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THE ROLE OF THE FEDERAL AVIATION ADMINISTRATION IN THE CONTROL OF AVIATION DRUG-TRAFFICKING

KAREN M. HANCHETT*

I. INTRODUCTION

THE UNITED STATES faces a national crisis, the trafficking of illicit drugs. Unfortunately, aviation plays a significant and lucrative role in drug smuggling. Cocaine and marijuana seizures from private aircraft constituted 64% of all drug seizures in 1987¹ and 50% of such seizures in 1988.² The 40,000 pounds of cocaine confiscated from general aviation aircraft in 1987 had an estimated street value of thirteen billion dollars.³ Inasmuch as these statistics reflect law enforcement successes, the magnitude of the problem undoubtedly exceeds those estimates. Authorities estimate that an average of 3.5 to twenty drug smuggling flights occur each day, or from 1,300 to 3,500 each year.⁴

This article focuses on the following two areas in which Congress has enlisted the assistance of the Federal Aviation Administration (FAA) in combating the war on drugs: the registration of aircraft and the certification of airmen.

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¹ H.R. REP. No. 891, 100th Cong., 2d Sess. 2 (1988) [hereinafter 1988 HOUSE REPORT].

² 55 Fed. Reg. 9270 (1990).

³ 1988 HOUSE REPORT, *supra* note 1, at 2.

⁴ *Id.*

To these ends, Congress passed the Aviation Drug-Trafficking Control Act⁵ (1984 Drug Act) and the Federal Aviation Administration Drug Enforcement Assistance Act of 1988⁶(1988 Drug Act). Both acts broadened the FAA's mandate to encompass aerial drug trafficking. Despite this increased authority, no intention exists to convert the FAA from its primary responsibility of public safety into a law enforcement agency.⁷

Nevertheless the FAA now plays a significant role in aerial drug trafficking enforcement. Since the FAA has taken little action to implement the 1984 Drug Act, it is unclear whether its new role has reduced aerial drug trafficking or improved interdiction efforts. This bureaucratic inertia, combined with the law enforcement community's frustration with the FAA's registration and certification systems, was the impetus behind the 1988 legislation. The FAA has recently begun to take steps to implement the 1988 Drug Act. Accordingly, this article may be viewed in part as a case study of one of the methods employed by Congress to ensure that an executive branch agency does not thwart its congressional mandate.

This article takes the position that the 1984 and 1988 Drug Acts, if properly implemented, will make it more difficult and costly for drug traffickers to continue using general aviation aircraft in their operations. Ultimately, a determination of whether the legislation in and of itself produces a decline in drug smuggling may be impossible. Even if the legislation alone does not reduce the criminal

⁵ Pub. L. No. 98-499, 98 Stat. 2312 (1984).

⁶ Pub. L. No. 100-690, §§ 7201-7214, 102 Stat. 4424 (1988). The 1988 Drug Act comprises Subtitle E of Title VII of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988). With two minor exceptions, the provisions of Subtitle E are identical to those of H.R. 4844, which the House passed in October 1988. It is therefore appropriate to consult the 1988 HOUSE REPORT *supra* note 1, which was prepared to accompany H.R. 4844. 100 CONG. REC. H11,241 (daily ed. Oct. 21, 1988) (statement of Rep. Hammerschmidt).

⁷ *Aviation Drug-Trafficking Control Act: Hearings on S. 1146 Before the Subcomm. on Aviation of the Senate Comm. on Commerce, Science, & Transp.*, 98th Cong., 1st Sess. 12 (1983) [hereinafter 1983 *Senate Hearings*] (statement of Sen. Bentsen); 1988 HOUSE REPORT, *supra* note 1, at 16.

activity, the administrative burdens imposed by the acts are justified. The legislation provides law enforcement agencies with an additional investigatory tool and may deter otherwise law-abiding pilots from engaging in one-shot drug smuggling flights for quick profits.

In examining the FAA's role in aviation drug-trafficking, this article first reviews the 1984 Drug Act, exploring its specific requirements and ramifications.⁸ The paper then addresses those actions taken by the FAA against drug smuggling pilots from 1984 to 1988.⁹ The article also focuses on the 1988 Drug Act,¹⁰ specifically examining the Act's affect on aircraft registration,¹¹ air personnel certification,¹² and law enforcement activity.¹³ Finally, the article focuses on the FAA's implementation of the 1988 Drug Act.¹⁴ The conclusion summarizes the impact both acts have had on drug smuggling and the FAA's remedial efforts to implement the acts.

II. AVIATION DRUG-TRAFFICKING CONTROL ACT¹⁵

The 1984 Drug Act authorizes the FAA to revoke the aircraft registration certificate and pilot's license of individuals involved in drug trafficking. The act addresses concerns that law enforcement was being hampered by the "inability to prevent the same pilots and the same aircraft from repeated participation in aerial drug trafficking."¹⁶

The 1984 Drug Act was not solely intended to solve the drug problem.¹⁷ Instead, the legislator's objective was to raise the stakes for drug trafficking, making it more diffi-

⁸ See *infra* notes 16-44 and accompanying text.

⁹ See *infra* notes 45-70 and accompanying text.

¹⁰ See *infra* notes 71-103 and accompanying text.

¹¹ See *infra* notes 75-98 and accompanying text.

¹² See *infra* notes 99-100 and accompanying text.

¹³ See *infra* notes 101-103 and accompanying text.

¹⁴ See *infra* notes 104-130 and accompanying text.

¹⁵ Pub. L. No. 98-499, 98 Stat. 2312 (1984).

¹⁶ S. REP. NO. 228, 98th Cong., 2d Sess. 2, reprinted in 1984 U.S. CODE CONG. & ADMIN. NEWS 3916, 3917 [hereinafter 1984 SENATE REPORT].

