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Senate - Commerce

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**HEARING**  
BEFORE THE  
**AVIATION SUBCOMMITTEE**  
OF THE  
**COMMITTEE ON COMMERCE**  
**UNITED STATES SENATE**  
EIGHTY-SEVENTH CONGRESS

FIRST SESSION  
ON

**S. 2268**

TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO PROVIDE FOR THE APPLICATION OF FEDERAL CRIMINAL LAW TO CERTAIN EVENTS OCCURRING ON BOARD AIRCRAFT IN AIR COMMERCE

**S. 2370**

TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO PROHIBIT THE CARRYING OF CONCEALED WEAPONS ON BOARD AIRCRAFT IN AIR COMMERCE

**S. 2373**

TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO PROHIBIT THE FORCEFUL SEIZURE OF AIRCRAFT IN AIR COMMERCE

AND

**S. 2374**

TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO PROVIDE FOR THE APPLICATION OF FEDERAL CRIMINAL LAW TO CERTAIN EVENTS OCCURRING ON BOARD AIRCRAFT IN AIR COMMERCE

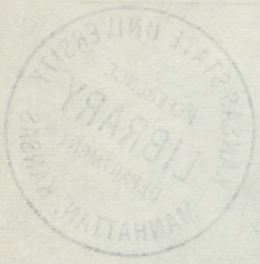
AUGUST 4, 1961

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BEFORE THE  
AVIATION SUBCOMMITTEE  
OF THE  
COMMITTEE ON COMMERCE

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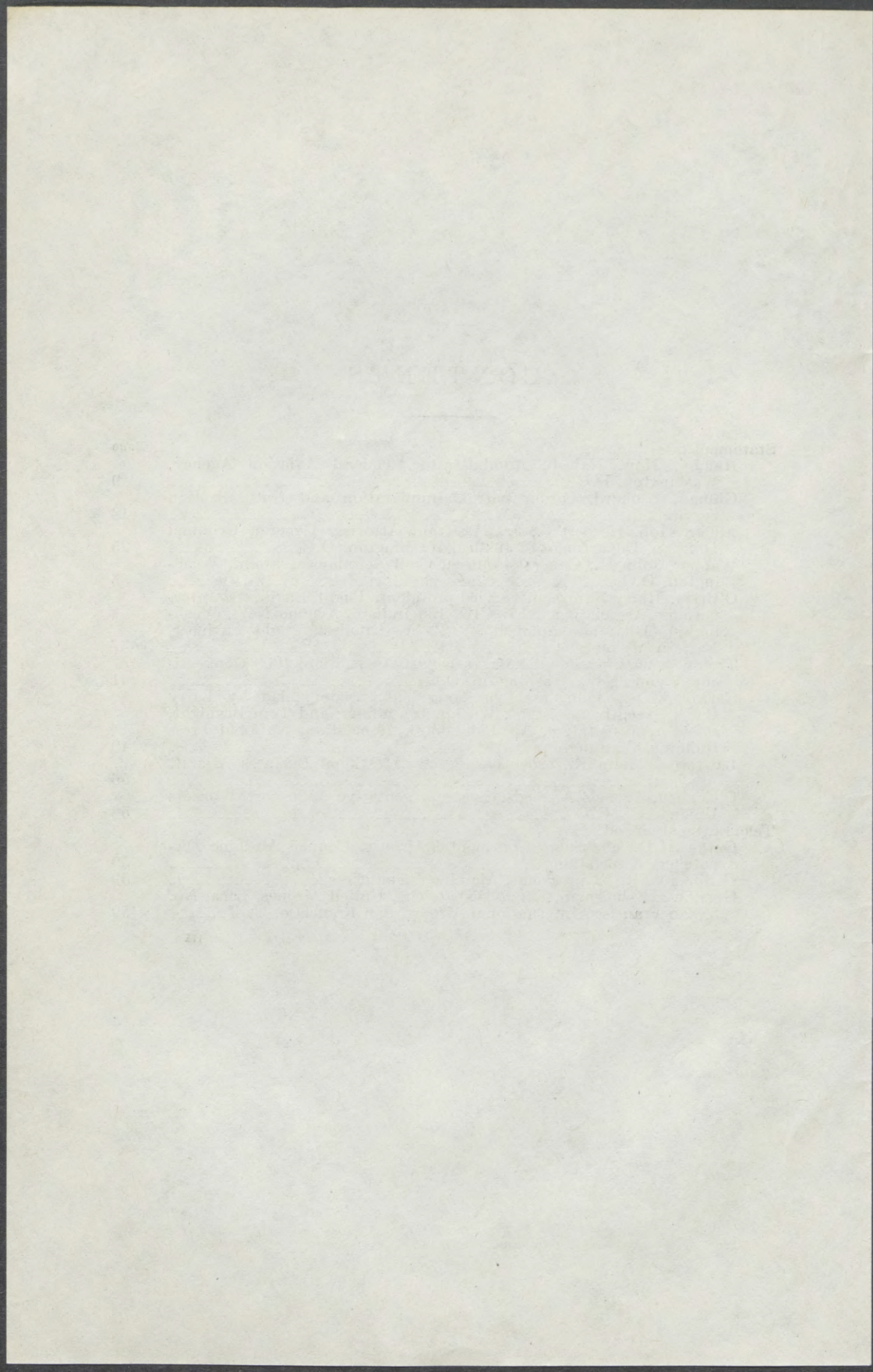
II

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## CONTENTS

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	Page
<b>Statement of—</b>	
Halaby, Hon. Najeeb, Administrator, Federal Aviation Agency, Washington, D.C.-----	9
Gilman, Leonard, border patrol, Immigration and Naturalization Service-----	18
Miller, Hon. Herbert J., Jr., Assistant Attorney General, Criminal Division, Department of Justice, Washington, D.C.-----	25
Wanner, John H., General Counsel, Civil Aeronautics Board, Washington, D.C.-----	35
O'Brien, Harry S., executive vice president, Flight Engineers' International Association, AFL-CIO, 100 Indiana Avenue NW., Washington, D.C.; accompanied by P. A. Knudsen, flight engineer, Eastern Air Lines-----	37
Tipton, Stuart, president, Air Transport Association, 1000 Connecticut Avenue NW., Washington, D.C.-----	41
Carroll, Capt. John, first vice president; accompanied by Larry Cates, executive assistant, Washington affairs; and Tom Basnight, safety representative, Air Line Pilots Association, National Press Building, Washington, D.C.-----	49
Lawton, William K., executive director, National Business Aircraft Association-----	56
O'Connell, Francis A., legislative representative, transport Workers Union, AFL-CIO-----	58
<b>Telegrams submitted:</b>	
Gatch, H.D., chairman, Continental Airlines, Council Air Line Dispatchers Association-----	59
Commerce, R. E., president, Air Line Dispatchers-----	59
Gurr, J. H., chairman, Flight Dispatchers, United Airlines, Local No. 5, San Francisco International Airport, San Francisco, Calif.-----	59



# CRIMES ABOARD AIRCRAFT IN AIR COMMERCE

FRIDAY, AUGUST 4, 1961

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
SUBCOMMITTEE ON AVIATION,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 6202, New Senate Office Building, Hon. A. S. Mike Monroney (chairman of the subcommittee) presiding.

Senator MONRONEY. The Aviation Subcommittee will today hold hearings on a proposed bill in the nature of a substitute to S. 2268, introduced by Senator Clair Engle. In addition to Senator Engle's bill, we have for consideration, S. 2370, introduced by Senators Bridges, Schoepfel, and Williams of Delaware; S. 2373, introduced by Senator Yarborough; and S. 2374, introduced by Mr. Bennett. We expect to take testimony on all of these bills as well as the original bill which Senator Engle introduced several days ago.

The bill would amend section 902 of the Federal Aviation Act to provide that certain acts including murder, assault, and manslaughter, which constitute Federal crimes if committed within the special maritime and territorial jurisdiction of the United States, would also constitute crimes if committed in interstate air commerce.

In addition, the measure would make it a crime to intimidate, threaten, or interfere with any flight crew member while engaged in the performance of his duties, which lessens the ability of such crew member to perform said duties. Such acts would be subject to a fine of not more than \$10,000 and imprisonment of not more than 20 years, or both. If such acts were committed with the use of a deadly weapon, the penalty would be imprisonment for life or not less than 20 years.

Except for authorized Government and airline personnel, the bill would prohibit carrying aboard aircraft a concealed or dangerous weapon subject to a fine of \$1,000 or imprisonment up to 1 year. The hijacking of an aircraft would be made the equivalent of piracy, subject to imprisonment for life.

(The bills follow:)

[S. 2268, 87th Cong., 1st sess.]

## AMENDMENT

Intended to be proposed by Mr. ENGLE to the bill (S. 2268) to amend the Federal Aviation Act of 1958 to provide for the application of Federal criminal law to certain events occurring on board aircraft in air commerce, viz:

On page 1, beginning with line 7, strike out all through line 2, on page 2, and insert in lieu thereof the following:

"(i)(1) Whoever, while on board an aircraft in flight in air commerce, commits an act which, if committed within the special maritime and territorial jurisdiction

of the United States, would be in violation of sections 113, 114, 1111, 1112, 1113, or 2111 of title 18, United States Code, shall be punished as provided therein.

"(2) Whoever, while on board an aircraft in flight in air commerce assaults, intimidates, threatens, or interferes with any flight crew member of such aircraft while engaged in the performance of his duties or in any way lessens the ability of such flight crew member to perform his duties, shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both. Whoever in the commission of any such acts uses a deadly or dangerous weapon shall be imprisoned for life, or for not less than twenty years.

"(3) Except for employees or officials of any municipal or State government, or the Federal Government, who are authorized or required to carry arms, and except for such other persons as may be so authorized by the air carrier involved, whoever, while a passenger aboard an aircraft being operated by an air carrier in air transportation, carries on or about his person a concealed deadly or dangerous weapon shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"(4) Whoever while on board an aircraft in flight in air commerce commits an act which if committed aboard a vessel on the high seas would constitute piracy as defined by section 1651 of title 18, United States Code, shall be imprisoned as provided therein."

---

[S. 2268, 87th Cong., 1st sess.]

