely,

ALBERT L. McDERMOTT,
Washington Representative.

NAPA, CALIF., November 29, 1971.

Senator WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.

HON. SENATOR MAGNUSON: I wish to state that I am in complete agreement with the facts presented by our A.S.T.A. President Keesling to your committee on November 18 of this year.

It is my opinion that 50 state governing bodies would place interstate and International Travel and Tourism in a Catastrophic position and the common sense solution would be to place the Carriers—Tour operators, wholesalers—Retailers and others engaged in the sale of Travel and Tours to the public, under Federal regulation.

Sincerely,

EARL P. PATTEN,
Napa Valley Travel Agency.

HOLIDAY TRAVEL,
Johnstown, Pa., November 30, 1971.

HON. WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: I would like to place on record the support of the Johnstown Holiday Travel Agency for S. 2577.

It is the belief of this organization that there can only be confusion, chaos and trouble in the travel industry until the sale of all travel is sold through recognized, qualified and financially sound agents. Although I regret the need for Federal regulation, it is my belief that S. 2577 is in the best interest of the public.

CHARLES KUNKLE, Jr., President.

CHIMA TRAVEL BUREAU, INC.,
Akron, Ohio, December 1, 1971.

Mr. DANIEL K. INOUE,
Chairman, Senate Commerce Committee, Subcommittee on Foreign Commerce
and Tourism, Senate Office Building, Washington, D.C.

DEAR MR. INOUE: As a travel agent, I am very much concerned with the many problems regarding our industry.

In recent months we have been the victim of substantial monetary losses as the result of bankruptcies, business failure or result of default of the tour operator. Because of this experience which we have been subject to, we want to commend or applaud the Senator and his Subcommittee for looking into abuses in the travel agency industry.

We urge the Subcommittee to take prompt action as advocated by ASTA to deal with these abuses through Federal Regulation as advocated by ASTA.

Very truly yours,

C. P. CHIMA, CTC—President.

TOLEDO HOUSE OF TRAVEL,
Toledo, Ohio, December 1, 1971.

HON. SENATOR INOUE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR INOUE: We are very much in favor of the bill providing Federal Regulation of Travel Agents and we wish to express our support of your bill S 2577.

A bill of this nature would provide much needed regulation of organizations that deal so much with the general public. Passage of Bill S 2577 will assure greater protection of the interests of all concerned.

Cordially yours,

CHARLES R. HAYES.

HAYES TRAVEL AGENCY, INC.,
Perrysburg, Ohio, December 1, 1971.

Senator INOUE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR INOUE: We are writing you in reference to your bill for Federal Regulation of Travel Agents (S 2577).

We are wholly in favor of Federal Regulation and strongly urge that Bill S 2577 be enacted.

A bill of this nature would assure fair and equitable treatment for all concerned.

Cordially yours,

CHARLES R. HAYES.

REED TRAVEL AGENCY,
Fargo, N. Dak., December 2, 1971.

Senator WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: Knowing your interest in travel and us having lost our mutual friend, Mr. Bill Stern, a few years ago, who was most interested in travel, I solicit your support of Senator Inouye's bill pertaining to Federal licensing of travel agents to curb illegal charters and outright fraud in handling travel charters.

I think this is a very necessary bill and hope you will support it.

Sincerely,

HAROLD G. REED,
President Elect, Upper Midwest Chapter of the American Society of Travel Agents.

BLAND-WILCOX TRAVEL, INC.,
Bala-Cynwyd, Pa., December 3, 1971.

Senator WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: We wish to go on record that we are fully in support of ASTA's position that a comprehensive federal regulatory program should be put into effect as embodied in S. 2577.

As members of ASTA we feel that the industry should not be subject to criticism because of fly-by-night operators. Their behaviour reflects on the whole industry.

Sincerely,

(Mrs.) E. BLAND.

STATE OF CALIFORNIA,
OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE,
Los Angeles, Calif., December 3, 1971.