¹⁷ 1983 Senate Hearings, *supra* note 7, at 13 (testimony of Sen. Bentsen).

cult for those involved to earn their livelihood from the illegal activity.¹⁸ Estimates indicate that in 1983 a pilot could collect up to \$100,000 for a single drug smuggling flight involving cocaine.¹⁹ The bounty may well have doubled since then. Most incidents involve United States-based aircraft.²⁰ In addition, most of the pilots apprehended possess proper pilot's licenses.²¹ The 1984 Drug Act's deterrent sanctions therefore target owners and pilots who use their certificates for legitimate business purposes but may be tempted to make a smuggling run because of the large financial remuneration.²²

Although primarily a law enforcement measure, the 1984 Drug Act also bears some relationship to the FAA's safety mission. Drug smugglers routinely fly at night without lights, fly at extremely low altitudes to evade radar detection, and fail to file flight plans in air defense identification zones.²³ Such behavior, while consistent with the smuggler's goal of concealment, poses obvious threats to navigation. The FAA reported that there were 491 aircraft crashes between 1980 and 1982 in which illegal narcotics were found on board the plane.²⁴ From 1980 to 1982, 155 accidents occurred in the United States in which illegal narcotics were found on the board the plane.²⁵ During the same period, however, the FAA completed only sixty-five license actions: forty-one revoca-

¹⁸ *Id.*

¹⁹ *Id.* at 39 (prepared statement of Allan I. Mendelsohn). Statistics also indicate that 40% of the cocaine arriving in the U.S. travels on small private aircraft. A full load of cocaine for such an airplane can be worth over \$15 million. *Id.*

²⁰ *Aviation Drug-Trafficking Control Act: Hearings on H.R. 1580 Before the Subcomm. on Aviation of the House Comm. on Pub. Works & Transp.*, 98th Cong., 1st Sess. 22 (1983) [hereinafter 1983 *House Hearings*] (testimony of Robert J. Grimes, U.S. Customs Service).

²¹ *Id.* at 20. Customs and El Paso Intelligence Center (EPIC) records contain information to indicate this majority. However, analysts suggest that most pilots arrested during aviation drug raids are U.S. licensed pilots. *Id.*

²² 1983 *Senate Hearings*, *supra* note 7, at 35 (testimony of Leo Howe, Vice President, National Aviation Underwriters).

²³ *Id.* at 19-20 (statement of Anthony J. Broderick, Deputy Associate Administrator, Aviation Standards, FAA).

²⁴ 1983 *House Hearings*, *supra* note 20, at 80 (testimony of Anthony J. Broderick).

²⁵ *Id.* at 79.

tions and twenty-four suspensions.²⁶ Moreover, even though the FAA was aware of the crashes and knew the N numbers of the aircraft,²⁷ no evidence indicates that the FAA took any steps to penalize the owners or even to investigate their crimes. Until 1984, the FAA felt that it had no statutory authority to revoke a registration certificate even if the owner was involved in drug smuggling.²⁸

Congressman Mineta, House sponsor of the legislation and Chairman of the Subcommittee on Aviation of the Committee on Public Works and Transportation, explained that the deterrence aspect of the legislation helped protect legitimate aircraft owners and operators "against threats to the safety and security of their aircraft."²⁹ His opening remarks at the congressional hearings on the bill succinctly describe the economic hazards that drug smuggling creates for such owners and operators:

Many aircraft used in drug smuggling are stolen from innocent owners. Some are never recovered. Other stolen aircraft are recovered only after being involved in an accident or being seized by U.S. or foreign authorities. The same problems of theft and damage are faced by legitimate owners who unknowingly rent airplanes to drug smugglers.³⁰

The 1984 Drug Act requires the revocation of any aircraft registration certificates possessed by an owner if the Administrator of the FAA determines that (1) one of the owner's aircraft was used to carry out or facilitate the commission of a felony violation of a State or Federal law relating to a controlled substance (other than simple pos-

²⁶ *Id.* at 87.

²⁷ The "N" number is the identification number required for all aircraft properly registered in the U.S. This number must be an "N" followed by not more than five additional numbers. Identification Number, 14 C.F.R. § 47.15 (1990).

²⁸ 1984 SENATE REPORT, *supra* note 16, at 2; 1983 Senate Hearings, *supra* note 7, at 41 (prepared statement of Allan I. Mendelsohn). In 1983, the FAA stated that in the absence of a conviction against a pilot, there is no statutory authority for it to revoke U.S. registrations. 1984 SENATE REPORT, *supra* note 16, at 2.

²⁹ 1983 House Hearings, *supra* note 20, at 1.

³⁰ *Id.*

session), and (2) such use was permitted with the knowledge of the owner.³¹ If the aircraft is owned by a business or corporation, a registration certificate cannot be revoked unless a majority of the individuals who control or form the major policy of the business or corporation had knowledge of the intended illegal use of the aircraft.³²

With respect to airmen's certificates, the statute mandates revocation of an individual's pilot license upon conviction of a state or federal felony relating to a controlled substance (other than simple possession).³³ The Administrator must also determine that an aircraft was used in the commission of the offense or to facilitate the commission of the offense and that the individual either served as an airman or was on board the aircraft.³⁴

The 1984 Drug Act provided the Administrator with the power to revoke a pilot's license upon finding the following: (1) the individual knowingly violated the felony drug control laws; (2) an aircraft was used to carry out this activity; and (3) the individual served as the airman or a passenger on that aircraft.³⁵ In essence, the FAA may revoke the licenses of individuals who violate drug laws even if they have not been convicted of a drug offense. The provision recognizes that, for whatever reason, a United States attorney may decline to prosecute the individual for violating the drug laws. While the FAA expressed concern that it would be required to prove the criminal case in an administrative setting, Congress re-

³¹ Aviation Drug-Trafficking Control Act § 4(a), 49 U.S.C. app. § 1401(e) (1988). The aircraft need not be used to transport illegal drugs. The "facilitate the commission of a felony" language is intended to apply to situations where the aircraft is used as a spotter plane or as transport for participants to meetings concerning drug smuggling. H.R. CONF. REP. NO. 1085, 98th Cong., 2d Sess. 8, reprinted in 1984 U.S. CODE CONG. & ADMIN. NEWS 3916, 3921 [hereinafter 1984 CONFERENCE REPORT].

³² 49 U.S.C. app. § 1401(e) (1988).

³³ 49 U.S.C. app. § 1429(c)(2); see *Kolek v. Engen*, 869 F.2d 1281 (9th Cir. 1989) (court upheld the revocation of a commercial pilot's license of a pilot for knowingly trafficking drugs); *Rawlins v. National Transp. Safety Bd.*, 837 F.2d 1327 (5th Cir. 1988).

³⁴ 49 U.S.C. app. § 1429(c)(2)(A).

³⁵ *Id.*

tained the reference to "criminal" law.³⁶ The legislative history makes it clear that the reference applies only to elements of the violation, not to federal criminal procedure or standards of proof.³⁷ The legislative history also evidences the Congressional expectation that the FAA fully utilize the new grant of administrative authority.³⁸

Established FAA administrative procedures, require notice and an opportunity to be heard prior to revocation of a registration or airman's certificate.³⁹ Certificates are to be revoked for a five-year period, although the Administrator retains the discretion to re-issue a certificate after one year if he deems the five-year period to be excessive or not in the public interest.⁴⁰

The FAA's current administrative procedure is analogous to the show cause order procedure commonly used by administrative agencies.⁴¹ Aircraft registrations and pilot licenses are privileges conditioned upon compliance with the Federal Aviation Act and the regulations of the FAA.⁴² Revocation, therefore, represents an appropriate sanction for violation of the statutory and regulatory provisions. The FAA's Notice of Proposed Certificate Action sets forth the basis for the proposed action and provides the holder of the certificate with an opportunity "to be heard as to why the certificate should not be . . . re-

³⁶ 1984 CONFERENCE REPORT, *supra* note 32, at 9. Congress noted that the alternative would be to describe all the elements of a violation in the aviation drug bill itself, a very complex drafting procedure. The simpler approach was to describe the prohibited activities by reference to existing criminal laws. *Id.*

³⁷ *Id.* at 3922-23.

