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AIR CRIMES: PERSPECTIVE FROM THE COCKPIT

JOHN J. O'DONNELL†

Regrettably, I must open my comments today with a dire prediction: Within the very near future, every person in this room will see or hear about a new act of aerial terror. Using a decade of history as my crystal ball, there is no question as to whether this will happen; the only question is how soon.

Most of you, of course, will witness this crime from the comfort of your living rooms. Surely, you are all too familiar with the scenario. A TV news announcer breaks into your favorite program and you watch the story unfold in living color: how the hijacker outwitted airline or airport officials; his threat; his demands; how FBI men tried to thwart him; and how he either succeeded or failed. Following this, there are firsthand accounts of the ordeal from passengers and crew members. Government and company officials express concern and chagrin, and tell about new defenses against these crimes — on the drawing board. Then, as quickly as it began, the incident fades into history.

Speaking for the people who do not witness hijackings from overstuffed armchairs or from behind oak desks, I can assure you that these crimes do not fade from our minds. Nor, I am pleased to add, do such people as my fellow panelists ignore the problem. But without continuous public pressure, too many others have been willing to sit back, do nothing, and hope that the problem will somehow just fade away.

It has not. The hijack scenario has been repeated close to 400 times in all corners of the globe.¹ Yet, despite the public's intermittent outrage and the official promises, we are not much better equipped now to stop these criminal acts than we were a decade ago.

From airline cockpits, we have seen sky pirates victimize nearly 17,000 of our passengers and fellow crew members.² We have seen them slip through what can only be described as slipshod security screens, if any such screens existed at all. We have seen them commit senseless acts of brutality, bizarre extortions, and even murder, only to be welcomed as heroes by some nations.

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1. Office of Air Transp. Security, FAA, Worldwide Reported Hijacking Attempts, June 5, 1972 (figures revised as of Dec. 31, 1972).

2. J. O'Donnell, Special Report to the Members of the Air Line Pilots Association, Sept. 22, 1972 (figures revised as of Dec. 31, 1972).

Appallingly, we have seen a hodgepodge of politics, economic interests, bureaucratic bungling, and outright negligence block solutions to the problem. Meanwhile, the hijack epidemic has continued to escalate. On one hand, vicious criminals have found that commandeering airliners is an easy path to freedom beyond our shores; on the other, revolutionary forces throughout the world have chosen the airways as their battleground, and the airlines as their targets of opportunity.

As pilots, we have but one ultimate responsibility: the safety of our passengers, crew, and aircraft. But we obviously cannot carry out that responsibility when governments fail to give us adequate security. We have thus had no other alternative than to step out of our cockpits to tackle the job that others have shirked.

Before commenting further on our position, I would like to make a few comments about the organization which I have been elected to represent. The Airline Pilots Association (ALPA) was founded in the early 1930's for the purpose of achieving two major objectives. The first goal was to act as a labor organization, providing the strength of a collective voice at the bargaining table. The second, but equally as important objective was to wield our firsthand knowledge of the air-transport system into a collective force to gain the highest possible standard of safety for that system. Flight security, we feel, is an integral part of the safety equation.

ALPA today represents 31,000 pilots and 15,000 flight attendants of 39 United States airlines. Our pilots are also members of the International Federation of Air Line Pilots Associations (IFALPA), a London-based organization comprised of 50,000 pilots of 64 nations.³ As directed by its member Associations, IFALPA, working with other world transport unions, has taken the leadership in the battle for global flight security. In turn, each of the 64 pilot groups has taken the fight to the government of its own nation. For the past half-decade, pilot representatives have pounded on the doors of every public official and airline manager who would listen and have literally camped on the doorsteps of those who would not. We have taken our pleas for security to every level of government, from meeting halls in small towns to the marble headquarters of world bodies.

