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# The Government's Response to Hijacking

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# THE GOVERNMENT'S RESPONSE TO HIJACKING

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THE FEDERAL GOVERNMENT has made the necessary response to air piracy. We are committed to a policy of protecting air travelers; we are pledged to bringing every air pirate, every air saboteur, and every person who attacks an aviation facility to justice. Yet, the Government has never tried to gain these ends through harsh or unreasonable edicts. The federal antihijacking campaign has been conducted with a judicious regard for all of the parties and all of the interests concerned. We have considered the demands of free enterprise, the rights of the individual, the sanctity of personal privacy, and the responsibilities of all jurisdictions affecting civil aviation. Before there was a regulatory program, there was a voluntary program and the air carriers acted under Government guidance and assistance. Only when it became evident that stronger measures were needed to meet the menace of the hijacker did the Government act. We have taken the security steps that fit the demand, the *necessary* steps.

Let me state very emphatically that present policies were not born of desperation or the belated repair of an inadequate program. Antihijack efforts have been working well over the past 3 years and the figures bear it out.[1] 1969 was the worst year in the annals of air piracy in this country; it was also the year that the federal deterrent system was initiated by the Nixon Administration. In 1969, there were 40 attempts to seize aircraft in the United States and 33 of them, or 82 per cent, were successful. In October of 1969, the Federal Aviation Administration (FAA) deterrence program was established on a voluntary basis. 1970 saw 27 hijacking attempts, 67 per cent of which were successful. In 1971, air criminals struck on 27 occasions, but on only 12 of them were they able to take over the aircraft. The hijack rate was down to 44 per cent successful. Last year, there were 31 incidents and three United States air carrier planes were diverted to Cuba. But of the 31 hijack attempts, only 10, or 32 per cent, were successful. We had gone from a success ratio of 82 per cent down to less than half that percentage.

The logical question is: Why, then, did the Government feel compelled to issue an emergency order in December 1972? The answer

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1. These and other figures referred to by the author are those of the Federal Aviation Administration (FAA) contained in Departmental chronology and are not part of any published statistical data.

lies in the nature of the last two hijackings to Cuba. They occurred in the fall, just 12 days apart, and both incidents were violent and bloody. Several weeks later, the Government announced its action.

On December 5, 1972, at the direction of the President, the Secretary of Transportation announced a strengthened aviation security program designed to protect air travelers against threats and acts of violence by air hijackers.[2] The new program was set forth in an emergency order and amendments to the existing regulations governing aviation security issued by the Federal Aviation Administrator.[3]

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2. Emergency Order of FAA, U.S. Dep't of Transp. Press Release No. 103-72 (Dec. 5, 1972). *See* 37 Fed. Reg. 25934 (1972), wherein it is stated that:

> The President has directed that the present Civil Aviation Security Program be strengthened to meet the escalating threats of hijacking, extortion, sabotage, and terrorism against U.S. civil air commerce. The strengthened security measures ordered by the President recognize the proper delineation of responsibilities between the Federal Government, airlines, airports, and local law enforcement.

3. 14 C.F.R. §§ 107.1(e), .4 (1973); 14 C.F.R. § 121.538 (1973). There are two aspects to the regulations regarding hijacking. One set of regulations imposes responsibilities upon airlines; the other imposes responsibilities upon airport operators. 14 C.F.R. § 121.538 (1973) requires each certificate holder (air carrier engaging in interstate, overseas, or foreign air transportation under a certificate of public convenience and necessity or other appropriate economic authority issued by the Civil Aeronautics Board; and commercial operator engaging in intrastate common carriage covered by 14 C.F.R. § 121.7 (1972) to submit for approval by the Federal Aviation Administrator a security program which includes:

(a) A screening system acceptable to the Administrator that is designed to prevent or deter the carriage aboard its aircraft of any explosive or incendiary device or weapon in carry-on baggage on or about the persons of passengers other than
  (1) officials or employees of a municipality or a State, or of the United States, who are authorized to carry arms; and
  (2) crewmembers and other persons authorized by the certificate holder to carry arms; and
(b) Procedures or facilities or a combination thereof that it uses or intends to use to support that program and that are designed to:
  (1) prevent or deter unauthorized access to its aircraft;
  (2) assure that baggage is checked in by a responsible agent or representative of the certificate holder; and
  (3) prevent cargo and checked baggage from being loaded aboard its aircraft unless handled in accordance with the certificate holder's security procedures.