³⁸ *Id.* at 3922.

³⁹ 49 U.S.C. app. §§ 1401(e)(2)(B), 1429(c)(3).

Prior to revoking any certificate of registration under this subsection, the Administrator shall advise the Holder thereof of the charges or any reasons relied upon by the Administrator for his proposed action and shall provide the Holder of the certificate of registration an opportunity to answer any charges and be heard as to why such certificate should not be revoked.

49 U.S.C. app. § 1401(e)(2)(B).

⁴⁰ 49 U.S.C. app. §§ 1401(e)(2)(E)(1988).

⁴¹ See, e.g., *Agusto v. Immigration & Naturalization Service*, 436 U.S. 748, 750 (1978).

⁴² *Roach v. National Transp. Safety Bd.*, 804 F.2d 1147, 1154 (10th Cir. 1986).

voked."⁴³ The airman or aircraft owner may elect to admit the charges and surrender the certificate, answer the charges in writing, request an informal conference before the FAA counsel, or request issuance of the proposed order with a view to appealing it to the National Transportation Safety Board (NTSB). If an election is not made within fifteen days, the Administrator issues the order as proposed. The FAA Notice, like a show cause order, sets out the elements of a prima facie case. While the FAA continues to bear the ultimate burden of persuasion, the burden of producing evidence shifts to the certificate holder.⁴⁴

III. AFTERMATH: FAA ACTION

Despite the power given to the FAA in the 1984 Drug Act,⁴⁵ agency has done little to aid in current drug enforcement efforts. Between 1984 and 1988, the FAA revoked the registrations of three aircraft, all of which belonged to the same individual.⁴⁶ Six airmen's certificates were revoked during the same period.⁴⁷ As a result of such lethargic enforcement, in early 1988 Congress initiated a bipartisan investigation of the FAA's role in enforcing the aviation drug laws.⁴⁸

Criticism by law enforcement officials of the FAA's cur-

⁴³ 14 C.F.R. § 13.9(c) (1991).

⁴⁴ See *Erickson v. National Transp. Safety Bd.*, 758 F.2d 285, 288 (8th Cir. 1985).

⁴⁵ Aviation Drug-Trafficking Control Act, Pub. L. No. 98-499, 98 Stat. 2312 (1984)(codified at 49 U.S.C. app. §§ 401, 1422, 1429 (1988)).

⁴⁶ 1988 HOUSE REPORT, *supra* note 1, at 13.

⁴⁷ *Id.* at 12. In one case, the FAA revoked the pilot's license of an individual convicted in the Southern District of Texas of conspiracy to violate narcotic laws, possession with intent to distribute marijuana, and importation of marijuana. The individual had piloted a cargo of approximately 750 pounds of marijuana from Belize to Houston, Texas, where the plane crashed. *Rawlins v. National Transp. Safety Bd.*, 837 F.2d 1327, 1328 (5th Cir. 1988). Another case involved a pilot who pled guilty in the Western District of Louisiana to importing into the United States approximately 1000 pounds of marijuana. The aircraft had been tracked by Customs Service airplanes, making an intermediate stop in Alexandria, Louisiana before landing in Jackson, Mississippi. *McArtor v. Murphy*, N.T.S.B. No. SE-7745 (Feb. 11, 1987).

⁴⁸ 1988 HOUSE REPORT, *supra* note 1, at 2. This investigation culminated in

rent system for registering aircraft and certifying airmen also prompted an investigation.⁴⁹ Critics stated that system laxity results in such abuse by drug traffickers that it inhibits law enforcement efforts. The officials complained that the FAA does not enforce its registration and certification rules. While dutifully praising some areas of FAA cooperation, officials voiced frustration over the FAA's resistance to improving the "system."

A portent of these systemic deficiencies was evident at the 1983 hearings which culminated in the 1984 Drug Act. The aviation underwriters industry supported the proposed legislation but further suggested that the FAA develop a nonforgeable pilot's license.⁵⁰ The current certificate evidencing that a pilot has met all FAA requirements, consists only of a typed paper card with few identifying features.⁵¹ In contrast, a driver's license is generally plasticized and contains both a photograph and an identification number. The industry supports improved pilot identification cards because a large number of insurance claims involve the use of forged pilot licenses to facilitate the theft of rented aircraft.⁵² Such problems, as well as the use of aircraft in drug trafficking widespread produce higher insurance rates for legitimate aircraft owners.⁵³

When asked to comment on the proposal for nonforgeable licenses, the FAA's Deputy Associate Administrator for Aviation Standards stated that he had "a little difficulty trying to understand what the gain would be in mak-

H.R. 4844, the Federal Aviation Administration Drug Enforcement Assistance Act of 1988. *Id.*

⁴⁹ *Id.* at 1-2.

⁵⁰ 1983 *House Hearings*, *supra* note 20, at 109 (statement of Allan I. Mendelsohn); 1983 *Senate Hearings*, *supra* note 7, at 42-44 (statement of Allan I. Mendelsohn).

⁵¹ See 1983 *Senate Hearings*, *supra* note 7, at 33 (testimony of Leo Howe, President, American Aviation Services Corp.). The current pilot's license does not contain a photograph; it is simply a "plain piece of paper which has typewriting on it." *Id.* Mr. Howe commented further, "... if I have an IBM Selectric typewriter with the right size type, I can duplicate this license exactly." *Id.*

⁵² *Id.* at 44 (statement of Allen I. Mendelsohn).