Re S. 2577.

Hon. DANIEL K. INOUE,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR INOUE: Thank you for this opportunity to present the experiences of the State of California with enforcement problems in the travel industry and our views on the scope of Federal legislation.

California is faced with three major problems. First, certain travel promoters have operated in open disregard of Civil Aeronautics Board rules by soliciting participants for pro rata charters from the general public and by accepting reservations from persons who will not have been bona fide members of the chartering group for six months at the time of flight departure. In one recent case more than fifty persons were stranded in London when their group was declared "uncharterworthy." Other groups are currently not complying with the Civil Aeronautics Board rules on disclosure of charter costs and equipment. If the charterer should not fill his quota of seats, the result may be a sudden and unexpected increase in the cost of the charter flight to the participants.

Second, some travel promoters have not refunded payments made for transportation when flights were cancelled through no fault of the would-be participants. There is a provision of a recently enacted California statute which also requires the travel promoter to place ninety percent of the monies he receives for air or sea transportation into a trust account. These funds may only be disbursed to the carrier or refunded to the would-be traveler upon the condition stated above. In one case currently being prosecuted, we are asking the court to order refunds for the persons whose flights were cancelled for violations of the Civil Aeronautics Board rules.

The third problem involves last-minute changes in itineraries by inclusive and study group tours. Even though the typical tour brochure contains exculpatory fine print, it is our position that changes in itineraries, classes of hotels or the number of prepaid meals can only be made in the case of emergency. We are currently investigating several tour groups which, having induced persons to participate in their tours, changed cities visited and hotels used, and deleted meals without compelling reasons.

We are thus quite concerned about abuses occurring in the travel industry and look favorably upon programs to correct these abuses, such as are embodied in S. 2577. S. 2577 may, however, lessen the effectiveness of our enforcement activities. From your remarks upon introduction of the bill and from its language, S. 2577 would appear to have the purpose and effect of preempting state legislation in this field. In response to problems in California, our Legislature has enacted two laws regulating travel promoters. The first requires each "air transportation broker" to post a \$5,000 bond with our Secretary of State conditioned on the honest conduct of his business. The second and more recent enactment mandates the trust fund outlined above. (Copies of these statutes are enclosed for your Committee's information.)

Preemption of state action is of course dependent upon numerous policy considerations which we are sure are seriously considered by your Committee. In order to continue in effect the substance of California's current legislative plan, we would ask that your Committee consider either (1) incorporating in S. 2577 a provision permitting states to enact legislation at least as comprehensive as that of any Federal law; or (2) enacting Federal legislation which provides the protections to consumers presently incorporated in the bond and trust requirements of California law.

Our second comment on S. 2577 relates to section 31 (4) of the bill which in part provides penalties for "Any fraud or fraudulent practice of the operation and conduct of a travel agency business including but not limited to *intentionally misleading advertising*." The underlined portion of this section can be read to deny discipline for advertising which is in fact misleading but where no intent to mislead can be proven. Such a standard would be more severe than that under which California presently operates: Whether the person making the misrepresentation knew or reasonably should have known that the representation is deceptive or merely misleading. No intent to deceive need be shown.

We in California very much appreciate your efforts to correct abuses in the travel industry and would be pleased to provide any additional information on this matter to you or to your Committee's staff.

Very truly yours,

EVELLE J. YOUNGER,
Attorney General.

BOB BURBANK TRAVEL AGENT,
Los Angeles, Calif., December 6, 1971.

Re Your bill to regulate travel industry.

Senator DANIEL INOUE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: You have my unqualified support for above legislation to establish Federal Regulation designed to protect the public and identify legitimate, authorized and responsible travel agents from the unscrupulous so-called travel agents who victimize the public by their unlawful fly-by-night operations.

Keep up the good work.

Sincerely yours,

BOB BURBANK, CTC.

KERR TRAVEL SERVICE,
Beverly Hills, Calif., December 6, 1971.