A BILL To amend the Federal Aviation Act of 1958 to provide for the application of Federal criminal law to certain events occurring on board aircraft in air commerce.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 902 of the Federal Aviation Act of 1958 is amended by adding at the end thereof a new subsection (i) reading as follows:

"CRIMES ABOARD AIRCRAFT IN FLIGHT IN AIR COMMERCE

"(i) Whoever, while on board an aircraft in flight in air commerce, commits an act which, if committed within the special maritime and territorial jurisdiction of the United States, would be in violation of sections 113, 114, 1111, 1112, 1113, or 2111 of title 18, United States Code, shall be punished as provided therein."

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[S. 2370, 87th Cong., 1st sess.]

A BILL To amend the Federal Aviation Act of 1958 to prohibit the carrying of concealed weapons on board aircraft in air commerce.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 902 of the Federal Aviation Act of 1958 is amended by adding at the end thereof a new subsection as follows:

"CARRYING OF CONCEALED WEAPON

"(i)(1) Whoever, without the knowledge and consent of an air carrier, boards or attempts to board an aircraft, operated by such air carrier in air transportation, while carrying on or about his person a concealed deadly or dangerous weapon shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

"(2) Any air carrier in air transportation may, under regulations prescribed by the Administrator, require that any person seeking to board an aircraft operated by such air carrier, submit to a reasonable search for the purpose of ascertaining whether such person is carrying on or about his person a weapon in violation of this subsection.

"(3) This subsection shall not apply to any official or employee of a State or local government, or of the Federal Government, who is duly authorized to carry arms in the performance of his duties."

[S. 2373, 87th Cong., 1st sess.]

A BILL To amend the Federal Aviation Act of 1958 to prohibit the forceful seizure of aircraft in air commerce.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 902 of the Federal Aviation Act of 1958 is amended by adding at the end thereof a new subsection as follows:*

“SEIZURE OF AIRCRAFT BY FORCE

“(i) Whoever, while on board an aircraft operated by an air carrier in air commerce, seizes or otherwise takes control of, or attempts to seize or otherwise take control of, such aircraft through the use of firearms or other deadly or dangerous weapon shall be punished by death, or by imprisonment for life, or for such term of years not less than five, as the jury may direct.

[S. 2374, 87th Cong., 1st sess.]

A BILL To amend the Federal Aviation Act of 1958 to provide for the application of Federal criminal law to certain events occurring on board aircraft in air commerce.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 902 of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new subsections:*

“INTERFERENCE WITH FLIGHT CREW IN PERFORMANCE OF DUTIES

“(i) Whoever, while on board an aircraft in flight in air commerce, assaults, intimidates, threatens, or interferes with any flight crewmember of such aircraft while engaged in the performance of his duties or in any way lessens the ability of such flight crewmember to perform his duties, shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both. Whoever in the commission of any such acts uses a deadly or dangerous weapon shall be imprisoned for life.

“CARRYING OF CONCEALED WEAPON

“(j) Except for employees or officials of municipal, State, or Federal governments who are authorized or required to carry arms, and except for such other persons as may be authorized by the air carrier involved, whoever, while a passenger aboard an aircraft being operated by an air carrier in air transportation, carries on or about his person a concealed deadly or dangerous weapon shall be fined not more than \$1,000 or imprisoned not more than one year or both.

“CRIMES ABOARD AIRCRAFT IN FLIGHT IN AIR COMMERCE

“(k) Whoever, while on board an aircraft in flight in air commerce, commits an act which, if committed within the special maritime and territorial jurisdiction of the United States, would be in violation of sections 113, 114, 1111, 1112, 1113, or 2111 of title 18, United States Code, shall be punished as provided therein.

“PIRACY ABOARD AIRCRAFT IN FLIGHT IN AIR COMMERCE

“(l) Whoever, while on board an aircraft in flight in air commerce, commits an act which if committed aboard a vessel on the high seas would constitute piracy as defined by section 1651 of title 18, United States Code, shall be imprisoned as provided therein.”

Senator MONRONEY. I understand Mr. Engle, who introduced the original bill, has a statement at this time. Senator Engle?

Senator ENGLE. Mr. Chairman, I appreciate the opportunity to make a statement regarding the bill I have introduced to amend the Federal Aviation Act of 1958 to apply Federal law to a variety of crimes aboard commercial aircraft. These several amendments are included in S. 2268, introduced July 18, and S. 2268 amended, introduced July 31.

We began work on this legislation over a month ago following an incident aboard a commercial jet flight into Los Angeles, Calif. It

involved a passenger who pulled a knife and threatened crew members after a bottle of liquor had been confiscated from his person. When the plane landed in Los Angeles, the culprit was arrested by local authorities on a drunk charge. Authorities discovered that there was no way to arrest him for the more serious crimes he had committed. The incident revealed a hole in the law—a legal “no man’s land.”

At that time—working in cooperation with the Federal Aviation Agency—we drafted the original bill, S. 2268, which provides specific Federal law covering assault, attempted manslaughter, murder, robbery, and similar crimes in the air.

Soon after that, another incident occurred on another commercial aircraft in Florida. A Cuban-born American citizen entered the cockpit of the plane soon after takeoff, pulled a gun, and ordered the pilot to fly to Cuba. The hijacking was successful; the culprit and the stolen plane are still in Cuba.

This incident suggested the need for additional legislation to extend Federal law to cover the crime of piracy in the air. There was no such law at the time of the incident. Again with the assistance of the FAA, we drafted S. 2268, amended.

We are all familiar with the incident in Texas yesterday which suddenly focused national attention on the problem of crime in the air.

In general, this recent series of incidents reveals two problem areas: (1) There are no legal statutes applying to certain kinds of crime in the air, and (2) existing law applying to other crimes simply doesn’t work.

S. 2268 as amended is designed to fill in the gaps involved in the first category. It extends Federal law on piracy on the high seas to commercial aircraft. It establishes new Federal law on the carrying of concealed weapons and on assaults, threats, and interference with flight crew members.

S. 2268 as amended is also designed to establish new Federal law in certain other areas to supersede existing statutes which are not now workable. In section (i)(1) it extends law applying to assault, murder, and manslaughter and attempted assault, murder, and manslaughter, as well as robbery, to cover commercial aircraft.

At the present time, jurisdiction for these latter crimes rests with the State over which commercial planes are flying at the time an incident occurs. However, existing law is too often unworkable because the precise location of the crime cannot always be determined, because the crime may extend over multiple jurisdictions and because the officers at the termination point of flights do not have authority to enforce laws of other States.

For example, on commercial planes flying 500 miles an hour and faster, the aircraft may cross several States in a matter of minutes. Furthermore, even over a single State, the problem is compounded when the jurisdiction rests within a particular country.

Mr. Chairman, Mr. Najeeb Halaby, FAA Administrator, and other expert witnesses are here today. I am sure that we will be able to examine these specific legal points involved in this legislation.

I thank you very much.

Senator MONRONEY. Thank you, Senator Engle.

We will have as our witnesses today Hon. Najeeb Halaby, Administrator, Federal Aviation Agency; Hon. Herbert J. Miller, Jr., Assistant Attorney General, Criminal Division, Department of Justice;

John H. Wanner, General Counsel, Civil Aeronautics Board; Stuart Tipton, president, Air Transport Association, 1000 Connecticut Avenue N.W., Washington, D.C.; Capt. John Carroll, 1st vice president, Air Line Pilots Association, National Press Building, Washington, D.C., accompanied by Larry Cates, executive assistant, Washington affairs, and Tom Basnight, safety representative; and Flight Engineers International Association, 100 Indiana Avenue N.W., Washington, D.C.

If there are any Senators who have introduced bills who would like to present testimony at this time, the committee would be glad to hear them or hear them later.

Senator SMATHERS. Mr. Chairman, may I say that I didn't realize that Clair had already introduced a bill, and that you had; Senator Engle had introduced one and I started working on one last evening. I think his is a better bill from what I have seen thus far. I want to congratulate him on it. I do believe that somewhere along this hearing we should direct some testimony to the thought of what you do about an alien who tries to do these things we are complaining about here. We have jurisdiction over our own citizens, but what kind of jurisdiction do we have over an alien who seizes a plane, as we have seen the Cubans do, and what can we do about that particular problem.

I think the committee ought to address its attention to that. It seems to me that somewhere in the course of it we could develop a theory which could be supported by international law, and that that could be considered on the part of the parent country of the alien as an act of aggression or violation of neutrality laws against the United States.

I think that would be very beneficial. Certainly by virtue of the hassle which we have been having between Cuba and the United States, the Cubans seem to be primarily the ones who are trying to run off with these airplanes.

I don't see in this proposed legislation any way that we can get at these aliens. I think during the course of the hearings we should talk about how do we get to these aliens who do this sort of thing, and how do we make their country responsible for their acts.

Senator MONRONEY. The Senator has raised a very good point. We will have Mr. Herbert J. Miller of the Justice Department, and if he wishes, we can call someone from the State Department.

Senator SMATHERS. I think we need a lawyer. It seems to me we need someone from the State Department, also.

Senator PASTORE. Are you speaking of instances where the alien has left the country or where he is still within our jurisdiction?

Senator SMATHERS. I am speaking of instances where the alien, if he has left the country, which of course was the case when they took the first Eastern Airlines plane—we have no jurisdiction. There is nothing we can do.

Senator PASTORE. Once he has left the country?

Senator SMATHERS. Once he has left the country. What do you do?

It seems to me we have to establish some kind of program or policy with respect to maybe not the alien himself because we have no jurisdiction over him, but certainly we should have some complaint, there should be some basis of action against the Government, the parent country.

Castro has refused to return the plane. It is still there. What do you do? A lot of us have said things. A lot of people think we ought to go directly and get it. Obviously we would be on better ground if we had established the fact that that was an act of aggression by that country against this country when the alien, his parent country, permits this kind of thing to happen and does not return the plane.

Senator COTTON. Mr. Chairman, would it be proper to inquire of the chairman about what he has in mind about the duration of this hearing, and whether it would be closed today or whether it will continue longer?

Senator MONRONEY. We have this list of witnesses. When we complete them, if we have other requests obviously we will try to have other hearings early next week. I hope if there is nothing additional, that we could consider the bill in subcommittee this week and perhaps report it to the full committee next week.

This is a rather urgent situation, not in any degree lessening the problem which the distinguished Senator from Florida has mentioned.