⁵³ 1983 *House Hearings*, *supra* note 20, at 124 (testimony of Leo Howe).

ing a less forgeable certificate.”⁵⁴ He added that there had been no indication that law enforcement officials considered the existing licenses to be a problem but said that the FAA would look at the issue again “real hard” if such officials informed the agency that the forging of licenses created law enforcement difficulties.⁵⁵ When he was subsequently informed that Mastercard had developed a non-forgeable credit card,⁵⁶ the Deputy Associate Administrator cavalierly responded that he “could not agree that anyone could ever design a ‘totally non-forgeable and non-counterfeit card.’ ”⁵⁷ He added that it would not be an appropriate activity for the federal government:

If it would save . . . [members of the aviation underwriters industry] money, and be cost effective, we would be pleased to entertain a proposal [from them] . . . to install and operate a system in lieu of the one the FAA now employs. But we cannot justify saddling the already overburdened taxpayers with this expense. Even if a particular action is cost effective on a societal basis, let’s remember that the U.S. Government is not an investment bank.⁵⁸

Proponents of nonforgeable pilot’s licenses then suggested that even if the licenses were only 99% nonforgeable, they would provide fixed-based operators with a more reliable source of identification when renting aircraft, thereby deterring the theft of such aircraft for use in drug smuggling.⁵⁹ In closing, the FAA official indicated that the FAA’s position was based on the fact that law enforcement agencies had not expressed a need for nonforgeable licenses and reiterated that the FAA would “happily move quickly” if law enforcement agencies ad-

⁵⁴ *Id.* at 87 (testimony of Anthony J. Broderick).

⁵⁵ *Id.*

⁵⁶ Letter from Allen I. Mendelsohn to Anthony J. Broderick (Nov. 28, 1983).

⁵⁷ Letter from Anthony J. Broderick to Allen I. Mendelsohn (Dec. 8, 1983).

⁵⁸ *Id.*

⁵⁹ Letter from Allan I. Mendelsohn to Anthony J. Broderick (Dec. 15, 1983). The letter also noted that concerns about taxpayer costs could be obviated through the establishment of user fees.

vised that such a license would reduce aircraft theft.⁶⁰

High-ranking FAA officials subsequently received information regarding law enforcement concerns with the registration and certification systems, including the problem of false pilots licenses, at a meeting of the National Air Smuggling Investigators Association in 1987.⁶¹ Discussions indicated that some of the FAA officials were first apprised of law enforcement concerns at the 1987 meeting. Although the FAA stated that they would examine the issues, no time frame was provided. Lack of funds was also mentioned. Thus, none of the suggested changes came to fruition prior to the June 1988 Congressional hearings.

The FAA responded to law enforcement criticism by correctly pointing out that its systems for registering aircraft and licensing pilots were neither intended nor designed to provide law enforcement authorities with the type of information they sought.⁶² The FAA systems were intended to "promote aviation safety and provide a reliable system for buying and selling aircraft."⁶³ The FAA's reluctance to modify its procedures were attributed to the following factors: (1) bureaucratic resistance to change; (2) the futility of changing to a system that smugglers would soon manage to circumvent; (3) the fact that safety, not drug enforcement, is the FAA's mission; (4) the low priority traditionally given to drug enforcement functions within the FAA; and (5) the FAA's desire to use scarce

⁶⁰ Letter from Anthony J. Broderick to Allan I. Mendelsohn (Jan. 3, 1984). With respect to user fees, Mr. Broderick conceded that partial recovery of costs is in fact desirable. He added, however, that the proposed expansion of the FAA program would "swell the ranks of Government." *Id.* Copies of the letters were forwarded to the Chairman of the Senate and House Committees which had held the 1983 Congressional hearings.

⁶¹ *FAA's Role in Aviation Drug Enforcement: Hearings Before the House Comm. on Pub. Works & Transp.*, 100th Cong., 2d Sess. 58-59 (1988) [hereinafter 1988 *Hearings*] (testimony of Robert B. Nestoroff, Investigator, Narcotics Service, Texas Department of Public Safety, and William F. Lewis, Air Intelligence Unit, El Paso Intelligence Center).

⁶² 1988 HOUSE REPORT, *supra* note 1, at 3.

⁶³ *Id.*

additional resources to improve safety.⁶⁴

Initiation of the congressional investigation in January 1988 apparently unleashed a flurry of activity at the FAA. High-level officials at the FAA met with local Customs Service and Coast Guard officials in Miami in February 1988, and subsequently designated two individuals to deal with air smuggling issues on a full-time basis.⁶⁵ The FAA held additional meetings with law enforcement officials from the Customs Service, the Coast Guard, and the Drug Enforcement Administration (DEA) to identify problems with the current FAA systems, including aircraft registration and pilot certification systems.⁶⁶ One week before the June 8, 1988, congressional hearing, the FAA announced the establishment of a special anti-drug unit within its Office of Civil Aviation Security that would coordinate drug enforcement activities.⁶⁷ Additionally, the day before the hearing, the FAA obtained a list from the DEA of approximately 1600 individuals who had been convicted of drug offenses.⁶⁸

At the 1988 hearing, the tone of the FAA's representatives indicated that they recognized the existence of shortcomings in the agencies' systems and law enforcement activities. The testimony submitted by the FAA indicated that the agency was already working on making pilot's licenses more difficult to forge.⁶⁹ The FAA attributed its ineffectiveness in revoking pilots licenses and aircraft registration to the unavailability of information on convictions.⁷⁰ Accordingly, the FAA stated that it was "aggressively" taking steps to ensure that information on convictions was obtained from United States attorneys,

⁶⁴ *Id.*

⁶⁵ 1988 Hearings, *supra* note 61, at 173 (testimony of Janet Hale, Assistant Secretary for Budget and Programs, U.S. Dept. of Transp.).

⁶⁶ *Id.* at 176.

⁶⁷ *Id.* at 174 (statement of Rep. Anderson, Comm. Chairman).

⁶⁸ *Id.* at 174 (testimony of Janet Hale) (The FAA's exploration of the development of new certification methods and the use of bar coding).

⁶⁹ *Id.* at 184.

⁷⁰ *Id.* at 174, 185.

the DEA, and state and local prosecutors. The agency was also consulting the Bureau of Prisons to determine whether it could modify prisoner entry forms to include questions about airman certification.⁷¹ The 1988 hearing ultimately led to the passage of the FAA Drug Enforcement Assistance Act of 1988.⁷²

IV. FAA DRUG ENFORCEMENT ASSISTANCE ACT OF 1988

The 1988 Drug Act includes a series of congressional findings on aviation drug trafficking and the need to expand the FAA's role in order to further drug interdiction and enforcement efforts.⁷³ In particular, Congress found that the current systems of registering aircraft and certifying airmen need improvement. Improvements to these systems, in conjunction with increased enforcement, would "benefit all users of such systems (including law enforcement officials) and the general public."⁷⁴ A statutory provision further clarifies that the public interest is served when the FAA provides assistance to law enforcement agencies in aviation drug smuggling matters, to the extent consistent with aviation safety.⁷⁵ The 1988 Drug Act recognized and addressed problems in three areas: aircraft registration, airmen certificates, and law enforcement activities.