We have been able to make progress in recent years, as shown by the decreasing proportion of successful hijackings,⁴ but that is not enough. Whether the act is successful or not, the fact is that every

3. International Federation of Air Line Pilots Associations, 1972 Membership Roster.

4. Office of Air Transp. Security, FAA, Worldwide Reported Hijacking Attempts, June 5, 1972 (figures revised as of Dec. 31, 1972).

person aboard a hijacked plane runs the very real risk of being murdered. In fact, nearly 600 innocent people have already been murdered during acts of violence aboard the world's airliners.⁵ Last year in the United States alone, some 2,000 air travelers faced this awesome possibility. In the past 5 years, I might add, one out of every 75 United States airline crew members has had a personal confrontation with the knives, guns, bombs, acid, ice picks, and other weapons of the air terrorist.⁶

Facing a marked upsurge of these threats, we have been forced to take a more militant stance. On June 19, 1972, for example, IFALPA took the drastic measure of a 1-day international suspension of service (SOS) to call global attention to our plight.⁷

Here at home, the announcement of our SOS plans triggered legal blocking maneuvers by most airline managements as well as a fast-moving court battle in the nation's capital. On June 17, attorneys for the Air Transport Association (ATA), on behalf of 18 member carriers, asked the United States District Court for the District of Columbia to grant a restraining order on the grounds that we were in violation of the Railway Labor Act. After hearing argument, the court ruled that the impending SOS was an exercise of individual rights under the first amendment to the Constitution and that it did not involve a labor-management dispute.⁸ Round one went to ALPA.

Within hours, ATA petitioned the United States Court of Appeals for the District of Columbia Circuit for a reversal of the decision. While considering this request, the court recessed that night without making a ruling. Round two turned out to be a draw. On June 18, the appellate court issued a temporary restraining order against ALPA to give it time to study the merits of the case. We were directed to call off the following day's demonstration "insofar as it was under [ALPA's] control."⁹

5. Office of Air Transp. Security, FAA, Aircraft Sabotage Incidents, June 19, 1972 (figures revised as of Dec. 31, 1972).

6. Minutes of the Flight Safety Foundation's 25th Annual International Air Safety Seminar 16-20, Oct. 16-18, 1972 (figures revised as of Dec. 31, 1972); J. O'Donnell, *supra* note 2.

7. Resolution of the Governing Body of the International Federation of Air Line Pilots Associations, June 8, 1971, provided in pertinent part:

If the United Nations fails to take effective action (to immediately establish enforcement machinery against states that do not honor antihijacking decisions by the United Nations and the International Civil Aviation Organization), then IFALPA has initiated plans to institute a worldwide stoppage of air service on the 19th of June, 1971.

8. Air Transp. Ass'n v. Air Line Pilots Ass'n, Civil No. 1224-72 (D.D.C., June 17, 1972).

9. Air. Transp. Ass'n v. Air Line Pilots Ass'n, No. 72-1557 (D.C. Cir., June 18, 1972).

Our attorneys quickly turned to the Circuit Justice, and the Court of Appeals stayed its restraining order until 6 p.m. that evening.¹⁰ Later, however, Chief Justice Warren E. Burger reinstated the earlier order and directed ALPA members to stay on the job until a final decision could be reached.¹¹ In a procedural sense only, without ruling on the merits of the case, the Circuit Justice gave round three to ATA (although 100 per cent compliance later proved to be beyond ALPA's control, as the court of appeals had anticipated in its eleventh-hour decision).¹²

Meanwhile, on the international scene, IFALPA had advised its American colleagues that there could be no turning back. Without legal restraints, European-, South American-, and Pacific-based pilot groups stood up for flight security by standing down for a day. The result was that key airports throughout the world virtually ceased operations on June 19, and, with rare exceptions, public sympathy was clearly in the pilots' favor.¹³

Domestically, the many thousands of pilots and flight attendants who had initially pledged their support to the demonstration were confronted with contrary orders from the federal bench. When Chief Justice Burger's ruling flashed across the country on the eve before the SOS, most of the ALPA units found themselves judicially restrained from participation even though the legality of their conduct had not been adjudicated. Significantly, some weeks later, ATA withdrew its action before the appellate court, thus rendering the immediate issue moot. The ruling of the lower court in favor of ALPA, the only decision on the merits of the case, however, continues to stand as legal precedent.

We hope there will never have to be a round four. But if we are forced to stand down again, ATA and airline industry decisionmakers may do well to study the results of a recent "sense of the membership" poll taken of all ALPA members.¹⁴ When the ballots were received and tallied, 96 per cent showed a continuing alarm that world governments and airlines are failing to put their full resources into the battle against air piracy. Further, 74 per cent of the responses showed

10. *Id.* (supplemental order).