The Administrator is authorized by 14 C.F.R. § 121.538(g) (1973) to issue emergency amendments to security programs filed by certificate holders. Under the authority of subparagraph (g)(1) of that regulation, the Administrator by telegram ordered all security programs amended effective January 5, 1973, to provide that the certificate holder not permit any passenger to board its aircraft unless:

(a) The carry-on baggage items are inspected to detect weapons, explosives, or other dangerous objects, and
(b) Each passenger is cleared by a detection device without indication of unaccounted for metal on his/her person (hand-held detection units may be used until walk-through units are available), or
(c) In the absence of a detector, each passenger has submitted to a consent search prior to boarding.

14 C.F.R. § 107 (1973) requires airport operators to implement facilities and procedures designed to prevent or deter unauthorized access to air operations areas and to submit for approval by the Administrator a security program designed to improve these facilities and procedures. The emergency amendment to 14 C.F.R. § 107.4 (1973), required that those facilities and procedures include provision of law enforcement support for all boardings of certificate holders covered by 14 C.F.R. § 121.538 (1973), and of foreign air carriers requesting such support.

Since January 5, 1973, air carriers have been required to electronically screen all enplaning passengers as a condition to boarding or reboarding.[4] If a passenger activates the electronic weapons detector and is unable to satisfactorily explain the presence of metal on his person, the airline must refuse boarding privileges unless he consents to a "frisk" or exterior clothing pat-down. The air carriers are also required to inspect all carry-on items, including hand luggage, purses, and packages, to insure that weapons, explosives, and other dangerous articles are not carried aboard the aircraft.[5]

The airport operators have also been given added responsibilities. Under an emergency rule effective February 6,[6] they are required to insure that armed local law enforcement officers are stationed at passenger checkpoints throughout the passenger screening process.[7] The law enforcement officer must remain at the passenger checkpoint until the aircraft has taxied away from the boarding area and he must return to his station in the event the aircraft returns to the boarding area prior to takeoff.[8] The local law enforcement officers have orders to support airline and airport security measures and to act in the event of suspected or actual unlawful activities.

It should be clearly understood that the procedures announced in December were not unprecedented. As early as September 1970, the President had announced that certain measures would be undertaken to prevent air piracy, the most significant being the placement of sky marshals on board certain flights.[9] On March 9, 1972, following the explosion of a bomb on board a jetliner and the discovery of an explosive device aboard another passenger aircraft, the President issued a second statement announcing additional preventive actions including the issuance of new federal security requirements.[10] Airlines and airport operators were thereby required by law to improve their security, and all airlines operating in the United States were encouraged to use a passenger screening system. This approach recognized a concept of

4. This was accomplished by amendment to security programs filed under 14 C.F.R. § 121.538 (1973). *See* note 3 *supra*.

5. *Id.*

6. 14 C.F.R. § 107.4 (1973). The United States District Court for the District of Columbia issued a temporary restraining order staying the effective date of the rule on February 5, 1973. On February 12, 1973, the district court denied a motion for preliminary injunction and permitted the rule to go into effect. Airport Operators Council Int'l v. Shaffer, 354 F. Supp. 79 (D.D.C. 1973). The United States Court of Appeals for the District of Columbia Circuit denied a stay pending appeal, Airport Operators Council Int'l v. Shaffer, Civil No. 209-73 (D.C. Cir., Feb. 15, 1973) (per curiam), and the rule became effective on February 16, 1973.

7. 14 C.F.R. § 107.4(a) (1973).

8. 14 C.F.R. §§ 107.4(b)-(c) (1973).

9. 6 WEEKLY COMP. PRES. Doc. 1193-94 (Sept. 11, 1970).

10. 8 WEEKLY COMP. PRES. Doc. 553 (Mar. 9, 1972).

interception; the potential hijacker was to be stopped before he could board an aircraft.

The federal antiskyjack campaign intensified in the spring of 1972. In May, the FAA announced the purchase of $3.5 million worth of electronic screening devices. In July, the President ordered 100 per cent screening of all passengers and carry-on items boarding non-reservation or "shuttle-type flights" of certain airlines.[11] Also, the entire federal civil aviation security program underwent a critical re-examination by the Department of Transportation (DOT) during the summer of 1972. The DOT's Office of Transportation Security was looking for the answers to three pressing questions: (1) how best to improve the program as it then existed; (2) how best to utilize technological improvements in security, such as metal detectors and low-wattage X-ray machines, which were then in production and would be available in the near future; and (3) how to build into the program the flexibility necessary to respond to the different kinds of hijackings.

Until that time, excluding deranged people, we had encountered two types of air pirates in the United States. The first was the person who wanted to fly to a sanctuary, usually Cuba, and who was content just to reach his destination. The second was a person who wanted a large sum of money in a hurry and would hold the airliner, its passengers, and crew for ransom. The Government saw the second type as the greater threat to life and property, and began broadening its plans to deal with him. By September 1972, the Office of Transportation Security had completed its analysis and its recommendations were under review. The expanded government security program began taking shape.