A. *Aircraft Registration*

A brief explanation of the current registration system is required to understand the deficiencies cited by law enforcement officials. As of 1988, a total of approximately 295,000 aircraft were registered at the FAA Airmen and Aircraft Registration Office (the Airman and Aircraft Regis-

⁷¹ *Id.* at 174 (statement of Janet Hale).

⁷² Federal Aviation Administration Drug Enforcement Assistance Act of 1988 Pub. L. No. 100-690, §§ 7201-7214, 102 Stat. 4424 (1988) (codified at 49 U.S.C. app. § 1303).

⁷³ *Id.* § 7202.

⁷⁴ *Id.* § 7202(a)(7).

⁷⁵ *Id.* § 7202(b), 49 U.S.C. app. § 1303(6).

try).⁷⁶ Approximately 60,000 planes are registered each year, the majority comprised of previously registered aircraft that have been sold.⁷⁷

Operation of an aircraft eligible for registration is unlawful unless the plane is registered in accordance with FAA rules and regulations.⁷⁸ Upon the sale of an aircraft, the seller must submit the old registration certificate to the Registry, indicating the name and address of the buyer. To operate the aircraft, the regulations state that the buyer must submit an application for registration to the Registry in person or by mail, including a bill of sale as evidence of ownership.⁷⁹ Registration is not required if the owner does not intend to operate the aircraft, or if the aircraft is not currently operable.⁸⁰ After reviewing the application, the Registry issues a certificate of registration to the new owner. While this review is pending, the owner is permitted to utilize a duplicate copy of the application form as evidence of temporary authority to operate the aircraft without the registration certificate. Temporary authority to operate is valid for 90 days following submission of the registration application, unless further extended by the FAA.⁸¹

From a law enforcement perspective, the primary problem posed by this system is the lack of any requirement for positive owner identification, thereby subjecting the system to abuse by drug smugglers and depriving law enforcement officials of a simple investigatory tool. The cited abuses which have been recorded include the following: the registration of aircraft to fictitious persons, the use of false or nonexistent addresses by registrants, the use of post office boxes and mail drops for return addresses, the registration of aircraft to sham corporations,

⁷⁶ 1988 HOUSE REPORT, *supra* note 1, at 4.

⁷⁷ *Id.*

⁷⁸ 49 U.S.C. app. § 1401(a) (1988). The regulations governing aircraft registration are set forth at 14 C.F.R. §§ 47.1-47.51 (1990).

⁷⁹ 1988 HOUSE REPORT, *supra* note 1, at 5.

⁸⁰ *Id.*

⁸¹ *Id.*

the submission of illegible and unidentifiable names on registration applications, the lack of timely notice of ownership transfers, and the existence of the temporary authority system.⁸² Drug traffickers frequently possess copies of applications appearing to establish temporary authority to operate, when in truth no application was ever submitted to the FAA.⁸³

Although law enforcement officials provided numerous suggestions for improving the registration system,⁸⁴ the 1988 Drug Act did not adopt specific requirements. Congress deemed it appropriate to defer to the expertise of the FAA. Therefore, the 1988 Drug Act included authorization for the FAA to issue final regulations modifying the registration system in order to more effectively serve the buyers and sellers of aircraft, law enforcement officials, and other system users within ten months of enactment of the legislation.⁸⁵ The FAA must, at a minimum, specifically address the deficiencies noted by law enforcement officials and explain how the new rules correct these deficiencies. The modifications may include a "system of titling aircraft or of registering all aircraft whether or not operated [and] shall assure positive, verifiable, and timely identification of the true owner."⁸⁶ With respect to identification, the legislative history states that Congress intends that the aircraft registration regulations require presentation of a driver's license number and, when applicable, a federal tax identification number.⁸⁷

The 1988 Act imposes several duties upon the FAA.

⁸² *Id.*

⁸³ *Id.* at 6.

⁸⁴ *Id.* Suggested improvements include: requiring applicants to apply in person at an FAA facility for aircraft registration; requiring the application to be notarized; requiring production of recognizable identification with the application; inspecting all aircraft prior to sale; establishing an annual registration system; requiring applicants to include current street addresses on applications; and enforcing existing FAA rules and regulations. *Id.*

⁸⁵ Federal Aviation Administration Drug Enforcement Assistance Act of 1988 § 7207(a).

⁸⁶ *Id.* § 7203(a), 49 U.S.C. app. § 1401(h) (1988).

⁸⁷ 1988 HOUSE REPORT, *supra* note 1, at 18.

For example, it explicitly directs the FAA to consult with federal, state, and local law enforcement officials, and the general aviation aircraft industry in issuing and modifying the regulations.⁸⁸ Additionally, the Act requires that the FAA submit annual reports to Congress on the status of the rulemaking process, the issuance of regulations, and the implementation of the regulations so issued.⁸⁹

The need to tighten up the aircraft registration and airman certification requirements was not unanimously agreed upon at the hearing. The Aircraft Owners and Pilots Association (AOPA) argued that correcting perceived deficiencies would be pointless because drug smugglers normally do not obey the rules.⁹⁰ In addition, the AOPA stated that the smugglers would simply find new methods to beat the system.

Several other witnesses, however, justified system changes as a needed law enforcement investigatory tool.⁹¹ Retention of the status quo will simply encourage drug smugglers to continue taking advantage of the current system's shortcomings. Deterrence was downplayed because neither law enforcement officials nor a confidential government informant believed that a paper trail would prevent drug smuggling. However, the creation of a paper trail may provide assistance in locating individuals and corporations that are involved in drug-trafficking. The provision which involves current and accurate identifying information will also save investigators time in determining aircraft ownership.

With respect to drug interdiction efforts, the purpose of these measures is to establish procedures that will force

⁸⁸ Federal Aviation Administration Drug Enforcement Assistance Act of 1988 § 7207(b).

⁸⁹ *Id.* § 7207(d).

⁹⁰ 1988 *Hearings*, *supra* note 61, at 188-89, 205 (testimony and prepared statements of John S. Yodice, General Counsel, Aircraft Owners and Pilots Association, and John L. Baker, President, Aircraft Owners and Pilots Association).