There is some doubt in my mind whether this committee would have jurisdiction over foreign policy and matters which would have to be either negotiated or taken up with the United Nations or the World Court. Therefore, since we make this a crime, punishable by life imprisonment for hijacking of an aircraft within the United States, we also have the recommendation of the distinguished Senator for punishment by death, that we can perhaps expedite the hearings on this particular phase. Then perhaps we would have to devote more study as to the international aspects or to request the Foreign Relations Committee of the Senate to take up the bill designed to retrieve property and also punish those who have originated their crime in the United States and now do not yield to our jurisdiction or extradition of the criminal.

Senator COTTON. Mr. Chairman, I think probably this is not exactly the proper time or place to discuss this, in the subcommittee, but I want to say that I think first the chairman should be commended and congratulated because, unless he has the gift of foresight, because this hearing was planned and scheduled before the recent startling developments of yesterday, it indicates the chairman is alert to this situation and that the committee is.

Speaking as one member, however, I think this requires the careful precision thinking. I am not saying that in a manner of levity or joking with the seriousness of what happened, but we certainly shouldn't "shoot from the hip" on this. I would like to ask permission to file a statement after this hearing if the hearing is terminated. I have to go over on the floor in a few minutes because there is something pending on which I must be present. I would almost hope that we could have a meeting Monday, before we finally report to the full committee.

Senator MONRONEY. I think that would probably be the better process, and have the weekend to consider what has been given. The subcommittee could then decide whether additional testimony needs to be taken or if they are satisfied with the testimony given today that then we can consider the type of bill and the extent to which it should be reported to the full committee, which meets, I understand, next Tuesday.

Senator SCHOEPEL. Would the Chairman yield?

Senator MONRONEY. I will yield.

Senator SCHOEPPPEL. With reference to the statement you made a moment ago about some of the other sponsors of amendments and cosponsors, is it understood that an opportunity would be given on the part of those who are interested in other approaches, or somewhat similar approaches taken by the distinguished Senator from California, that we would have an opportunity of filing a statement in these proceedings.

Senator MONRONEY. Indeed. And if they wish to be heard the subcommittee would meet Monday and hear them and then perhaps go into executive session. It is not my desire to cut anyone off. But I do feel, because of this void which has been so well spotlighted earlier by Senator Engle in the preparation of this bill, and the additional amendments which he offered to it after further study, this void which exists today should be filled, and we should have full Federal enforcement against this crime which we have seen many times, of bombings and other things, which take on a hysterical waste at times.

We are trying our dead level best to move as rapidly as prudence will permit.

Senator COTTON. When I congratulated the chairman and the members of the committee I wanted to specifically congratulate Senator Engle who is so largely responsible for having brought this thing to light even before the rest of the country realized its need.

I am glad the chairman has made that decision. I think we ought to have an opportunity, Monday, in executive session, after everyone has been heard—we should hear everyone who desires to be heard—to have a long and rather careful discussion because this does require some action which should be done with thoughtfulness and precision.

Senator YARBOROUGH. Mr. Chairman.

Senator SMATHERS. Excuse me. Right on that point, I wonder if it would be timely now, in the light of the fact that you have agreed to a meeting on Monday, if a communication could be addressed to the counsel in the State Department asking him to prepare himself and to appear possibly Monday with respect to a recommendation as to what might be done when an alien commits these crimes and seizes one of our planes and then removes himself from our jurisdiction.

Senator MONRONEY. I think it would be wise to find out what steps or what limits we are under, or what can be done for extradition; first of the criminal from foreign countries, and extradition of the stolen property.

Senator YARBOROUGH. Mr. Chairman.

Senator MONRONEY. The Senator from Texas.

Senator YARBOROUGH. I want to commend the Senator of this committee for his leadership in setting this meeting up, and the distinguished Senator from California, Senator Engle, for the careful work he has done with his bill which, you might say, covers crimes with reference to air transportation.

I have introduced a bill on only one phase. He has a general classification covering a number of different crimes, and filling a badly needed void, I think, in the law.

I have a specialized bill that would punish by death or such lesser sentence as the jury may direct, for the seizure of an aircraft in air commerce, either through use of firearms or other deadly or dangerous weapons.

The death penalty is for that one specialized crime, while the general study which the distinguished Senator from California has submitted covers many types of crimes.

This is based on the predicate of the kidnaping laws of the United States which provide the death penalty if someone is kidnaped and is not released unharmed. And more specifically, the kidnaping laws are 1201 and succeeding sections of title 18 of the U.S. Criminal Code, and more specifically the bank robbery statutes, 2113 and the succeeding sections of title 18.

The bank robbery statutes covering robberies of national banks in the United States cover robbery, taking and carrying the property away, receiving, possessing, and concealing. Such various statutory terms provide imprisonment. But it provides also that whoever in committing any of these offenses of robbing a bank, taking the property away or concealing it, either kills any person or forces any person to accompany him without the consent of such person, shall be punished by death if the jury so directs.

So a person robbing a bank or carrying the property away, if he seizes a hostage without his consent and carries him along, that is a death penalty. This is comparable. If they seize a plane at the point of a gun, we all know that there is imminent danger, even through accident, of the death of all the persons on that plane. It is far more serious than a bandit stealing a car and taking a hostage along in it, which calls for the death penalty under Federal law. We think this is reasonable. I may have a further statement.

Due to the distinguished witnesses here, I don't desire to take further time except to say, Mr. Chairman, that I believe, though there may be opinions of sociologists to the contrary, that in crimes of this type, seizing of property, that punishment or threat of punishment has proved a deterrent to crime.

Right after World War I we had a great rash of bank robberies in my State. The robbers had mechanized with automobiles. The means of law enforcement hadn't caught up with them. So the legislature passed a law making robbery of a bank with firearms punishable by death, and there was an immediate decline in the number of bank robberies, though the robbers hadn't been captured, and the death penalty hadn't yet been inflicted. I think it is a salutary law.

I reserve the right to file a more complete statement.

Senator MONRONEY. Senator Pastore? We are glad to have you with us.

Senator PASTORE. Apart from the criminal aspect of these acts, is there any requirement that the captain's door be locked?

Senator MONRONEY. We will have testimony directly on that from Mr. Halaby, the Administrator of the FAA.

As I understand it, there is such a requirement. In all cases, practically, the stewardess has to have the key for entrance to the cockpit, and it could be obtained under threat of death, perhaps, from her. Mr. Halaby will probably want to address himself to that very important situation in his testimony.

Senator PASTORE. The reason I bring it up, my experience has been, especially during the hot season, that that door is usually wide open. The pilot, copilot, and the navigator have their backs to the cabin. It strikes me if you had a steel door, locked, with sufficient ventilation, and that could be opened only from the inside by the captain himself,

at least the plane itself could be navigated and be brought to a landing without any serious harm being done in the air, apart from the criminal aspects of the passenger taking the law into his own hands or committing an act of violence or endangering the lives of passengers.

Senator MONRONEY. Or mentally unbalanced persons.

Senator PASTORE. That is right.

Senator MONRONEY. Thank you very much for that contribution. We will hear from Mr. Halaby first. I believe he would like to introduce a witness to precede his general testimony. Mr. Gilman, of the Immigration and Naturalization Service, will present testimony.

You may proceed. We are happy to have you here. We know of the work that you have been doing on this phase, and the cooperation that you gave to Senator Engle in preparation of the original bill on which these hearings were scheduled earlier this week.

**STATEMENT OF HON. NAJEEB HALABY, ADMINISTRATOR,  
FEDERAL AVIATION AGENCY, WASHINGTON, D.C.**

Mr. HALABY. There could be no more distinguished committee to appear before at a more timely moment than this one. The interest of this committee in the advancement of aviation and safety and national security is well established. The President and the whole executive branch welcomes the initiative that Senator Monroney and Senator Engle, who has been quite foresighted in working over the last month on this bill, have taken. We certainly in the executive branch are glad of this opportunity.

This bill provides very simply that air drunks and flying fools and spies in the sky will face not just local police or a defenseless girl or a preoccupied crew, but the full power of your Federal Government.

Starting with the President, the Attorney General, the Director of the FBI, the border patrol, Civil Aeronautics Board, and my own agency, the FAA, this full Federal power, led by a vigorous and firm and decisive President, is what faces the man who seeks to hijack or kidnap or subvert America in the sky from now on. And I say let him beware, particularly if the Congress sees fit to promptly enact Senator Engle's bill.

By way of introduction, and as the Chairman suggested, we have the good fortune today to have with us Leonard Gilman, the border patrolman who was on that flight; a brave and cool citizen of Senator Engle's and my State of California, here. He has a broken hand from one weapon that has been very effective in law enforcement, a right cross. I think we might call it the Gilman from now on.

He will join me in a moment after I have presented some testimony in support of this bill.

I think we have to look at this in a broad perspective for just a moment. This isn't a local or a momentary thing.

The United States is at the peak of its prospects. It is also in the greatest peril it has ever been.

We have a technological revolution going on that offers great opportunities. We have got a population revolution that is offering great problems. We have got the revolution of forceful demands, demands by our own citizens and demands by the citizens of emerging nations. And finally, we have the continuing Communist revolution.

All of these things require your Government to manage progress and safety and conflict and changes well.

It is my job, as Federal Aviation Administrator, to come before you—and I have come before this committee—regarding the management of air safety. These are the operations in the air, growing in number and volume, civil and military, low speed and high speed, private and commercial, that offer great facility and mobility to our population, but also risks, because we have neglected these airways for many years. And now we are trying to modernize them.

Previously I have come before you to talk about air safety in the sense that we must keep the air safe for crew and passengers during regular operations.

Today I come to talk to you about air security, security in the air.

There are at least three kinds of threats to security in the air. One is the simple airborne drunk. He either attempts or gets on the airplane while under the influence of liquor.

Over the past few months we have had an increasing number of people, either drunk prior to enplaning or through bringing their own alcohol on board they have gotten drunk and disorderly in flight.

Senator YARBOROUGH. Don't you think some of them got drunk from the liquor served on the planes?

Mr. HALABY. We have, sir, a regulation which is clear but difficult to enforce, which makes it a violation of the Civil Air Regulations for anyone to drink except when served by the air carrier.

The air carriers have gotten together and ruled that no more than two drinks may be offered a passenger, and that no drink may be offered a passenger who is intoxicated or obviously under the influence of alcohol.