Senator INOUE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR INOUE: S. 2577 seems to embody a much needed federal regulatory program for travel agents, and I support ASTA's position in either the passage of this bill, or some similar effective measure to deal with the problems being discussed before your Sub-Committee. I urge you and your committee members to do everything in your power to work with Congress in bringing about these very necessary reforms.

Sincerely yours,

RICHARD T. KERR, *President.*

KENOSHA TRAVEL SERVICE, INC.,
Kenosha, Wis., December 7, 1971.

HON. SENATOR W. MAGNUSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: This letter to you is in support of the Bill presented by the Hon. le Senator from Hawaii, Mr. D. Inouye regarding some kind of federal licensing and regulations for the Travel Industry and particularly for the Travel Agencies.

It is abundantly clear that something must be done at federal level to avoid the shameful and disgraceful image of the US Travel Industry here and abroad, image that it has been created by those who have nothing to do with Travel and who take advantage of the situation to make dirty money. It is also sad, that in order to get some action from part of the CAB, a travel agent in California has been forced to ridicule two of the top men of CAB with a phony booking in illegal charters. At least it seems that action was taken only then.

We travel agents—bona fide travel agents—have already self-regulation thru ASTA, ARTA, Better Business Bureaus etc. What we want is a law with such powers as to fine intruders or flyers-by-night with \$5,000-fines and up or a jail sentence of at least 6 months or both. It is useless we report violations; nobody take care of them. You know that travel Agents have booked themselves in illegal charters and then reported them and the charters have left anyway with the results that the taxpayers pay in many cases return trips of those who have violated the law knowingly.

I thank you for the attention you will give to this matter, I wish you a Happy Holiday Season and I remain,

Respectfully yours,

GEORGE FRANCESCHINI, *President.*

FOX TRAVEL INC.,
Cincinnati, Ohio, December 7, 1971.

Senator WARREN G. MAGNUSON,
Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: In the interest of protecting millions of American travelers from the growing number of unscrupulous travel agents, I urge you to support House Bill S. 2577 proposed by Senator Inouye.

Numerous state legislators have recognized the urgent need for such a licensing bill. State licensing however, would be futile in this cause as state laws are inconsistent with each other.

The travel industry is a national and international industry. The vast majority of American tourists are involved in interstate and international transportation. Thus, if there is to be an effective regulation it must be at the federal level.

Thank you for your attention to this urgent matter. I feel confident that your wisdom and understanding will commit you to take positive action in this matter.

Sincerely,

G. THOMAS MORGAN,¹ *Manager.*

¹ Additional letters to the same effect have been received from Fox Travel, Inc., and are in the subcommittee files.

UNION CARBIDE CORPORATION,
Washington, D.C., December 10, 1971.

Senate DANIEL K. INOUE,
Chairman, Subcommittee on Foreign Commerce and Tourism, Senate Commerce
Committee, Washington, D.C.

DEAR SENATOR INOUE: On the 17th and 18th of November of this year the Subcommittee on Foreign Commerce and Tourism held hearings on S. 2577, the proposed Travel Agents Registration Act of 1970. I would like to present some informal comments of Union Carbide Corporation which might be helpful to you and to the Subcommittee in reviewing this legislation.

The bill provides that any person who receives "consideration of any sort" for arranging travel or lodging accommodations would be required to secure a registration certificate. There is little doubt that the bill is intended to bring within its coverage persons or firms generally recognized as "travel agencies" offering their services to the general public. To the extent that this legislation would affect only such persons, Union Carbide neither favors nor opposes its enactment.

We believe, however, that the bill as presently written would produce anomalous results affecting business organizations, other than travel agents, which arrange travel or lodging for their officers and employees as an incident of their regular business. Although such organizations do not receive fees or commissions in connection with travel accommodations which they secure, some of their activities could be construed, under the provisions of the bill, as an acceptance of "consideration."