⁹¹ *Id.* at 31 (Statement of Mr. Smith, confidential informant); *Id.* at 53, 59 (Statement of William F. Lewis, Air Intelligence Unit, El Paso Intelligence Center); *id.* at 155-156 (Statement of Terrance M. Burke, Deputy Assistant Administrator for Operations, Drug Enforcement Administration).

drug traffickers out of the normal private pilot patterns. Hopefully, the traffickers will then "stick out like a sore thumb."⁹² The changes might also have a positive effect on safety as well as law enforcement, inasmuch as smugglers are "flying a bomb around."⁹³

A related issue involves the aircraft identification number system.⁹⁴ The Convention on International Civil Aviation requires that every aircraft engaged in international air navigation bear appropriate nationality and registration marks. In the United States, this requirement is met through the assignment of "N" numbers to all registered civil aircraft.⁹⁵ The numbers are assigned by the FAA upon application by an aircraft manufacturer or individual owner. Owners may also request that special registration numbers, akin to vanity license plates, be assigned to them or reserved for their future use. The special numbers may be reserved indefinitely through payment of an annual fee.

Law enforcement officers testified that their efforts are obstructed by the use of false "N" numbers and by the use of special reserve numbers without FAA authorization.⁹⁶ The numbers are also easily and legally changed. Drug traffickers resort to frequent number changes in an effort to confuse law enforcement agencies.⁹⁷ Law enforcement officials suggested that the reserve system be abolished and that a system of permanent identification numbers be established, with numbers assigned during

⁹² *Id.* at 160 (Statement of Sam Banks, Assistant Commissioner for Inspection and Control, U.S. Customs Service).

⁹³ *Id.* at 54 (Statement of Carol Knapik, Detective, Aircraft Narcotics Interdiction Unit, Broward County (Florida) Sheriff's Office).

⁹⁴ The ease with which "N" numbers can be changed was raised by the aviation underwriters industry at the 1983 hearings in the context of stolen aircraft which had been seized by the Mexican government. These aircraft may have been used for trafficking drugs prior to their confiscation. See 1983 *Senate Hearings*, *supra* note 7, at 37, 42 (testimony and statement of Allan I. Mendelsohn).

⁹⁵ 14 C.F.R. § 47.15 (1990).

⁹⁶ 1988 HOUSE REPORT, *supra* note 1, at 7; 1988 *Hearings*, *supra* note 60, at 43 (testimony of Carol Knapik).

⁹⁷ 1988 *Hearings*, *supra* note 61, at 52 (testimony of Robert B. Nestoroff and William F. Lewis).

the manufacturing process.⁹⁸ The National Business Aircraft Association, in contrast, favored retention of vanity numbers, and suggested that the serial number be used as a permanent identification number.⁹⁹ In keeping with the approach adopted with respect to aircraft registration, the 1988 Drug Act simply requires that the FAA institute a rule within a ten-month period to address the deficiencies identified by law enforcement agencies.¹⁰⁰

B. *Airmen Certificates*

The 1988 Drug Act also adopts a ten-month rule-making period for the resolution of the deficiencies existing in the airmen's certification system. System modifications must assure positive and verifiable identification of each applicant and specifically address the following deficiencies cited by law enforcement personnel: (1) the use of fictitious names and addresses by applicants; (2) the use of stolen or fraudulent identification in the application process; (3) the use of post office boxes or mail drops as return addresses by applicants; (4) the use of counterfeit and stolen pilot's licenses; and (5) the absence of physical characteristic information on pilot's licenses.¹⁰¹

FAA regulations require that an individual must pass both the written and flight examinations to qualify for a pilot's license.¹⁰² Presently, no positive identification is required. The actual application, with documentation demonstrating passage of the examinations, is presented to an FAA inspector, or to a designated pilot examiner who forwards the application to the FAA. The airman's

⁹⁸ 1988 HOUSE REPORT, *supra* note 1, at 7.

⁹⁹ 1988 *Hearings*, *supra* note 60, at 189-91 (testimony of Pete West, Vice President, National Business Aircraft Association, Inc.). Although Mr. West conceded that "N" number abuse is a problem, he also testified that the criminal element did not care what number is put on aircraft tails. He pointed out that none of the members of his own association have been involved in illegal drug smuggling. *Id.* at 198.

¹⁰⁰ Federal Aviation Administration Drug Enforcement Assistance Act of 1988 § 7203(a), 49 U.S.C. app. § 1401(h)(6).

¹⁰¹ *Id.* § 7205, 49 U.S.C. app. § 1422(d).

¹⁰² *See* 14 C.F.R. §§ 61.1-61.60 (1990).

certificate is then issued by the Airmen and Aircraft Registry, which is also responsible for record maintenance.

C. Law Enforcement Activities

The 1988 Drug Act sharply curtails the FAA Administrator's discretion to re-issue a pilot's license one year after the commencement of a five-year revocation period. The new provision permits re-issuance of a revoked certificate only upon a determination that such reissuance will facilitate law enforcement efforts.¹⁰³

Congress attributed the dearth of aircraft registration and airman certification revocations subsequent to the passage of the 1984 legislation was attributable, at least in part, to the lack of an appropriate system for assuring FAA receipt of data on criminal drug convictions.¹⁰⁴ The FAA also lacked the necessary investigative manpower to undertake administrative revocation proceedings in the absence of a conviction. The 1988 Drug Act directs the FAA to submit annual reports to Congress outlining its progress in pursuing the revocation of registration and airman certificates under the 1984 Drug Act, with the first report due six months after the 1988 Drug Act's passage.¹⁰⁵

V. FAA IMPLEMENTATION OF THE 1988 DRUG ACT

After years of inaction under the 1984 Drug Act,¹⁰⁶ the FAA has finally begun to actively address issues raised in the 1988 Drug Act.¹⁰⁷ For example, on August 18, 1989,

¹⁰³ Federal Aviation Administration Drug Enforcement Assistance Act of 1988 § 7204, 49 U.S.C. app. §§ 1422(b)(2), 1429(c)(5) (1988). The Administrator previously had broad discretion to re-issue permits after one year had passed. See *supra* note 40 and accompanying text.

¹⁰⁴ 1988 HOUSE REPORT, *supra* note 1, at 12-13.

¹⁰⁵ Federal Aviation Administration Drug Enforcement Assistance Act of 1988, § 7210. Section 7210 requires the preparation and transmission of the reports "[n]ot later than 180 days after the date of the enactment of the subtitle and annually thereafter during the 3-year period beginning on such 180th day." *Id.*

¹⁰⁶ Aviation Drug-Trafficking Control Act, Pub. L. No. 98-499, 98 Stat. 2312 (1984) (codified at 49 U.S.C. app. § 1354 (1991)).

¹⁰⁷ Federal Aviation Administration Drug Enforcement Assistance Act of 1988,

the FAA issued a regulation restricting the temporary authority process for aircraft registration to operations within the United States.¹⁰⁸ The FAA stated that the regulation will eliminate the fraudulent use of temporary authority used by drug smugglers in cross-border flights.