This is a question of whether you will penalize all, many of whom get not only pleasure but relaxation from anxiety from one or two drinks, to be sure that some damn fools will not abuse the rules.

At the present time there are rules, and they are hard to enforce. The airlines, particularly through the very efficient stewardesses, are trying to see that no one, either intoxicated or on his way to being intoxicated, is served.

Senator YARBOROUGH. I ride the airlines quite a bit, and I am not an expert on where they got their liquor, but I have seen a lot served, and I have seen passengers after they would drink that drink being served, begin to act in a somewhat silly way. I have been advised by doctors that at high altitude the same quantity of alcohol in the human system would have a greater effect on them in the sense of destroying their sense of control than it would if they were at sea level.

So I raise this question. You raise two questions, two ways of people getting liquor on planes: Drinking it before they come on, or bringing it in a briefcase and drinking it. There is a third way, isn't there? The planes serve it themselves.

Mr. HALABY. Yes, sir; that is possible. And I am sure that you and the distinguished members of this committee, and most of the public, could do without a drink on an airplane.

Senator YARBOROUGH. I don't drink it at all.

Senator SCHOEPEL. Would the Senator yield?

Mr. HALABY. That makes it a great deal easier to do without it.

But the fact is, sir, that as part of our current social culture, it is a fixture in many people's lives. And so the private carriers—and we must remember that the airlines of the United States are a part of a

private enterprise system—they let a contract, they make a contract with the passenger to carry him. They try to carry him at a profit so that they will not need subsidy. And we must remember that it is their airplane, they are operating it under Federal regulations. And we cannot go in and regulate everything every minute, every act of the airline.

Senator YARBOROUGH. Mr. Chairman, I didn't care to argue that point. I only brought it up because you mentioned two sources of people getting liquor on planes. You mentioned drinking it before they got on, and carrying it in the briefcase. In my experience I have seen a lot more served on planes by the airlines than I have seen people pull it out of the briefcase and drink it. I thought the third source ought to be mentioned here.

I yield to the Senator from Kansas.

Senator SCHOEPEL. I think the record ought to show here that there are some members of this committee who heretofore have taken a position with reference to legislative approaches on this matter, who think that there ought to be some compelling type of legislation preventing its use on some of these planes. That is merely to keep the record straight.

Senator MONRONEY. I think we might say at this point, with the emergency facing us on hijacking and no laws whatever to cover that, that we should concentrate first on this item. There are pending bills on which we should have hearings that deal specifically with the subject that the Administrator is talking about. However, the penalties against assault or threats or things of that kind in Senator Engle's bill are very severe and would apply to anyone who was disorderly to this extent in an aircraft, to where it threatened the flight crew. I believe for the purpose of getting on with this, we should try to confine it at this point of the hearings at least to the crisis before us.

Mr. HALABY. Mr. Chairman, I do want to say that in recent weeks we have asserted the maximum penalties against several flagrant cases of drunken and disorderly conduct in the cockpit. We have tightened up those rules requiring the airlines to observe and deny access to those under the influence of liquor.

Senator MONRONEY. You mean in the cabin?

Mr. HALABY. Yes, sir.

The reason for bringing the air drunk up is that he is one of the men against whom this legislation is directed.

The second category is what I would call a flying fool, a fool who flies for some individual mission of his own.

It turns out that the last three cases of hijacking or attempted hijacking appeared to be by foolish men who feel that through some heroic act, well publicized and dramatized, that they can make some progress in their own individual lives; psychopathic as they may be.

Two incidents since the Electra hijacking, one in Binghamton, N.Y., and the other in Chico, Calif., the latter resulting in a very serious injury to crew members, were not by Cubans or alien enemies of the United States, but by malcontent, discontent, abnormal citizens. And this bill is directed to that category.

The third category is the airborne subversive, the spy in the sky who may have, on his own or through the initiative of a foreign government, decided that one way to humiliate the United States is

to steal an airplane. The air pirate. And this bill is directed against him.

I think Senator Smathers has a very good point about the alien. I would reassure him on behalf of his point: That if an alien, that is, a resident of another country, commits a crime made criminal by this act within the jurisdiction of the United States, and we could apprehend him in the United States, or in a country with which we have an extradition treaty, we can try and punish that man. It is that alien who is not apprehendable, who is not committing this crime within the specific jurisdiction of the United States, that I think Senator Smathers is justifiably concerned with.

Senator SMATHERS. Mr. Chairman, right there. Are there provisions in this bill which, as you say, make it possible to stop the spy in the sky? That is what I raise the question about.

Senator PASTORE. In the United States.

Senator SMATHERS. If apprehended in the United States.

Mr. HALABY. Or in the country which will extradite.

Senator SMATHERS. That is right.

Mr. HALABY. May I sum this up. We have been working, all of us, very hard on air safety. We are now working very hard on air security. And the Justice Department, the Federal Bureau of Investigation, are vigorously active and eager to work with the Immigration and Naturalization Service, the Civil Aeronautics Board, and the Federal Aviation Agency, and have been doing so.

We have had perfect collaboration from the Attorney General and his associates, from Mr. Hoover and his acting director, Mr. Belmont, from General Swing, and from the Chairman of the Civil Aeronautics Board.

The reason for mentioning air drunks was that the legislation started out of that problem. With very close collaboration with Senator Engle, this proposed legislation was developed. His bill has the concurrence of the executive branch.

In July we flashed the alarm about the hijacking threat to all of the airlines. Senator Pastore, we directed the air carriers to lock and bar that door at first on those flights operationally capable of reaching Cuba, and secondly on all flights. We intend, and I believe the air carriers intend, to tighten up the security of the cockpit and, wherever possible, to control access through that door from within the cockpit rather than without.

This is not an easy problem. That door was a sort of peaceable door. It is light in construction. A heavy man can charge it and break through. And the air carriers are this minute in the act of trying to make a more difficult barrier there.

Also, there has to be in and out of that cockpit for various personal reasons. So locking the door has been a rule without this legislation.

Second, and I want to be clear on this one, we have authorized the air carriers to arm the crew only if the crew has recent training in the use of sidearms and is believed to be demonstrably proficient in their use. We do not want a man unproficient in the use of automatic arms in the cockpit.

There seems to be some confusion in the last 24 hours perhaps that I or the President had directed the arming of the crew members. This is not the case. We have authorized them to go back to the early practice in the airlines when the pilot and the copilot carried

sidearms because they had been deputized as postal inspectors. They were flying "gun" on the mail. In recent years that has not been the case. We have simply said that if the air carriers in their own judgment wish to arm their crew, they may do so only if recent training and demonstrable proficiency is present.

We have also authorized the air carriers to carry in the cab or in the cockpit armed guards. In at least one case this is so.

We have offered yesterday, through the Department of Justice—"we" being the President and the executive branch—a \$10,000 reward for anyone giving to the local office of the Justice Department and the Federal Bureau of Investigation information leading to the apprehension of an individual attempting one of the crimes covered by this bill.

A third thing we have done, working in collaboration with the air carriers through their very able Air Transport Association here in Washington, is to tighten up on the surveillance and observation of enplaning passengers, to keep them off the airplane before they get inside and making the trouble. This is difficult.

What we have told them is not to leave this up to a ticket taker at the counter but to have a senior supervisor, an individual on duty, particularly during this period, who will observe enplaning passengers and when there is reason to believe they are carrying concealed weapons or intending to commit a crime, or a violation of our regulations, that they immediately bring in the local law enforcement official and turn the search and seizure, if necessary, over to that official.

The Justice Department has very helpfully and wisely alerted law enforcement officials all over the United States to collaborate with the airlines in this matter. So we have adopted a graduated action, a series of actions to fit the crime and the threat.

We can go on if it becomes necessary. We could, for example, cause every enplaning passenger for a flight who was capable of flying on to Cuba while hijacked, every passenger to submit to a complete inspection of his person and effects. You can readily imagine the line that would extend from the ticket counter at Miami International Airport if every person, man, woman, and child, had to submit to the kind of inspection that a police official might require to be sure that there were no concealed weapons.

So we have that under consideration with the air carriers. We feel that it is a very drastic step, and perhaps may not be in order at this time.

The final step that has been thought about, but not activated, is the stationing of uniformed U.S. guards on selected flights. If we need to, that is one additional step.

So, to sum it up, we have been striking at the air drunks, the flying fools, and the airborne subversives or sky spies. We have taken a series of actions. But today we ask you, please, to give us, the Justice Department, the FAA, the border patrol and other agencies criminal legislation.

The need for such legislation has long been recognized by those who are familiar with the subject. The need now has unfortunately been highlighted most dramatically by a recent series of incidents with which the public is familiar.

It must have come as a distinct shock to many people to learn that the law today is inadequate to deal with such acts as an assault with

a knife, shooting, the armed abduction of the passengers and crew of an airliner, plus the theft of an aircraft, the piracy of an aircraft. It was a distinct shock to me, about 5 weeks ago, after having been in office 3½ months, to discover that this spectrum of our public protection was uncovered.

When I say the present law is inadequate, I am not referring to a complete absence of applicable law but to its inadequacy when it comes to prosecution for violation of such laws as do exist. The Federal Government does not provide a general criminal code for all crimes committed in the United States. This is the province of the various States, and their criminal codes are at times supplemented by Federal law when the subject matter is under the exclusive or concurrent jurisdiction of the Federal Government.

There is a good deal of Federal criminal law in existence in many areas. For example, Mr. Bearden and his son have been charged now with kidnaping under the Lindbergh law. They have been charged with contributing and acting in violation of the juvenile delinquency law. They have been charged and are going to be tried on other Federal crimes as well. They could also be tried on local laws.

There is not the coverage with respect to all crimes. So we are making what have hitherto been local crimes, Federal crimes.

Federal reservations, Federal officers, and so on have statutes which protect them. The States also have laws in some of these areas, and frequently the same acts will constitute a crime under both Federal and State law. In other areas where the States have no jurisdiction, such as crimes committed on the high seas, the only law is the Federal law.

The present law as to crimes committed aboard aircraft in flight follows the normal rule, that the offense is dealt with under the law of the State where the offense occurs.

