

TESTIMONY BEFORE
THE HOUSE PUBLIC WORKS AND
TRANSPORTATION SUBCOMMITTEE ON
AVIATION

BY

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HEARING ON MANDATORY CHILD
RESTRAINT USE ON AIRCRAFT

JULY 12, 1990

Mr. Chairman and members of the committee, GOOD AFTERNOON. I am Stuart Miller, the first advocate for infant/child safety aboard aircraft. My crusade began 19 years ago and I have been motivated not by money, publicity or personal gain, but from meeting the face of death, eye to eye, with my own son.

I pioneered the development of the first infant/child restraint system for use in both general aviation aircraft and for commercial air carriers. I hold the first and only supplemental type certificate for such a device as well as obtaining the only parts manufacturing approval, which was issued under the strict control of the FAA. I have never nor will ever accept any compensation for this safety device. I personally created installation procedures as well as conducted the installation of infant/child devices on aircraft from a C-172 to the Concorde. For the record - any one can purchase a proper approved device without a problem at a reasonable price.

Over the past years, several of my proposed mandatory rule changes have been submitted to the FAA. In fact, the FAA informed me in writing that, (Quote) "A rulemaking project is currently in progress that would permit the use of child restraint devices aboard U.S. registered civil aircraft". "Due to the advanced status of the current project, we request that you withdraw your petition in order that the agency may avoid delay". The date of this letter was April 2, 1976, signed by Arthur E. Pearsall, Chief, Air Carrier Regulations Branch, Flight Standards Service, FAA.

Many of my other adversaries have now concluded, and agree with my early findings, that a definite and irrevocable need exists to protect infants and children up to 3 years or 40 lbs. in an approved safety seat aboard aircraft.

Our differences are between my mandatory concept vs. the FAA's voluntary rule.

History has again proven the FAA wrong. Their misjudgment was the implementation of a voluntary program March 5, 1985, when the Secretary of Transportation and the FAA made their joint announcement. At that time the FAA stated that (Quote) "36 models totaling more than three million seats were acceptable" for aircraft use.

By waiving the new FAA standard (Technical Standard Order C-100), after years of special and costly research at the tax payers' expense, the Secretary combined the National Highway Traffic Safety Administration standard which added six million more devices available for air travel use. This figure was quoted from the FAA release of Tuesday March 5, 1985. (DOT 19-85)

The FAA stated "After extensive testing and evaluation, the FAA has determined that an estimated six million additional child safety seats approved by NHTSA are acceptable for use in both airlines and general aviation aircraft, during all phases of flight". This change became effective February 26, 1985.

Furthermore, the FAA stated (Quote) "While the new policy does not require air carriers to allow the use of child seats, at least 16 major airlines already permit the use of such FAA-approved seats".

I now will read excerpts from the DOT release. The purpose is to show how the DOT and the FAA "in my opinion" were deceptive in their statements for the benefit of their relationship with the air carriers.

"It will be much easier for the airlines to identify child seats approved by the FAA," Dole said. "With this simplified policy, we will encourage more air carriers to permit passengers to use approved child safety seats.

"We encourage families traveling by air to protect their children with safety seats before, during and after the air travel portion of their trips". Administrator Donald D. Engen of the FAA is providing the airlines with

detailed information about the new policy and urging them to allow passengers to use child seats.

Dole said the use of infant seats for those up to age one in motor vehicles is now about 69 percent, and the use of toddler seats for those aged one to four is about 47 percent.

The FAA was never able to satisfy my inquiries on this subject. It is obvious that their use of expensive prestigious research studies and tests are "loaded" to reach predetermined economic answers.

Therefore we should not and cannot rely on any reports which the FAA may have presented in the past.

For example, the FAA stated "After extensive testing and evaluation". Of course if you demand proof that's another story.

Tests were conducted at CAMI, Oklahoma City, by Richard Chandler in the early 1970's, as well as a quick fix test conducted at Calspan, Buffalo, NY, for DOT, on a few specific devices after it was known about my S.T.C. being granted and TSO C-100 was issued.

These tests were a blatant waste of tax payers' money. The tests were conducted with a very narrow population of child devices.

I stated my objections shortly thereafter, to no avail.

With all the noise and great promises by the FAA, it is a proven fact that what remains is an unsuccessful voluntary program with infants and children still flying without proper protection.

Although the ATA is now jumping on the wagon, they have stated that there are not enough infant/child safety devices available for use on aircraft and have suggested that an AD HOC committee be formed to study the situation for at least another year.

It is hard to conceive, with the pounds of letters and other materials which I have generated plus the FAA, NHTSA, NTSB and others have poured out, that a professional organization would make such a ludicrous and unconstructive statement that there were not enough child devices which fit on airlines, unless it was their intent to delay child safety for a few more years.

This brings us to the next controversial topic and now the only FAA objection, which is cost.

First, we must consider the actual cost of each child restraint device. In the past and currently, the FAA established a price per unit; how they obtained this information is unknown. In checking a number of retail stores and catalogs, the cost to a retail consumer can be as low as \$35 to a high of \$75. However, this can be misleading. An airline can purchase a number of devices at a discount and perhaps a non deluxe unit at \$40, with spare parts.