In addition, as of November 1, 1989, all FAA investigators and pilot examiners must require applicants for pilot's licenses to present positive identification at the time of application.¹⁰⁹ The identification must include a photograph, signature, and residential address. The inspectors and examiners verify identity in order to preclude the use of fictitious names and addresses, stolen or fraudulent identification, and post office boxes and mail drops.

While tacitly acknowledging that the foregoing changes were only initial steps, the FAA issued a notice of a proposed rulemaking on March 12, 1990, to address aircraft registration and pilot certification.¹¹⁰ The 1988 Act, however, required the promulgation of final rules by August 1989. The FAA attributed its inability to meet the ten-month statutory deadline to the "complexity of the subject matter and the lead time required for such comprehensive rulemaking."¹¹¹ The proposed rules, the agency noted, were developed after extensive solicitation of the "specific needs and concerns" of industry groups, law enforcement agencies, and FAA divisions.¹¹²

With respect to pilot certification, the FAA proposes to establish a two-part license consisting of an airman identity card and a rating and limitation portion.¹¹³ Both portions must be in the pilot's possession in order for the certificate to be valid. The airman identity card will be the

Pub. L. No. 100-690 §§ 7201-7214, 102 Stat. 4424 (1988) (codified at 49 U.S.C. app. § 1303).

¹⁰⁸ 54 Fed. Reg. 34,284, 34,286 (1989) (to be codified at 14 C.F.R. § 91.27).

¹⁰⁹ FAA Action Notice No. 8700.2; see 55 Fed. Reg. 9270, 9280 (1990).

¹¹⁰ 55 Fed. Reg. 9270 (1990) (proposed Mar. 12, 1990).

¹¹¹ *Id.* at 9271.

¹¹² *Id.* For example, the FAA rejected a proposal to require all applicants to appear in person to apply for registration, finding that it would create an unreasonable burden on some applicants. *Id.* at 9271-72.

¹¹³ *Id.* at 9289.

size of a credit card, nonforgeable, machine readable, and will include the pilot's name, address, identification number, and photograph.¹¹⁴ It must be renewed every three years. The second portion of the license consists of the pilot certification number, ratings, and limitations contained on the current license.

Other proposals include a major overhaul of the aircraft registration system.¹¹⁵ In the future, the registration certificate must be submitted to the Registry within ten days of the sale of an aircraft. The application process will be modified to incorporate a positive identification requirement. The applicant will be required to present the following materials to an FAA official or notary public:¹¹⁶ the application form, a photo identification (preferably a state driver's license, "new" pilot's license, or passport) or a certificate of incorporation, and copies of the photo identification. Now, the form must include a driver's license number or taxpayer identification number and the applicant's home or business street address. In addition, the form must be signed in ink, with the name of the applicant typed or legibly printed. The official or notary will certify that the photograph is an accurate likeness of the applicant and that the copies of the original identification documents are true and complete. The application form will then be mailed or delivered to the Registry or an FAA office along with evidence of aircraft ownership, proof of identification documents, and a user's fee. In addition, aircraft will have to be reregistered every three years.¹¹⁷

Notably, the rule also further restricts the temporary authority provisions, available only to previously regis-

¹¹⁴ *Id.* at 9282. The FAA rejected the idea of having fingerprints on the identity card on the ground that it would be too expensive and only slightly improve the proposed identification system. *Id.*

¹¹⁵ *Id.* at 9271-73.

¹¹⁶ *Id.* at 9272. The FAA included notaries in the belief that such individuals would be more accessible than FAA officials. *Id.* The provision is a compromise between requiring in-person application to FAA officials and continuing the existing mail-in application procedures. *Id.*

¹¹⁷ *Id.* at 9277.

tered aircraft.¹¹⁸ As previously discussed, temporary authority to operate an aircraft prior to receipt of the registration certificate has already been discontinued outside the borders of the United States.¹¹⁹ The proposed rules would permit operation within the United States only upon specific request to the FAA as part of the application process. To be effective, a temporary authority form would be valid for no more than 45 days and would have to be issued by an official of the Registry.¹²⁰

The FAA proposes to address "N" numbers by permitting only one written request for a special number during the period the requesting individual owns the aircraft.¹²¹ Once assigned, the owner just paints the number on the aircraft within 90 days, and notifies the Airman and Aircraft Registry. The FAA stated that it was reluctant to completely eliminate the reserve number system "because experience has shown that the aviation community considers this a desirable service."¹²² While a reasonable compromise, it can be argued that the "vanity" of aircraft owners is being given undue weight in comparison with legitimate law enforcement concerns.

The notice of a proposed rulemaking invited the submission of comments on the FAA's proposals by May 11, 1990. The comment period was subsequently extended until July 11, 1990.¹²³ The rules may be modified in light of such comments. Certainly, the eyes of the law enforcement community are now focused on the FAA. Inasmuch as the FAA states that additional personnel and improved

¹¹⁸ *Id.* at 9272.

¹¹⁹ See *supra* note 104 and accompanying text.

¹²⁰ 55 Fed. Reg. at 9272.

¹²¹ *Id.*; see *supra* notes 92 to 98 and accompanying text for a further discussion of "N" numbers.

¹²² *Id.*

¹²³ 55 Fed. Reg. 20,394 (1990). The 60-day extension was granted on May 16, 1990, at the request of the Aircraft Owners and Pilots Association (AOPA), which included an analysis of the proposed rules in the May issue of AOPA Pilot Magazine. The Association stated that the May 11 deadline did not provide sufficient time for it to formulate comments based on member input. AOPA members had been asked to review the proposed rules and AOPA analysis and submit meaningful information directly to the Association.

automation will be needed at the Registry to carry out the proposed rules, a specific timetable for implementation of the rules is not set forth in the notice.¹²⁴

With respect to the revocation of aircraft registrations and pilot's licenses, there is also evidence that the FAA is beginning to take positive action to implement some aspects of the 1984 Drug Act, albeit extremely slowly. Investigator positions have been established in the Drug Interdiction Support Unit, which was created in the Office of Civil Aviation Security in March 1988.¹²⁵ Five individuals have been assigned to the headquarters unit to oversee the program. The investigators have been assigned to regional civil aviation security offices to prepare enforcement investigative reports on airmen and aircraft involved in illegal activities, particularly drug trafficking.¹²⁶ The initial emphasis has been on the identification of suspect aircraft, with a view towards revoking registrations and thereby upgrading the Airman and Aircraft Registry. The reports are forwarded to the Assistant Chief Counsel for the FAA at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma for further action.