I think it particularly noteworthy that Senator Engle, finding that several of these crimes had been committed on the way to California, and that local officials in his State of California could not deal with the crimes because they had not been committed in California, created a serious problem, particularly at Los Angeles. In the normal situation, this provides a jurisdiction over the offense and the means to prosecute offenders. The normal situation, however, involves crimes committed on land, not in the air.

State laws may be sufficient when a crime is committed on a bus or railroad, but when the criminal moves the scene of his activity to an aircraft in flight he is able to take advantage of practical and physical difficulties that seriously impair effective apprehension and prosecution.

These difficulties arise from the simple fact that the State above which the crime may have been committed is often not the State in which the aircraft lands. The second State has no jurisdiction over the crime and cannot even arrest the criminal when the crime was completed in the first State. If the first State is disposed to act, it has first to collect the evidence that a crime has in fact been committed within its State jurisdiction. All the evidence of this went with the aircraft to the State of the landing. The witnesses would have dispersed soon after landing. Assuming that an indictment may be returned in the first State, the question of extradition from the overflowed State to the landing State remains. Not all crimes are

extraditable: Time and expense are involved, and litigation is frequently necessary.

This is a much-simplified outline of the difficulties. To contrast, if the offense were also a crime under Federal law, the aircraft would be met on landing by Federal officers. The offender could be taken into custody immediately and criminal prosecution instituted. This, we want to make clear, would not replace any State jurisdiction but would supplement it. The crime under Federal law would be a different crime than the crime under State law.

I might interject here a point we should all bear in mind during these hearings. Even where a State law exists, it may not recognize the difference in gravity between an offense on the ground and an offense in the air. A crime of violence in the air endangers not only the person against whom it is directed but all the persons in the aircraft. An assault against a crew member could have more serious consequences to all aboard than an assault on a passenger. Those below the airplane are thereby endangered without assuming any risk of boarding the vehicle. These distinctions must be recognized in the law if it is to be adequate.

Returning to the difficulties encountered under present laws, the incident involving a drunken assault with a knife is a good illustration.

It occurred on a nonstop flight from Chicago to Los Angeles. Our best information is that the acts which would have constituted the assault took place during the time that the aircraft was over the State of Nevada. During the flight the passenger was once tied to his seat, released, and later had to be tied up again. In the interval of freedom he pulled out a knife with a 7-inch blade, threatening to kill the captain and assaulting the stewardess.

The interested Federal and State officials immediately undertook, as the saying goes, "to set the machinery of the law in motion." It is perhaps an oversimplification to say that they discovered the "machinery" to be missing. The best that could be done under the circumstances, though final disposition of the matter is still under consideration, was taken by the California authorities. The passenger was charged simply with being intoxicated in a public place. He pleaded guilty and was sentenced to 90 days in jail—after threatening a large, completely filled jet aircraft flying over the United States. This was possible only because he was still intoxicated when the airplane landed in Los Angeles.

Senator ENGLE. If he had been sobered up, they would have had to turn him loose, would they not?

Mr. HALABY. Yes, sir.

Senator ENGLE. That is a good point in support of Senator Yarborough.

Senator MCGEE. In other words, "high in the sky" is not an offense.

Senator YARBOROUGH. The point I raised, Senator, is based mainly on the continued recommendations of the pilots and the hostesses, airline stewards and stewardesses, that serving liquor on the plane be prohibited.

Senator ENGLE. I don't want to start that again.

Senator YARBOROUGH. They have had more experience than any of us.

Mr. HALABY. The assault in question took place entirely over Nevada, we believe, although it is hard to tell when you are crossing

a State line. California does not have the jurisdiction to prosecute for a crime that may have taken place over Nevada. On the other hand, Nevada did not have jurisdiction over the passenger when the airplane landed. There is some question whether Nevada could successfully extradite the passenger from California, which at best might involve extensive litigation. And then there would be the question of the proof needed in a criminal case that the actions did in fact take place over Nevada within the jurisdiction of Nevada law—aside from the difficult question of fixing the precise county within Nevada where the crime occurred.

As to the Federal law, it may suffice simply to say that the actions do not appear to have constituted a violation of any current Federal criminal statute.

There is a Federal law which would have applied if the incident had occurred while the aircraft was in flight over the high seas. In past years, recognizing that aircraft in flight presented many of the problems of law enforcement that exist on the high seas, the Congress wisely provided for crimes committed in aircraft while over the high seas.

In the case I have just described, the passenger would have been subject to imprisonment for up to 20 years and a fine of up to \$10,000, if he had been over the high seas instead of high over Nevada. As it now stands, from the Agency's point of view, the only available Federal prosecution would be for violation of the Agency's regulation governing drinking aboard carrier aircraft. This is not a crime and is subject to a maximum civil penalty of \$1,000, and we have slapped a penalty on the individual whom I have described.

We don't think that it requires any further elaboration to reach the conclusion that the existing law on the subject matter is simply inadequate to meet the problems presented. The proposed bill would cure the difficulties in the areas it covers.

The proposed bill is on the initiative of the President and his assistants, or Senator Engle, Senator Monroney, and the members of this committee who support it. The bill does not establish new crimes, in the sense that the acts involved are presently recognized in the law as criminal. In fact, except for the carriage of deadly weapons, they are the types of crimes which were perhaps the first established by any criminal law—crimes of violence against the person, robbery by force from the person, and crimes similar to piracy.

The section on piracy was included in the bill, we understand, because of the incidents in which aircraft in flight were taken by use of force. Such an action in the airspace can be considered, in practical effect, as analogous to piracy on the high seas.

In many ways the situation aboard an aircraft in the airspace is the same as that aboard a ship on the high seas. They are both beyond the reach of any immediately available police authority. Many legal and practical problems are presented by the varying jurisdictions represented by the flag carried and the passengers involved. The law of nations supplies the needs found to exist on the high seas. The present bill would fill these needs in the airspace for the crimes covered. It also gives the crew, the captain of this fine ship in the sky, similar rights and duties and privileges to the captain of a ship at sea. And I believe the crews of these air carriers are prepared to accept that responsibility. In fact, I believe that it is appropriate.

The bill, therefore, simply equates aircraft in flight in air commerce to ships on the high seas. There is no doubt that forcible seizure of an aircraft in flight is as grave a crime as seizure of a ship. Perhaps more so. Interference with a ship's crew would not present the same dangers as are inherent in interference with the crew of an aircraft in flight. Incapacity of a ship's crew would not cause the vessel to sink, but an aircraft cannot stay in the air without a crew.

Ships on the seas can be reached by other ships; aircraft in the skies cannot. The time element is vastly different. The size of the crew is different, so that incapacity of but one member of a flight crew could have serious consequences to the safety of the flight. An airliner that runs out of fuel is in terrible danger—a ship normally will still float.

We cannot help but think that the barrage of publicity in recent weeks about the shortcomings of the law has given some persons a feeling of confidence that they might commit crimes aboard aircraft with little danger of punishment. We think that this must be corrected without delay.

We have been fortunate, I might say very fortunate, and plain lucky, that so far we have not had a general tragedy in one of the incidents that have already taken place. It is due, I think, to an increasing awareness on the part of the public, on the part of the air carriers, and to the bravery and coolness of crews in flight and, yesterday, to the distinguished action of a passenger on one of the hijacked aircraft, a man who served many years of his life in the public service and who is now assistant regional commissioner for the Southwest region of the Border Patrol.

If I may, Mr. Chairman, I would like to ask that Leonard Gilman, who was one of the hostages aboard the hijacked Continental airliner yesterday, come to the stand and give an account, supplemented as appropriate from the Washington point of view by myself, of what lessons we have learned from yesterday's 9-hour ordeal, and how they can be made applicable to the future.

With your permission, Mr. Gilman is in the audience.

Senator MONRONEY. I would like to have Mr. Gilman come forward to the witness stand, along with Mr. Halaby.

Mr. Gilman, as most of those in the room know, is the man who disarmed Mr. Bearden and helped capture the father and son along with a member of the flight crew and Mr. Francis Crosby special agent of the FBI.

Mr. Gilman, we congratulate you on your quick and brave act and the steady nerves which you must have had during that 9-hour period.

We would be happy to hear any comments that you might make.

Mr. GILMAN. Thank you, sir.

Mr. HALABY. I wonder if he would show us the hand that was used on this criminal in the air.

Senator MONRONEY. He didn't have the plaster cast at that time.

Mr. GILMAN. Unfortunately, no.

Senator SMATHERS. Why don't we have him tell us what happened, first?

Senator MONRONEY. Why don't you tell us what happened when you first observed Mr. Bearden and his son as they took over the plane. I think the narrative would be helpful to understand how these things occur.

STATEMENT OF LEONARD GILMAN, BORDER PATROL,  
IMMIGRATION AND NATURALIZATION SERVICE

Mr. GILMAN. Unfortunately, I did not observe anything in Phoenix where these gentlemen stated they got on.

The first that I noticed, as a through passenger to Houston, there was no intention of deplaning in El Paso, so I was trying to sleep a little.

The first I noticed actually was a woman screamed, not too loudly, and as I moved over to the aisle I could see that the two hostesses were quite excited toward the front of the aircraft. I did not at this time see the two gunmen.

As one of the hostesses walked down the aisle, I stopped her and asked her what was happening, because the purser had announced that no passengers would deplane in El Paso. Knowing that this was a scheduled stop, and that there were several military recruits aboard, it sounded rather odd. She said that the plane was being hijacked, and that they were looking for hostages. I said, "I will volunteer."

She said, "They want you up in the lounge, those who will volunteer."

There was a woman with a small baby in her arms, and quite hysterical. I calmed her down a little bit and handed my card to her, with my name and title, and said, "As I walk into the airport, please make a telephone call to the border patrol, explain what has happened, and tell them that I am aboard."

Subsequently they got three young men as hostages and brought them forward.

Senator MONRONEY. Did they pick them or did they volunteer?

Mr. GILMAN. They volunteered. One of them I believe is a Mexican citizen, who had recently been discharged from the American Armed Forces; a very nice and brave young man.

One of the young men I believe was or is an employee of Continental Airlines. And the other was a pilot in the airplane.

The Government had particularly stated that no pilot personnel were to be among the hostages.

After the passengers had deplaned, they had asked that they go out one at a time, but they stampeded and crowded out rather rapidly—then they asked for identification of the four hostages. The private had been able to throw his identification in the commode and had asked me subsequently to seek to see that it was not visible.