Many firms, for example, have agreements with hotels whereby arrangements for lodging are made at discounted rates. Under the bill, such discounts might be construed to be "consideration" so as to subject the firm to regulation as a "travel agent."

Similarly, many companies retain a staff of travel experts who perform various ticketing and related services which would otherwise be performed by the transportation carriers or their agents. Since the performance of such services results in considerable expense to the companies and substantial savings to the carriers, it has been suggested that the carrier should reimburse a portion of the involved expense. Under S. 2577, however, such reimbursement could be construed as sufficient "consideration" to require a registration certificate, even though the service for which payment would be made is not offered to the public.

We respectfully recommend, therefore, that S. 2577 be amended to expressly exclude from its coverage commercial firms or organizations which are not regularly engaged in securing travel and lodging accommodations for the general public. A draft amendment to accomplish this purpose is attached for your consideration.

I hope you will find these comments helpful in your analysis of this legislation.

Sincerely,

JEREMIAH J. KENNEY, Jr.

Enclosure.

"(5) 'Engage in the business of conducting a travel agency' means and refers to holding out to any person, directly or indirectly, as being able or offering or undertaking by any means or method, whether acting as principal, agent, broker, or otherwise to acquire for a fee, commission, or other valuable consideration, of any sort, travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation, hotel, or other lodging reservations or accommodations; Provided, however, that nothing in this title shall apply to any person who or which makes or acquires travel reservations or accommodations incidental to promoting, facilitating or conducting any business enterprise other than the business of acquiring travel reservations or accommodations for hire and, Provided, further, that nothing in this title shall apply to any charitable or fraternal organization."

AMERICAN AUTOMOBILE ASSOCIATION,
Washington, D.C., December 14, 1971.

Re S. 2577—Regulation of Travel Agency Industry.

Senator DANIEL K. INOUE,
Chairman, Subcommittee on Foreign Commerce and Tourism, Senate Committee on Commerce, New Senate Office Building, Washington, D.C.

DEAR SENATOR INOUE: The American Automobile Association is the world's largest motoring and travel organization with more than 14 million members and has 868 clubs and branch offices in the United States and Canada. It additionally maintains offices in London, Paris and Rome and has representatives in 100 foreign countries.

Four hundred seventy-two of these clubs and branch offices are bona fide travel agents as they are accredited by one or more transportation conferences. The gross international travel sales by the AAA and its affiliates in 1970 was nearly 194 million dollars.

The AAA opposes the enactment of S. 2577 which would provide for Federal regulation of the travel agency industry by amending the International Travel Act of 1961.

Our opposition is based on two main points. First, the motive supposedly behind the legislation is to prevent the stranding of travelers abroad through the default of charter organizations yet it does not deal with these organizations. Instead, it seeks to regulate the legitimate travel agents who have not been responsible for these strandings.

Second, there are sufficient Federal laws now on the statute books to meet the stranding of U.S. travelers such as occurred in Europe just this past summer and last year.

All of us in the travel business wish to prevent the re-occurrence of the strandings that have happened in the last two years in Europe. About 2,000 young people were stranded in Europe just this past summer. They all were participants in trips arranged by the "American Union of Students" and the "University Students Association."

Both organizations sold what they called round-trip charter transportation although a usable ticket home was not given the purchasers. Advertisements were placed in newspapers and many of those who responded were requested to falsify affidavits stating they had been members of the "AUS" or "USA" for more than six months. The strandings that followed overseas were very much limited to such group charter flights.

We submit that the Federal Trade Commission has authority to proceed against such charter organizations under the false advertising section of the Federal Trade Commission Act. It also can institute proceedings against such organizations for violating the Unfair Trade Practice provisions of the act although, for reasons unknown to us, it has not seen fit to use this authority.

In connection with this, the U.S. Postal Service has court actions pending for the illegal use of the mails to promote such charter flights.