During the first six months following enactment of the 1988 Drug Act, Notices of Proposed Certificate Action were served in twenty cases in which aircraft were either registered to fictitious persons, registered to dissolved corporations, or wrecked in the Bahamas.¹²⁷ None of these actions, however, specifically involved the revocation provisions of the 1984 Act. The FAA's first report to Congress on its law enforcement activities, which was actually transmitted to Congress five months late, states that as of May 18, 1989, there had been only one case in which

¹²⁴ See 55 Fed. Reg. at 9277.

¹²⁵ FEDERAL AVIATION ADMINISTRATION REPORT TO THE CONGRESS, STATUS REPORT ON PLANS FOR ENFORCEMENT ACTIONS RELATED TO DRUG ACTIVITY AND THE PROVISION OF ASSISTANCE TO LAW ENFORCEMENT AGENCIES: NOV. 18, 1988 - MAY 18, 1989 [hereinafter 1989 REPORT TO CONGRESS].

¹²⁶ *Id.* at 2. The first field unit of the Drug Interdiction Support Unit was established in Jacksonville, Florida. *Id.*

¹²⁷ *Id.*

the revocation of aircraft registration certificates was based on the 1984 provisions.¹²⁸ The case involved three aircraft registered to a single owner who had used one of the aircraft to transport marijuana.¹²⁹ This same case was apparently cited during the 1988 congressional investigation.¹³⁰ The 1989 report to Congress contains no indication that the FAA revoked any pilot's licenses in accordance with the 1984 Drug Act between November 1988 and May 1989. Instead, the report simply repeats that the FAA is "pursuing means to obtain information from the Bureau of Prisons in order to develop lists of convicted drug felons who may also be airmen,"¹³¹ a claim that the FAA also made at the June 1988 congressional hearings.¹³² The law enforcement community is dutifully waiting to see, if the FAA will open its first show cause hearing against a pilot who was never indicted or convicted for drug running.¹³³

Presently, the FAA drug unit is in the process of compiling information for its second annual report to Congress on law enforcement activities.¹³⁴ Information on the number of aircraft registration and pilot license revocations was not yet available as of June 4, 1990.¹³⁵ The FAA has made tentative arrangements for the Bureau of Prisons to provide it with computer tapes listing convicted felons where there is preliminary information that the

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ See 1988 HOUSE REPORT, *supra* note 1, at 13.

¹³¹ 1989 REPORT TO CONGRESS, *supra* note 125, at 5.

¹³² See 1988 Hearings, *supra* note 61, at 185 (statement of Janet Hale); see *infra* notes 69-70 and accompanying text.

¹³³ For a discussion of the FAA's Show Cause order procedure, see *supra* notes 41-44 and accompanying text.

¹³⁴ Pursuant to the statutory provisions, this report should have been prepared and transmitted to Congress not later than May 18, 1990. Federal Aviation Administration Drug Enforcement Assistance Act of 1988 § 7210, 49 U.S.C. app. § 1303. See *supra* note 103 and accompanying text. The second annual report, like the first, is late.

¹³⁵ The FAA has agreed to provide the author with information on the number of revocations when a final list has been compiled. As of this writing, no list has been completed.

felons are airmen. Of the 300 names received by the FAA in 1989, 289 were forwarded to the FAA's Chief Counsel for possible enforcement action.

VI. CONCLUSION

The quest to establish and define the FAA's role in assisting with enforcement of this nation's drug trafficking laws is a study in congressional-executive relations. Many of the FAA's deficiencies discussed above could already have been corrected without the need for additional legislation. The FAA's inactivity and delay in implementing the 1984 legislation¹³⁶ and in dealing with law enforcement concerns, however, practically guaranteed further congressional action. After the initiation of the 1988 congressional investigation, the FAA finally "got the message" and began to cooperate with law enforcement agencies on the drug problem. The benign nature of the 1988 Drug Act¹³⁷ may be attributed to the FAA's new-found attitude of cooperation. Congress deferred to FAA expertise instead of passing detailed legislation overhauling the registration and certification systems. At the same time, Congress established a timetable for FAA rulemaking and mandated the submission of annual progress reports—moves intended to ensure continued FAA activity in the drug trafficking context.

A question that remains is the reason for the FAA's delay in implementing the 1984 Drug Act. While the issue may remain an enigma, several general criticisms can be leveled at the FAA.¹³⁸ The FAA not only used additional resources on safety rather than carry out the mandates of the 1984 Drug Act but was also lax in providing adequate training to existing personnel. While the agency might

¹³⁶ Aviation Drug-Trafficking Control Act, Pub. L. No. 98-499, 98 Stat. 2312 (1983).

¹³⁷ Federal Aviation Administration Drug Enforcement Assistance Act of 1988, Pub. L. No. 100-690, §§ 7201-7214, 102 Stat. 4424 (1988).

¹³⁸ One possible explanation is that the FAA is simply disorganized, at least with regard to the 1984 and 1988 Drug Acts.

have gone to Congress for additional funding specifically directed towards the revocation program, no evidence indicates that it did so prior to the 1988 Congressional investigation. This inaction is inexcusable, especially since recent administrations have stressed the need to eradicate the scourge of drugs, an emphasis backed by congressional willingness to fund programs aimed at furthering the "war on drugs." Even now, the FAA's slow pace in implementing the 1984 Drug Act indicates that drug trafficking by air may still have a low priority within the agency: only five people at FAA headquarters have been assigned to administer and coordinate the unit charged with encouraging nationwide drug interdiction.

One possible explanation is the FAA's lack of experience with a proactive role—the agency has traditionally maintained a passive style in which applicants come to it with requests for action. More fundamentally, the FAA may be unwilling or lack the experience to determine if the elements for revocation of aircraft registrations and pilot's licenses have been met. Absent a federal conviction, the FAA must be able to establish, on its own, elements of the offense and the suspect individual's participation. Although criminal standards do not apply, such an exercise may nevertheless be alien to FAA attorneys who have not had prior criminal law enforcement experience. Still another fundamental problem may lie in the close and amiable relationship the FAA has traditionally maintained with pilots and aircraft owners. The agency may find it difficult to suddenly establish an arm's length—let alone adversarial—relationship.

Despite initially slow implementation, the 1984 and 1988 Drug Acts will undoubtedly have some impact on the use of general aviation aircraft in drug trafficking, although it may be impossible to quantify. The measures will deter some individuals from smuggling drugs as well as provide law enforcement with far more effective investigatory tools. The FAA's contributions to law enforcement, when they finally occur, should assist in promoting

aviation safety. The small administrative burden that effective enforcement of the 1984 and 1988 Drug Acts will impose on the general aviation industry will clearly be outweighed by their benefit to the public. While drug smugglers will obviously search for new ways to continue their operations as long as there is a demand for their "product," that does not justify the inaction which has marked the FAA's role in this area since the 1984 Act was enacted.