Then, in late October, hijackers of a new breed struck a domestic air facility. Four men forced their way onto an Eastern Airlines plane in Houston and took it to Cuba. The four, already wanted for murder and bank robbery, killed an Eastern employee and wounded another in the hijacking process. Twelve days later, three wanted men boarded a Southern Airways jet in Birmingham and sent it on a 29-hour, five-stop flight to Havana, shooting and wounding the copilot on the way. The gunmen had demanded and received ransom money from Southern Airways amounting to an estimated $2 million.

Both of these hijackings were perpetrated by fugitives from justice, violent men willing and able to shoot down anyone who stood in their way. Human life was the least of their concerns. The immediate problems that confronted the Government were how to cope with this

11. 8 WEEKLY COMP. PRES. DOC. 1152 (July 17, 1972).

new breed of air criminal and how to do it quickly before there was a repetition with tragic results. Two concerns were paramount: (1) the tightening of our screening procedures, since the Southern Airway hijackers had succeeded in getting their weapons aboard the plane; and (2) the ability to respond to violence in the boarding area, since the Eastern Airlines hijackers had ruthlessly shot their way on board.

While routine screening of a few selected passengers might have prevented a hijacking before, we now had to be prepared to stop air criminals at the boarding gate and deny them access to the ramp area. Our objective was to keep *all* weapons off *all* air carriers. With our course determined, we considered the Office of Transportation Security's analysis and recommendations and chose those measures which: (1) were reasonable in the context of the emergency which existed; (2) would achieve the goals of 100 per cent screening and security at the passenger gates; and (3) could be implemented quickly. The President was advised of our recommendations and requested that they be implemented as quickly as possible. On December 5, the Federal Aviation Administrator issued the rule.[12]

That is how and why the emergency procedures came about. They were anything but a hastily contrived plan or the patchwork efforts of an ad hoc committee. All measures taken had been in the planning stage so that we were ready when the occasion demanded.

It should be emphasized that imposition of the emergency procedures does not mean that other Government efforts have been abandoned. There is increasing impetus on Capitol Hill for legislation to stop the hijacker. The substance of the emergency measures we took in December was included in a bill passed by the Senate last session.[13] The bill was allowed to die in a House-Senate conference but it was substantially revived as S. 39 when the 93d Congress convened in January.[14] This bill has already been passed by the Senate.[15]

S. 39 contains some provisions with which we agree and some which we do not support. It requires the screening of passengers by weapon detectors in language that strongly resembles the regulations already issued by the FAA. However, the FAA order requires additional security measures; it directs the air carriers to deny boarding to any person who is not cleared by the detection device and does not consent to the search of his person. The FAA regulations also require that all carry-on items must be inspected prior to boarding.

12. 37 Fed. Reg. 25934 (1972).
13. S. 2280, 92d Cong., 2d Sess. (1972).
14. S. 39, 93d Cong., 1st Sess. (1973).
15. 119 CONG. REC. 3096 (daily ed. Feb. 21, 1973).

Much of S. 39 pertains to international efforts to curb air piracy. We strongly support provisions in the bill which would implement, for the United States, the Hague Convention for the Suppression of Unlawful Seizure of Aircraft.[16] The Convention obligates contracting states to establish severe penalties for air piracy and requires the extradition or prosecution of hijackers. S. 39 also would authorize the President to suspend air service to any foreign nation which he determines to be encouraging the act of hijacking.[17]

There is another feature of the Senate bill which we favor. That is the proposal which would retain the present misdemeanor offense for carrying weapons aboard an aircraft, or attempting to do so, while making this offense a felony in instances where such an action is willful and taken without regard for the safety of human life.[18]

The principal source of our disagreement with S. 39 is the provision which would establish a new security force within the FAA.[19] This provision is wholly inconsistent with our present civil aviation security program and the FAA will continue to oppose it. This part of the Senate measure imposes upon the federal government the chief responsibility for providing law enforcement personnel at the 531 airports in the United States which serve the scheduled air carriers. We believe very strongly that a federal role in the preventive aspects of the civil aviation security program is unwarranted. It is an intrusion into the jurisdictions and obligations of state and local governments which raises the unwanted spectre of federal police power.

Proponents of the federal force, on both sides of the Senate aisle, say that we have abdicated our responsibilities in requiring that local police officers support the passenger screening process. We maintain that this is properly a local duty and service. The need for police security and crime prevention at an airport does not obligate the federal government any more than it does at any other public facility. There is no federal force at a train station, or a bus depot, or a local sports arena; local policemen are on hand to preserve order. The argument is made that security at airports is for the protection of people traveling in interstate commerce. However, state and local police personnel patrol our interstate highway system, and the railroads and shipping terminals provide their own security guards to protect passengers and cargo.