11. *Air Transp. Ass'n v. Air Line Pilots Ass'n*, No. A-1308 (Burger, Circuit Justice, June 18, 1972).

12. *Air Transp. Ass'n v. Air Line Pilots Ass'n*, No. 72-1557 (D.C. Cir., June 18, 1972).

13. ALPA, *SOS: Suspension of Service*, PILOT BULLETIN, Aug. 1972 (special ed.), at 3.

14. ALPA, *ALPA Flight — Security Program*, PILOT BULLETIN, Jan. 1973 (special ed.), at 1.

pledges for support of another SOS or any other concerted actions that may be needed to get the job done.¹⁵

Whether ATA would try to stop us again remains to be seen. We firmly believe, however, that the federal courts would uphold ALPA's position that when governments fail to act in the public interest, responsible groups or individuals can and must exercise their rights under the first amendment.

Admittedly, we are not politicians, nor do we have the expertise of those who must construct the complex legal machinery of global antihijack accords. Our job, as we see it, is to make sure that those who are charged with these obligations live up to them. Speaking for the United States pilot community, we will be more than pleased to return to our cockpits as soon as three major defenses are a reality: (1) Prevention — As a starting point, systems must be developed to more effectively weed out sky criminals before they can board an aircraft at any of our nation's 531 civil air terminals; (2) Intervention— Should a hijacker somehow manage to slip through this screen, air crews must have both ground and inflight defense systems at their command; (3) Apprehension — Should the aircraft be commandeered, there should be no place in the world where the criminal can land without being apprehended and tried. Preferably, he should be extradited to the nation of the crime's origin. And as a deterrent to others, the punishment should be a universal penalty of from 20-years' imprisonment to death.

Late last year, in the wake of two particularly vicious attacks, our Government took a giant step toward achieving the first of these objectives, prevention. We are gratified to see that total screening of passengers and baggage, a procedure long recommended by ALPA, is at last a mandatory requirement.¹⁶

As you may recall, early screening systems were developed by the FAA in 1969, following an epidemic of 22 hijackings. Implementation of this safeguard, however, was left open to airline options and most carriers ignored it. Now, every person who boards a United States airliner must go through a "profile" check by gate officials who match certain actions of the passenger against known traits of air criminals.¹⁷ He or she is next subject to physical screening that involves use of

15. *Id.*

16. Emergency Order of FAA, Dep't of Transp. Press Release No. 103-72, Dec. 5, 1972.

17. *But see* Gora, *The Fourth at the Airport: Arriving, Departing, or Cancelled?*, 18 VILL. L. REV. 1036, 1047 (1973), wherein the author states, "The new system apparently abandons all the limiting safeguards previously required. Most importantly, it eliminates the use of the profile"

electronic metal detectors and even hand searches. Carry-on baggage, while still permitted, must also be screened.¹⁸ This process, we feel, could be significantly improved by eliminating carry-on items altogether, with exception of such essentials as a doctor's kit or baby bottles. Further, we are urging tighter regulations for the inspection of checked luggage as well as everything else stored in cargo bins.

Several aspects of the program, of course, are still being worked out in Congress. Among the most vital issues is the new requirement for an adequate law enforcement presence during all boardings.¹⁹ Many top legislators share our concern that this safeguard, which is the heart of the system, may not be fully effective as it is now constituted.²⁰ Its fragmentation of responsibility, for example, could result in serious inconsistencies from airport to airport. Further, the quality of the screening work will probably be dependent on the varying budgetary restraints of those who are charged with paying for it. Nevertheless, we are pleased that action — even an interim step — has at long last been taken to close this gap in our domestic security system.

We are also making progress toward our second objective, intervention. But again, there are many jurisdictional problems that must be resolved, particularly the relationship of law enforcement agencies to the command authority of airline captains. On the negative side, we have made only limited advances in the field of inflight defense systems. Since 1969 we have been pleading with the FAA to correct some glaring deficiencies in the vulnerability of airline cockpits.²¹ For security reasons, I cannot provide further details on these defenses, but we have made the appropriate people fully aware of what must be done.