They identified the three and had my credentials and knew that I was an officer by this time. They immediately shouted and asked if I was armed. I said no, that I was not.

The 17- or 18-year-old boy walked back and had his 45 in his hand with the hammer back, and the safety off, and asked me to turn around for a search. He searched me and then moved back to the front of the aircraft.

The two hostesses were placed in a sitting position in the doorway. The two gunmen immediately behind them and in the cockpit, one of them with a gun on the crew, and one of them with a gun on the four of us.

This particular situation existed for the first possibly 2 hours or more. I lost track of the time.

Mr. HALABY. The whole affair started about 2 a.m. El Paso time, didn't it?

Mr. GILMAN. I understand that is correct. I didn't know about it until possibly 2:20 or 2:25.

The gunmen had and were having several conversations, of which I could not overhear all, but with the pilot, demanding that he contact the tower, a man who identified himself as a Continental Airlines employee was conversing with him. Most of it was relative to the obtaining of fuel, the obtaining of charts for Cuba, because the pilots insisted they could not fly this aircraft without charts. It was quite apparent that a stall was taking place, and I thought it should have been apparent to the gunmen but they said nothing because it went on almost until daylight. Finally they became quite nervous, and demanded that this aircraft take off, the 707.

In the meantime they had asked the four of us to fasten our seat belts tightly across our legs so that we couldn't move. However, I took a chance and unbuckled and walked up. They stopped me within about 6 or 8 feet and I requested that if they would release the two hostesses, let them deplane immediately before the departure of the 707, that I would guarantee no action by the crew or the four of us to prevent them from departing.

The answer was, "They were hired to take chances, and they stay."

A little later I made another try at scaring them off of taking the 707 into Cuba, stating that there was no airfield in Cuba large enough to accommodate this aircraft, that their landing fields were made of asphalt and wouldn't support the weight. I don't know that this is true but I was trying to talk them out of it.

Ultimately the older man, the father, with his gun trained on the captain of the aircraft, demanded that we depart immediately.

Mr. HALABY. At that point on the ground, unbeknownst to you, they were very slowly refueling the aircraft, probably the longest refueling of an aircraft in American aviation history. And secondly, the president of Continental Airlines, Mr. Robert Six, was flying from Denver and the Federal Bureau of Investigation special agent, Mr. Crosby, was in direct touch with the Acting Director of the Bureau, Mr. Belmont, and with me, and our FAA tower operator was watching every move. Also there was communication, as we got it, from the pilot through the company communication channel to the company whenever the gunman would permit it. At this point, when they started to taxi away, we felt was the crucial moment, and at that point, in discussing this matter with the President of the United States, he made a very clear decision that that aircraft was not to leave the ground.

Mr. GILMAN. At this time that we did taxi away, I was astounded, because I was certain in my own mind that something would be done to that aircraft, that it couldn't move from there, because I had not considered the possibility that they would let the aircraft go. So when they did start rolling I was astounded that they permitted it. Immediately I saw and recognized the border patrol cars as they moved in, and assumed that they would attempt to shoot the tires from the aircraft, knowing that they had a high speed aircraft and only one side would be necessary. They did a thorough job. All of them were down.

Mr. HALABY. Were you aware that the gunmen had proposed a deal to trade the jet for another aircraft that would fly to Cuba?

Mr. GILMAN. Yes. This is the reason that I was telling him that the airports in Cuba would not accommodate this aircraft, and if he wanted safety in transferring I suggested that he move the 707 to the middle of the El Paso Airport, out in the center, have the DC-7 brought alongside, and that we would get aboard the DC-7 if he would permit the girls to go.

He did not continue any further, so I don't know whether he said he would not, or what was done. I was merely making the proposal.

Mr. HALABY. At that point we heard that very serious consideration was being given on the spot to a deal, and on hearing of that, and on advice of his close advisers, the President again said, "No deal." I believe you were thinking that inside the airplane.

Mr. GILMAN. This is absolutely correct. Inasmuch as they notified us, I assume through the Continental employees, that if we would wait until approximately 9:50, that a DC-7 would be available from Houston, and that they would let him depart. By this time Special Agent Crosby in charge of the Bureau was visiting with the older gunman and stated that he would permit him to get aboard the DC-7 and to become airborne without interference if he would leave all hostages, this crew and the four hostages, at El Paso and take a new crew, because this particular crew was not capable of flying the DC-7.

This was agreed to temporarily by the gunman, although subsequently, after he permitted me to get into the cockpit portion of the aircraft, someone demanded from the tower that each of us identify ourselves and say that we were all right. This was done.

Each individual identified himself. Then an attempt was made, by one of the supervisory patrol inspectors, to get a message through to me by code, which I was immediately stopped from answering by the gunman. He warned me that I was not to use any code. But they permitted me to remain to speak with Mr. Crosby.

After the plane was stopped by the fire—

Mr. HALABY. You were along about 30 or 40 miles an hour when the border patrol and the FBI opened fire on the tires?

Mr. GILMAN. It is difficult to say how rapidly we were going because by the time that we had started to taxi they placed us in the center section of the aircraft, and made us buckle the seat belts, and we were not to move. When the firing started most of us moved quite rapidly.

However, the two gunmen did nothing. They sat immobile after the shooting and then I went to the cockpit. From then on it was a lengthy conversation. When I first arrived in the cockpit I could see that the pilot and the copilot could not move very rapidly in the position they were in.

The second officer, Simmons, appeared to be a very competent individual. The two hostages were quiet and calm. There was no excitement involved or causing any trouble, and we laughed and kidded each other to keep it that way.

Mr. HALABY. This was after about 8 hours, and the temperature had risen from about 60° to 100°, as we saw from the ground.

Mr. GILMAN. At times they did attach the refrigeration unit to the aircraft to cool us off a little bit. First I got Simmons' eye and I saw that he understood me thoroughly, that he was to take the young

man when I took the older one, when I moved. And this situation existed for a long time, because the opportunity was not afforded for quite some time.

Ultimately I was able to talk him into uncocking the gun. Finally he suggested himself that if I would not do anything he would put the guns away, and I immediately said, "OK, if you put them away I will do nothing."

The hostages said, "Thank God." From there on they had the guns, at least the older man, in his belt. The boy carried his in his hand. He did uncock it. I finally suggested to the father that maybe he should take the gun away from him, which he did. Then we had only one to worry about.

Mr. HALABY. The FBI reports this boy as 16 years old. Is that what you understand?

Mr. GILMAN. It was difficult to determine his age. He was a very cold and cool little customer.

He would not smile; he would not talk. And actually I feared him more than I did his father because he probably did not realize what it would mean if he started a shooting escapade within the aircraft because we were all going to have to go into action if he did.

Of course the father realized this and did not want anything to happen. I knew he did not want to shoot.

Mr. HALABY. Did he say why they were doing this at all, while you were talking to them?

Mr. GILMAN. Oh, yes. He told me that it was a great desire to go to Cuba, they had many friends in Cuba, that he liked their way of life, he did not like the Government of the United States any more, that he wanted me to understand that it was not a political conspiracy with El Castro, that there had been no previous conversations relative to this confiscation or highjacking of this aircraft, that it was his intention to obtain transportation only.

I suggested that it was rather expensive transportation, involving about a \$5 million aircraft, and he probably could have gotten to Miami and anyone would have permitted him to take his family to Cuba.

He said he did not have the money to go to Miami.

There were a great many conversations, rather irrelevant. We were merely trying to lead him on, calm him down so he would not become excited and do something.

Ultimately the decision and information from the seat of government was passed to us through Mr. Crosby, and we asked him to come aboard and discuss it.

As Mr. Crosby came aboard, in the confusion the hostess and the three hostages were able to slip out the rear of the aircraft. The pilots I believe went out through the windows. At least I heard the noise and knew they were trying to get out. This then gave us the opportunity that we had been waiting for. We were free to start something without getting the girls or someone shot up because there was only left Mr. Simmons, the second officer, Mr. Crosby, and myself.

In the interim I saw a border patrolman whom I recognized and knew his competency, and he had a .45 in his hand, behind the compartment of the pilots' door and was ready when we made a move.

Mr. Crosby attempted to do what I had tried, to get him to surrender and walk out. He became slightly hysterical and said he would commit suicide before he would permit the officers outside to kill him.

At that time I signaled to Simmons and hit him, and in a few seconds we had them outside the aircraft.

Mr. Simmons and Mr. Crosby took the youngster, while I took care of the father. That is about all there is to it.

Senator MONRONEY. Congratulations, Mr. Gilman.

During your long observation of him, and as an enforcement officer, what was your feeling as to his character?

Mr. GILMAN. After about 2 hours it was apparent that he had a psychopathic personality of some type. He was very cool, cold, and logical in his explanations of why he was doing what he wanted to do, and why he wanted to do it.

However, logic would cease when you would get him in a corner. He could speak very clearly and concisely until you proved to him that what he was doing was illogical and then he would say, "This has been studied for a long time and you are not going to talk me out of it."

He ultimately offered me, if I would go as hostage to Cuba, he would turn all of them loose, permit me to guarantee the safety of the crew, and stated that he would personally see that I got out of Cuba with the crew. I don't see how he intended to do this, but this is what he had offered.

Senator MONRONEY. Delusions of grandeur worked into this scheme of hijacking an aircraft, perhaps.

Mr. GILMAN. There is no doubt that the individual—I accused him, I said, "Only a criminal who was attempting to escape severe punishment, or a Communist, or a person who is entirely demented, would pull what you have done. Which one of them are you?" He said, "I am not a criminal."

I said, "Are you a Communist?"

He said, "I refuse to answer you."

I said, "Are you an atheist?"

He swore a little and said, "Yes, I am."

I said, "There is not much reason for me to attempt to reason with you at this time."

However he did, from the time he put his gun away, never pull it again until I thought he was going to at the time that I hit him.

Senator MONRONEY. Senator Smathers?

Senator SMATHERS. Did he indicate or did he say whether or not he had ever been to Cuba before?

Mr. GILMAN. I asked him if he had been, and his answer was, "I have many friends in Cuba."

Senator SMATHERS. He has many friends?