The FAA has never shown this cost on a "cost amortized basis over the projected life of a unit." For our discussion, I will use a five year estimate. This is a high value because the devices are made of a long use plastic shell, padding and belts. (Note that there are few moving parts; truly a simple device!) Thus, using \$40, over five years we have a cost per unit of \$8 per year. Taking this \$8 cost another stage, we should consider a \$2.50 factor for a service cost for cleaning and reserve per the number of passenger usages (figure used by car rental business). Compare this with the cost of food service per passenger and in some cases free newspaper, reading material and children games. One might say we should carry on our own blanket and pillow now provided by the air carrier. Examine the cost of supplying wine, beer and liquor.

A choice the airlines can always make is to provide the devices free, to be included in their pricing of tickets or to charge a rental charge.

I envision a cooperative pool of devices at each airport which would supply the devices for each flight. In fact, a service organization might even be formed on the same basis of outside food contractors. There are alternatives which can be selected by each air carrier.

The FAA has been unable to present bonafide figures. Even with the use of outside prestigious consulting firms I find that their basic hypothesis and statements of studies are directed and false.

None of the information I have seen from the FAA has been based on actual physical polls or interviews with a large accurate public sample. Obvious factors have been omitted from every FAA report, such as competition, free economy, and time/distance or consideration, and psychological attitudes and motivations of parents concerning flying in relationship to the safety of their children. The use of statistics from other industries in an attempt to substitute actual data from the airline industry is an inaccurate research method. The recent "Executive Summary" study circulated by the FAA is based on many fallacious fundamental hypothesis.

An example is the attempt to correlate air safety per mile versus automobile safety. The false assumption is that if a mandatory rule is enacted this will force more two year olds and under and their families to travel by car which is, according to the FAA, more dangerous. We know that all our states require infant/child seats for auto use. Secretary Dole used a figure that 500 small children die in auto crashes each year. This was her reason for working for enforcement and passage of an all-state mandatory auto use rule. Of course I could never find out the death by age in her quote.

The FAA can not substantiate the switch from air to ground. No time versus distance displacement factor was even considered. It is highly unlikely

that a family would drive from Boston, New York, or Teaneck, N.J., to visit grandparents or Disney in Florida for a vacation in place of flying.

The FAA failed to consider the cost of food, motels, fuel, tolls, auto repairs or the time lost for a round trip vs. a free airline ticket or perhaps a ticket of \$29.00 (Eastern Airlines) fare.

This is another foolish attempt to confuse this committee and the public. The people which I interviewed laughed when given the choice of air, car, bus or train.

Driving was the last choice; and has the FAA forgotten about the horse? In respect to the members of this committee and our limited time, I will reserve comment on this point at this time.

This entire report was created in an attempt to comply with "Executive Order" 12291, of February 1981. Executive Order 12291 has many grey areas which lead to confusion.

However, under Sec. 8-page 708 exemptions: (1) "Any regulation that responds to an emergency situation provided that, any such regulation shall be reported to the director as soon as is practicable, the agency shall publish in the Federal Register a statement of the reasons why it is impracticable for the agency to follow the procedures of this order with respect to such a rule, and the agency shall prepare and transmit as soon as is practicable a regulatory impact analysis of any such major rule".

An emergency does exist for every infant/child flying without proper restraint. We don't let adults travel without seat belts and we have proven that death is just as final for infants and children as is for adults. The FAA has lost their priority and placed unproven cost guess work in place of safety. I declare an emergency and demand that the FAA Administrator take direct intervention and pass a mandatory rule change.

It is time that the Administrator reassigns Anthony J. Broderick, Associate Administrator for regulation and certification, at once to a position which is less sensitive to Aviation Safety and the loss of human life. After his work on child safety and counterfeit aircraft parts, I think he should be advised to take early retirement.

(2) The Director, subject to the direction of the Task Force, may in accordance with the purposes of this order, exempt any class or category of regulations from any or all requirements of this order.

The aforementioned paragraph would allow the FAA to avoid any further delay and pass a needed mandatory regulation.

If we look at the regulation as I proposed as a new service now provided to the public by the airlines, of course (since there has been no history on this new service), a price structure must be created. Whatever this initial price may be, you can be sure free unregulated airline prices will change as influenced by competition.

Basically, the air carriers are providing a service either new or existing because they are transporting that two year old or younger child from one place to another. Thus they are entitled to charge, if they wish, for the service they provide, just as in the case of a two year old plus one day.

Arguing over this two and three year matter when safety is concerned is fool-hardy on the part of the FAA because their mission is safety!

ACCOUNTABILITY

The public is now seeking accountability from corporate executives and from public officials. Individuals who are responsible for human life and safety must be held accountable for their actions. Recent Supreme Court decisions have shown a trend in support of this aforementioned concept. Thus, in the event of the next infant or child's death in a survivable air crash,

in which the infant is unrestrained, the airline president who's aircraft is involved in that future crash and a FAA official such as Mr. Broderick should be accountable for this death and should be indicted for criminal negligence to commit manslaughter and for discrimination against children for not providing equally safe flight.

My opinion is based on the fact that both entities are aware of the scientific evidence and that FAA-approved child restraint devices are available for aircraft use.

ACTION TO BE TAKEN

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, IT IS YOUR RESPONSIBILITY TO PROTECT OUR FLYING CHILDREN AND FORCE THE FAA TO ADOPT THE PROPOSED RULE CHANGE.

Proposed rule making change:

"All infants/children up to 3 years old shall be required to be seated in their own seat, within an F.A.A. Certified Infant/Child Restraint System meeting TSO C-100 or equivalent for take offs and landings and/or at such times that the pilot in command deems it necessary". Public Docket (No. 25985).

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