Air crimes, however, can never be totally eliminated until sanctuaries for the perpetrators of these acts cease to exist. This, then, is our most critical objective, and the one toward which we have made the least headway.

As you know, three antihijack treaties have so far been written by the International Civil Aviation Organization (ICAO), the U.N.'s specialist agency in these matters.²² Dating back to 1963, each accord

¹⁸ Emergency Order of FAA, Dep't of Transp. Press Release No. 103-72, Dec. 5, 1972.

¹⁹ 14 C.F.R. § 107.4 (1973).

²⁰ See S. 39, 93d Cong., 1st Sess. § 23 (1973).

²¹ Fed. Aviation Reg. §§ 25.774, 121.313(f), 123.27(g), 37 Fed. Reg. 5638-40 (1972); J. O'Donnell, *supra* note 2, at 3.

²² Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768 (effective Dec. 4, 1969) [hereinafter cited as Tokyo Convention]; Hague Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, [1971] 22 U.S.T. 1643,

calls for various measures to thwart air crimes.²³ None of these, however, possesses effective enforcement machinery, nor are penalties prescribed against nations that fail to honor their commitments. Further, do not bother to look for the signatures of skyjack havens on the treaties because they are not there, and it is unlikely that they ever will be. As living evidence of these loopholes, more than 100 air criminals are today roaming the world as free men.²⁴

How can we fill these gaps? First, the community of nations must come to terms on clear-cut enforcement machinery that would deny offending states a place in the world commerce system. As proposed to ICAO, and also now being considered by the United States Congress,²⁵ a country that harbors sky criminals should have its air fleet barred by all other nations. At the same time, the world community should cease air operations to the offending country. If other nations fail to honor this plan, they too should find themselves on the receiving end of a world boycott.

Last June 19, the day of the SOS demonstration, we were assured by ICAO that immediate steps would be taken toward an enforcement treaty. To date, despite the dedicated efforts of the United States Department of State and representatives of other responsible nations, this has not been done. Behind their rhetoric, the power blocs that have so far scuttled this accord simply do not acknowledge the overriding importance of denying sanctuary to any air pirate, regardless of his nationality.

To its credit, ICAO is continuing to press for enforcement machinery. At the earliest, some progress could come from a diplomatic conference scheduled to begin in August 1973.²⁶ But even then, as my colleagues can attest, it could be years before an enforcement accord is globally implemented. And in the final analysis we have no real assurances that its language will prove any more effective than that of its three predecessors.

So here we are, after a decade of empty promises, still moving closer to the catastrophe that will inevitably come. Pathetically, it

T.I.A.S. No. 7192 (effective Oct. 14, 1971) [hereinafter cited as Hague Convention]; Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, [] U.S.T. _____, T.I.A.S. No. 7570 (effective Jan. 26, 1973) [hereinafter cited as Montreal Convention].

23. Tokyo Convention requires nations involved in air crimes to take all measures necessary to restore control of the aircraft to its lawful commander. Hague Convention adds provisions for the return of hijacked aircraft and calls for severe punishment for the criminals. Montreal Convention further broadens the definition of air piracy to include acts of aerial sabotage.

24. FAA, Legal Status of Hijackers, June 5, 1972.

25. S. 39, 93d Cong., 1st Sess. § 4 (1973).

26. A Joint Diplomatic Conference and Extraordinary Meeting of ICAO Assembly is scheduled to be held in Rome, Italy, Aug. 28 to Sept. 21, 1973.

appears that the final call to arms will be sounded not by governments, but by criminals.

Surely, if their next attack involves mass slaughter aboard a 747 jumbojet, for example, diplomats will come running to the conference table. Federal lawmakers will scramble to enact emergency legislation. Overnight, world air terminals will be bristling with armed guards and the latest electronic screening systems. Airline and airport managers will pull the plug on security expenditures. And an outraged public will ask: Why didn't they do all of these things before? Your pilots are demanding that they do it *now*. We cannot allow such a catastrophe to happen, even if we must resort to preventive steps that traditionally are repugnant to pilots.

We refuse to leave the destiny of global air commerce to the whims of common criminals and lunatics. If governments are willing to continue to expose their publics to a cloud of terror, then we may have no other choice then to remove that threat using the one unique weapon available to airline pilots. One way or another, these crimes *must* be stopped.