Mr. HALABY. There is a report, Senator Smathers, that this individual has visited the Cuban Embassy in Mexico City with regard to passage to Cuba. I believe it was in the early part of 1961. To date—and this will come out in the investigation—we have no positive evidence of any connection between Mr. Bearden, Sr., age 50, or Junior, age 16, and the Cuban Government. This will be investigated.

There is also a report that during the hearing before the Commission that Bearden stated that he was going to sell the jet to Castro. I wonder if that came up in any of the conversations in the cabin?

Mr. GILMAN. I asked him if this was his passport to Cuba. He stated, "No, I merely want it for transportation."

However, there can be no doubt with the type of individual that he thought that this would be a great asset to him, that he would arrive in Cuba and be able to hand Mr. Castro a \$5 million jet aircraft.

Senator SMATHERS. What kind of employment? Did he discuss what kind of employment, if any, that he had had in recent months?

Mr. GILMAN. Yes, sir. We carried it back to practically his birth. I was able to determine that he was from Arizona because he knew so many officers that were stationed there in years past, and if I would name them he said yes he knew them and where he knew them. So I had him pinned down to Arizona but he refused to give me his name.

Senator MONRONEY. Senator Engle?

Senator ENGLE. I have no questions at this time.

Senator McGEE?

Senator MCGEE. I couldn't help but reflect, Mr. Chairman, on the exciting new program this could be so far as TV is concerned. Somebody might call it, "Have Fist, Will Travel." I think we could put Mr. Gilman on some of these planes and bring this under control.

Mr. GILMAN. At this point, if I may, gentlemen, I would like to say, in this particular instance, inasmuch as it did happen, that it spoke quite highly of the class of personnel hired by Continental, and I know by other airlines—I know them personally—because of the manner in which they conducted themselves, the coolness at all times, including two 22-year-old girls, and the willingness on the part of the second officer to assist me without equivocation, speaks quite highly.

In my own instance, I think it can be taken for granted, because it has to be assumed that an officer of 20 years at least has some training, and that if he is an officer that he has a responsibility. So I think we should think more, in this particular instance, of this particular program, as to how easy it was for these people to do what they did.

I would like to point out that they merely walked up behind two hostesses, walked to the cockpit of an aircraft, placed the guns on the pilots because they knew they were in no danger from any source other than if there was an officer possibly aboard this aircraft.

They were not worried about it as long as they had guns on the crew and on the two hostesses.

Possibly had they have known, or had we had publicity stating that crew members on all of our airlines were armed and proficient in the use of arms, it might have been a great deterrent to these two particular types of people, possibly not to a ring, organized and competent, but to individuals of this type it might have been a large enough deterrent to have stopped them.

In addition I think we can say that if we had legislation, or that which people at least knew, that we had some teeth in the law by which they could be prosecuted, it would probably be a large deterrent.

Senator MONRONEY. Plus the fact if they knew that the full power of enforcement of all agencies, such as joined informally at El Paso, were behind the airline and behind the efforts to prevent such crimes as these, that, too, would have a deterrent if they felt that the Secret Service, the FBI, the Immigration Service, and other law enforcement agencies would be quick to respond, is that correct?

Mr. GILMAN. Certainly, sir, I would say this is of course true.

Senator MONRONEY. And as a law enforcement officer, about the best deterrent is the certainty of capture and conviction.

Mr. GILMAN. Yes, sir.

Senator MONRONEY. Senator Yarborough?

Senator YARBOROUGH. Mr. Chairman, having lived in El Paso, Tex., for 3½ years, and having seen the Border Patrol in action there, and at other points in our State—there being more of the U.S. Border Patrol in service in Texas than in any other State—I have long known of their proficiency. I think they are one of the finest groups of law enforcement officers that exist anywhere on the face of the globe, and I think Mr. Gilman's accomplishments here are not merely that right uppercut, but the long hours of handling these people so as to prevent injury to anyone is in keeping with the finest traditions of the Border Patrol, which has a very fine tradition and a very fine group of men in it.

I want to congratulate you and the Border Patrol as a whole.

Mr. GILMAN. Thank you, sir.

Senator MONRONEY. One last question.

Mr. HALABY. Mr. Chairman, could I ask Senator Yarborough if he would be in favor of serving "Gilmans on the rocks" in aircraft?

Senator YARBOROUGH. I think we need more of those in instances like this. Not only for hijackers but for some of the inebriated people I have seen walking up and down the aisles; they need Gilmans around.

Senator MONRONEY. Since you undoubtedly had information after this matter was resolved, were you able to identify who it was that gave the order to shoot the tires off of the 707?

Mr. GILMAN. No, sir, I was not at that time. In fact, I was wondering if any orders had been given. When that plane started to roll, until that time I had not seen any activity on the outside.

Senator MONRONEY. Mr. Halaby?

Mr. HALABY. May I answer that, Mr. Chairman?

This was a definite Federal formation effort. The President asked me from the Washington end to coordinate and give some leadership to it, and at every moment of those 9 hours that Mr. Gilman was there, the FBI, the Justice Department, the White House, the Immigration and Naturalization Service were acting as one.

The President gave two orders: One, the airplane was not to leave the ground. Two, there was to be no deal or dickering with criminals.

In carrying out those orders, the FBI, the Border Patrol, the local Texas police forces, and in particular the special agent in charge, Crosby, and the Continental Airlines, all worked as one. The effect of the President's order transmitted through me to those on the scene was to follow that aircraft and keep it on the ground, which they did.

Great risks were taken by the President and all those involved, and they paid off in a safe and secure result.

Senator MONRONEY. We have a rollcall coming up momentarily in the Senate. The subcommittee will stand in recess until 2 o'clock this afternoon. We will continue our testimony from the other witnesses at that time in this room.

(Whereupon, at 12:10 p.m., the subcommittee was recessed, to reconvene at 2 p.m., this same day.)

## AFTERNOON SESSION

Senator MONRONEY. The Aviation Subcommittee will resume its hearings.

Our next witness to be hear is the Honorable Herbert J. Miller, Jr., Assistant Attorney General, Criminal Division, Department of Justice.

Mr. Miller, we appreciate very much your appearance before this committee. We would like to have your testimony in regard to the Engle bill and the other companion bills that are now pending before this subcommittee.

**STATEMENT OF HON. HERBERT J. MILLER, JR., ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.**

Mr. MILLER. Senator, I have a short prepared statement on the Engle bill. I have not as yet had an opportunity adequately to study the other bills which were introduced just recently.

Senator MONRONEY. They run fairly well in the same nature, and some to a greater degree of punishment, things of that kind. The purpose of the bills I think are pretty much the same.

You may proceed.

Mr. MILLER. My name is Herbert J. Miller, Jr. I am Assistant Attorney General in charge of the Criminal Division of the Department of Justice.

Pursuant to the request of this subcommittee, I shall state the position of the Department of Justice with regard to S. 2268, which would amend the Federal Aviation Act of 1958, to provide for the application of Federal criminal law to certain events occurring on board aircraft in air commerce.

My comments are directed to the July 31, 1961 amendment to the bill.

First I wish to emphasize that the Department of Justice endorses this bill but with certain amendments.

S. 2268 would amend the Federal Aviation Act of 1958 by adding a new subsection (i) to section 902 of the act. The new subsection would be further divided into four divisions. The first division would make permanent the actions proscribed by sections 113-4, 1111, 1112, 1113, and 2111 of title 18, United States Code, when they occur on board an aircraft in air commerce.

Section 113 deals with several types of assaults.

Section 114 with maiming.

Section 1111 with murder.

Section 1112 with manslaughter.

Section 1113 with attempts to commit murder or manslaughter.

And section 2111 with robbery.

It should be pointed out that most of the crimes listed in subsection (i)(1) are also crimes cognizable in State courts. For example, murder or manslaughter in an airplane above a State can be prosecuted in the State over which it occurred. The problem of venue is not obligated by making it a Federal crime. The Federal Government will still have to prove the State and the district in which the crime was committed as required by the sixth amendment to the Constitution of the United States.

S. 2268 would apply to specified acts committed aboard any aircraft in air commerce.

Air commerce is defined in the act, 49 U.S.C., section 1301-1304, to include oversea and foreign commerce, which are further defined to include commerce between the United States and any place outside the United States. Thus, this subsection 1 of 2268 would extend Federal jurisdiction over the high seas as well as to foreign countries.

As far as jurisdiction outside of the United States is concerned, there are two problems. One, jurisdiction over crimes on airplanes of American registry over the high seas is already covered by title 18, United States Code, section 7. Secondly, with regard to jurisdiction over foreign countries, it would cover any airplane flying from the United States over a foreign country.

The latter extension may well be in conflict with the Convention of International Civil Aviation effective April 4, 1947, in which article 1 provides, and I quote:

The contracting state recognized that every state has complete and exclusive sovereignty over the airspace above its territory.

The Department of Justice is of the opinion that if the Federal Government is to enter this area, this part of the bill should be limited to the airspace above the United States.

We also note that the crimes listed in this part of the bill are those commonly contained in title 18 of the Criminal Code; and therefore it would appear to be more appropriate to amend that title than the Federal Aviation Act. This would also clarify investigative jurisdiction.

We believe that these crimes should be investigated by the Federal Bureau of Investigation.

If it is determined that this subsection is necessary and that the physical placement of it should be in the Federal Aviation Act, then the investigatory responsibility should be clearly spelled out.

Subsection (i)(2) makes it a crime to assault a flight crewmember if the assault prevents the proper performance of duty by the flight crewmembers. This subsection specifically takes care of the problem posed by the recent occurrences which resulted in the introduction of S. 2268.

We suggest that here also the offense should be limited to the United States for the reasons stated above.

We also suggest that this subsection shall specifically forbid the obtaining or the attempt to obtain control of an airplane illegally by force and violence even though such an act would probably include an assault.

The Department of Justice endorses subsection (i)(3) without change. While the law of piracy in modern times has been found to be archaic and difficult of application, a convention on the high seas was ratified by the Senate on May 26, 1960, which defined acts of piracy and brought such acts on airplanes within the term "piracy." I am advised by the Department of State that this convention is not yet effective since it has not been ratified by the requisite number of countries. We do not object to this subsection.

I would suggest that it is the position of the Department of Justice that this legislation, with appropriate amendments, should be enacted as soon as possible, and I offer the facilities of the Criminal Division

of the Department if any drafting problem should arise. We would be very happy to do all we can to expedite this legislation.