S. 2577 is aimed at the wrong target. It is all encompassing and would license travel agents who provide travel tours by bus, ship or train as well as by air. We are not aware of the stranding of travelers by travel agencies through default in connection with group travel by bus, ship or rail.

Travel by ocean-going vessels now is regulated by the Federal Maritime Commission under Public Law 89-777, often referred to as the "Safety of life at Sea" legislation. This law has been on the books since 1964 and has worked well. We know of no complaints of stranding against travel agents regarding travel on ocean-going vessels.

The Interstate Commerce Commission, under the Motor Carriers Act of 1935, regulates travel agents or brokers who provide group travel by motor buses. Licenses are issued and governed under Section 211 of the Interstate Commerce Act. These regulations of the motor bus travel industry have worked well through the years. Again, we are not aware of complaints of stranding against the travel industry in this regard.

S. 2577, if enacted into law in its present form, would set up an additional Federal regulation of ocean-going travel and motor bus travel. We see no justification for such dual regulation.

Perhaps the most compelling reason for not enacting S. 2577 will be found in the authority now vested in the Civil Aeronautics Board under the Federal Aviation Act, particularly the 1952 amendment to this act. This empowers the

Board to take action against any "ticket agent" who "has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof."

We also would like to point out that the Civil Aeronautics Board now has authority over Airlines (direct air carriers-companies offering transportation on aircraft they operate). Additionally, the CAB has authority over "Indirect Air Carriers", namely, a travel agent who undertakes to charter an aircraft for trip, sells tickets for that trip, and assumes responsibility for the trip.

Because present Federal laws confer the necessary authority to deal with the problem to the Civil Aeronautics Board, Postal Service, Federal Maritime Commission, Interstate Commerce Commission and the Federal Trade Commission, we see no justification for enacting S. 2577.

We request that this letter be made a part of the printed hearings record.

Sincerely,

JOHN DE LORENZI,
Managing Director,
Public and Government Relations.

[Telegram]

HARTFORD, CONN., November 18, 1971.

Senator DANIEL K. INOUE,
Chairman, Senate Subcommittee on Foreign Commerce and Tours, Senate Office
Building, Washington, D.C.:

As a travel agent who has recently suffered great financial loss from the bankruptcy of a prominent tour operator I commend you and your committee for your current inquiry into business abuses which have adversely affected the public and the reputation of the professional travel agent and on your effort to help in regulating our industry.

ELLA G. BROWN,
President, World Travel Service, Inc.

[Telegram]

SEPULVEDA, CALIF., November 18, 1971.

Senator DANIEL K. INOUE,
Chairman, Subcommittee on Foreign Commerce and Tourism, Senate Building,
Washington, D.C.:

As one of the travel agents who has led the fight against illegal charters from California I commend you and your subcommittee in conducting investigations of illegal charters operated by responsible operators. My fellow travel agents in the State of California join me in urging you to push badly needed legislation to protect the traveling public and legitimate travel agent against the abuses of the illegal charters.

GEORGE FORTH,
Air Committee Chairman,
ASTA Southern California Chapter.

[Telegram]

LOS ANGELES, CALIF., November 18, 1971.

Senator DANIEL INOUE,
Chairman, Subcommittee on Foreign Commerce and Tourism, Senate Building,
Washington, D.C.

Congratulate you on your activities to promote legislation and restriction on fringe charter operations which California agents have suffered greatly from. Your assistance well appreciate to assist in maintaining reputation of reputable authorized travel agents.

BOB BURBANK,
Area Director.

KALAMAZOO, MICH., December 7, 1971.

Senator INOUE,
*Chairman, Subcommittee on Foreign Commerce and Tourism, Senate Building,
Washington, D.C.*

Fully support Federal regulations regards our industry thus you are helping to weed out the dishonorable from amongst us. Our congratulations to you on your constructive action. You are rendering us a greatly needed service.

MILDRED ERMISCH,
Ermisch Travel.

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