There are other compelling reasons why a federal security force should not be created. It would be not only expensive, but wasteful.

16. Hague Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, [1971] 22 U.S.T. 1641, T.I.A.S. No. 7192 (effective Oct. 14, 1971).
17. S. 39, 93d Cong., 1st Sess. § 4(a) (1973).
18. S. 39, 93d Cong., 1st Sess. § 26 (1973).
19. S. 39, 93d Cong., 1st Sess. § 24 (1973).

The waste in man-hours and nonproductive time for federal employees would almost equal the financial costs. We can put this fact in perspective by estimating the number of aircraft departures in the United States this year. During 1973, the scheduled air carriers will enplane approximately 185 million passengers. An estimated 90 per cent of those passengers will board at 87 airports and nearly 70 per cent will be boarding at the 33 largest airports. That leaves 444 of the smaller air carrier facilities with a minimal level of activity. One or two local policemen could make the airport another stop on their assigned patrol to back up the passenger screening process. Some 200 airports, for example, enplane only about 50 passengers a day. There simply is not a significant problem in providing guards at most of the airports in the country. A federal officer is not needed.

This, in no way, abrogates the responsibility of federal law enforcement. The Federal Bureau of Investigation (FBI) responds immediately to a hijacking attempt; it investigates all incidents of air piracy and brings the criminals to justice. But the FBI is not now involved in the day-to-day business of local crime prevention.

It is normal enforcement procedure for local policemen to react to violations of federal laws, as in the case of kidnapping and bank robbery. In most states, the legal authority is there. According to the Justice Department, 31 states authorize their local police officers to arrest under federal statutes, either for misdemeanors or felonies, and this would cover attempts to board an aircraft with a weapon.[20] Of the remaining states, eight of them do not authorize their law enforcement officers to make arrests without a warrant for federal misdemeanors.[21] In 11 states, police officers are not authorized by law to arrest without a warrant for any federal offense.[22] However, it appears that in each of the states where officers may not arrest for federal offenses, there is some state law which could be violated by a person attempting to board an aircraft with a deadly or dangerous weapon.[23] Moreover, in at least two of these states there are statutes which specifically make such conduct unlawful.[24] We believe that action by the Congress as well as the state legislatures would be desirable in closing the gaps between federal and state jurisdiction in these areas.

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20. S. REP. No. 93-13, 93d Cong., 1st Sess. 15 (1973).

21. *Id.*

22. *Id.*

23. *See, e.g.*, CONN. GEN. STATE ANN. § 53-206 (1960); MONT. REV. CODES ANN. § 94-3525 (1969); N.C. GEN. STAT. § 14-269 (1969).

24. ILL. REV. STAT. ch. 38, § 84-1 (1970); IND. ANN. STAT. § 10-4760 (Supp. 1972).

Much of the complaining about the law enforcement requirement stems from the cost. The Administration is cognizant of and sensitive to the pleas of state and local officials on the funding of enforcement personnel. This is an honest misunderstanding of our policy. We have not asked for a diversion of local tax revenues or other funds to pay for the presence of armed guards. Instead, we have proposed that the airport operators adjust or renegotiate the existing cost formulae and contracts with their tenant air carriers or negotiate new contracts for payment of airport security services. It is then up to the airline to either absorb the cost or to initiate steps to request changes in the fare structure.[25]

We believe in the principle that the users of the air transportation system should pay for the costs, including those for police officers. All costs related to the federal aviation security program, we believe, should be a part of the total cost of the system. Security-related costs should not be borne alone by the local airport, or the air carrier, or the community. It is proper that the new expense be reflected in the fare structure.

The financial aspects of the security requirements cannot be minimized, but they should not serve to cloud the primary issue — safety. The federal program is designed to protect air travelers. In a matter of just a few years, American commercial air lanes have become imperiled by hijackers, and recently a new and vicious brand of air criminal has emerged. Society may abhor a killer in its midst but the presence of such a man aboard a crowded airliner is doubly terrifying. We simply must prevent dangerous individuals with weapons from flying.

The Government is wholeheartedly committed to that purpose. We want the cooperation of all elements of authority — federal, state, and local — and the aviation industry. We seek to impress upon the traveling public the reasons for our actions and to convince them that they are the direct beneficiaries. We are succeeding.

We anticipate that Congress will pass the legislation this year that we recommend to enhance the civil aviation security program. There may be further revisions and rulemaking by the federal government. The American citizen, especially the air traveler, may be assured of one thing — we will do all that is necessary.

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25. On March 22, 1973, the Civil Aeronautics Board granted Western Airlines permission to add charges to travelers' tickets to help absorb the airline's costs for the new security measures. Other airlines are expected to seek similar authority.