Senator MONRONEY. You were testifying on the original bill, S. 2268, I believe?

Mr. MILLER. The amended bill, Senator, which was introduced on July 31, 1961.

Senator MONRONEY. I thought you included some items that were not within the scope of the amended bill.

Mr. MILLER. I don't believe so, Senator.

Senator ENGLE. We reached the original and added some sections. S. 2268 as amended is the bill as originally introduced plus the new sections which related to pirating. In other words, S. 2268 is the original, plus the amendments.

Senator MONRONEY. The amendments are in addition to S. 2268?

Senator ENGLE. That is correct. What the amendment did, in effect, was to restate the bill introduced, whenever it was, and added sections with reference to pirating airplanes.

Mr. MILLER. That is correct.

Senator ENGLE. So that the testimony of Mr. Miller is relative to both bills.

Mr. MILLER. That is correct.

Senator MONRONEY. Is it your position that the bill does not have to include any area outside the territorial limits of the United States because those are already covered by existing law?

Mr. MILLER. At the present time, Senator, the special maritime jurisdiction of the United States includes aircraft of American registry flying over the high seas.

This bill, because of the definition of air commerce, which in turn is defined in the Federal Aviation Act of 1958, would include travel over the high seas and would also include, as I interpret the definition, travel over foreign countries.

So it is the position of the Department that the current provisions of criminal statutes applying to the special maritime provisions of the United States, extension of this bill beyond the continental limits of the United States would not be necessary.

Senator MONRONEY. Was it also your position that such well-defined crimes as murder, robbery, maiming, and other items like that are presently adequately covered by law and that the main thrust of this bill should be limited to assault aboard an airplane and things more generally covered in the amendments which Senator Engle has submitted to the bill?

Mr. MILLER. That is correct. We have no objection to making it a Federal crime to commit murder over the continental limits of the United States, for example, which would be in (i)(1) of Senator Engle's bill. It includes murder, manslaughter, maiming, and several other crimes. We merely point out that this is already covered by reason of the definition of air commerce when the plane of American registry flies over the high seas. Thus, insofar as (i)(1) is concerned, if that were limited to the continental United States, as perhaps the rest of the bill should be, then there would be no problem.

Senator MONRONEY. How about the 113, assaults within the maritime and territorial jurisdiction?

Mr. MILLER. The sections listed here, 113, 4, 1111, 1112, 1113, and 2111 of title 18 would be applicable to the special maritime jurisdictions of the United States.

Senator MONRONEY. Then it is also your feeling that rather than amend the Federal Aviation Act, that these should fit into the Criminal Code, rather than become a part of the Aviation Act because they would be easier to be found or identified, is that correct?

Mr. MILLER. That is correct, Senator.

There are two basic reasons. One, we prefer, where possible, that criminal statutes be included in title 18; simply because it is a proper codification.

Secondly, if the bills are in title 18, then it will be clear that the Federal Bureau of Investigation will have investigative responsibility for these crimes. We think that this is the proper agency to investigate crimes of this nature.

If the committee should decide to leave this as a part of the Federal Aviation Act of 1958, then we would suggest that a specific provision be included which would vest investigatory jurisdiction in the FBI.

Senator MONRONEY. Senator Engle?

Senator ENGLE. Do you have that language?

Mr. MILLER. The specific language?

Senator ENGLE. Yes.

Mr. MILLER. I don't have it here, sir, but I would be very happy to sit down with members of the staff of the subcommittee and I think we could put it together in a very short time—by this afternoon.

Senator ENGLE. We would like to have that. This bill has been drafted to go to the Judiciary or come to this committee. I serve on this committee, and I think the conclusion is obvious.

Senator MONRONEY. Also the committee, as well as the distinguished author of the bill, is very much concerned with aviation safety. This has a very important bearing, as we heard this morning, upon the safety not only of the aircraft but also perhaps of a hundred persons who may be endangered by acts of violence aboard a plane in flight.

Senator ENGLE. At any rate, this legislation was drafted by attorneys in the FAA. I understood that they had talked to people in Justice, but I don't know who they talked to.

Mr. MILLER. They have indeed discussed the matter.

Senator ENGLE. Mr. Chairman I would like to suggest that Mr. Miller sit down with Mr. Goodrich, or whoever it is in FAA, and our staff, and draft the necessary amendments to bring this bill into line so that we don't have overlapping jurisdiction.

There isn't any reason to having two laws over the open seas.

Mr. MILLER. I would be happy to do it.

Senator ENGLE. With reference to jurisdiction, I wish you would draft that language in such a way, that is, the FBI, that the FBI would make these investigations. We don't want to put this in as an amendment to the Federal Aviation Act, rather than title 18 to cut them out. We want to be sure they are in. It would be appreciated if you would draft that language for us so that it would be offered as an amendment.

There is another point that you raise and that is the business of how you establish the venue of a crime. From your testimony I take it it is just as necessary under Federal jurisdiction to establish the necessary Federal district in which the crime occurs as it is under State jurisdiction.

Mr. MILLER. Yes, sir. The Constitution, amendment VI, provides that the man must be tried in the State and in the district in which the offense was committed.

Senator ENGLE. Inasmuch as that is in the Constitution there isn't much we can do about it.

Mr. MILLER. Not without a constitutional amendment, Senator. I merely pointed out that we would still have the venue problem that you presently have when flying over a State. It is a little better, I might say, from a Federal standpoint, because you don't have as many Federal judicial districts as you have counties within a particular State. Plus the fact that in crimes of this nature, where they, in effect, have an interstate character, occasions arise where perhaps the police and the judiciary of the county involved would not be too interested in prosecuting something that did not occur on their soil, but actually occurred several miles in the sky.

So that even though you do have this identical problem, I still do not think that that runs against the passage of this legislation at all.

Senator ENGLE. I think we are in much better shape. The Federal judicial districts are much larger.

Mr. MILLER. That is correct.

Senator ENGLE. California, for instance, has 58 counties. You could fly over 16 of those while one of these crimes was in progress. A defense lawyer would have a field day making you prove just which county you were over.

Mr. MILLER. In that type of case I would like to represent the defense instead of the prosecution.

Senator ENGLE. They could get very serious problems on that. I believe those problems are mitigated by a Federal jurisdiction.

Senator MONRONEY. Not only would they be mitigated by a Federal jurisdiction but you would have the same prosecution authority to follow the case if they claimed lack of jurisdiction because you were over the northern district of Iowa, instead of the western district.

Your prosecution could be shifted for the Federal Government to follow its crime through to its conclusion as the jurisdiction was finally defined, whereas the State has not necessarily great desire to prosecute this man who holds a switchblade knife on a crew flying over Nevada. This is an additional expense to them and they weren't aware of the crime happening, and it didn't endanger any of the citizens at least who were on the ground within the sovereign State.

I feel that only by Federal jurisdiction can you even have a way of cracking this very difficult jurisdictional problem; plus the enforcement problem of that officer flying aboard a plane that is crossing Nevada. He would have great difficulty in establishing whether he was a peace officer or not, depending on whether he had crossed the boundary of the State, whereas a Federal officer would have this jurisdiction anywhere within the limits of the United States.

Mr. MILLER. That is correct, Senator. I don't think there is any question that this legislation is called for and should be enacted.

Senator ENGLE. Can we get these amendments that you suggest by the first of the week?

Mr. MILLER. Certainly.

Senator MONRONEY. We would like to have them before a meeting Monday afternoon at the very latest.

Mr. MILLER. As a matter of fact we will do our best to see if we can't get them up to you late this afternoon or perhaps tomorrow. If not, Monday morning certainly.

Senator MONRONEY. You keep referring to the fact that you want the FBI to be in on the investigations.

Mr. MILLER. Yes, sir.

Senator MONRONEY. The FBI is of course a branch of the Department of Justice and is charged with the duty of investigating Federal crimes.

Mr. MILLER. That is correct.

Senator MONRONEY. Would the use of the FBI to prevent the occurrence of a crime by the presence of special agents aboard planes in flight where there is a reasonable area where they may consider it more than normal exposure to hijack an aircraft, would that be a proper use of the FBI special agents?

Mr. MILLER. Senator, I would be perfectly frank with you. I don't know the answer to that. I would think that there would be some problems with it.

One, the Federal Bureau of Investigation is not normally engaged in that type of activity. They investigate; they do not guard.

The so-called guarding arm, which is a part of the Department of Justice, of course would look to the marshal rather than to the Federal Bureau of Investigation.

Senator MONRONEY. But the marshals are tied down to their respective Federal districts.

Mr. MILLER. But they can be—we can appoint special marshals and they can be moved.

Senator MONRONEY. They could be appointed and could be moved; is that correct?

Mr. MILLER. Yes, sir.

Senator MONRONEY. But it would be beyond the scope or the legal power of the Department of Justice to assign a certain number of special agents to fly in plain clothes on these airplanes; is that it?

Mr. MILLER. As I say, I don't know the answer to that, Senator. My guess is that it would probably be beyond the scope of the power of the Department of Justice.

Senator MONRONEY. Because of the great respect the FBI enjoys, and the feeling that they are dead shots and would not kill any other passengers in case of a riot, as people unskilled with firearms might do. It also seemed to me that the presence or the suspected presence of an FBI agent on flights might have a tendency to dissuade men of these intents, or even psychopathic persons from committing the crime in the first place.

This is a problem that we have. I would think that the plainclothes aspect of the FBI perhaps, and the great reputation they enjoy, would be one of the best insurance policies we could buy to stop this wave which we have seen occur, and which may occur again.

Mr. MILLER. There is one problem which comes to mind, Senator. It is very obvious, and that is how far we can extend the present manpower of the Federal Bureau of Investigation. I don't know if they have the manpower to accomplish this or not, but one thing that always troubled me was that it would be expanded to the point that perhaps the high standards and traditions maintained by the FBI would start to come down. This is one thing that I know we in the

Department of Justice, and I am sure Mr. Hoover, have always been very careful to consider.

Senator MONRONEY. Is there any type of commission that the Federal Government could give as you deputize a special officer, a special deputy sheriff, or, in the old two-gun days, the "high noon" type, where you could deputize marshals, that could be given to give legal authority to make arrests aboard a plane to persons selected and employed and screened by the airlines themselves.

Mr. MILLER. There is a provision and I believe it is in title 18. I could be wrong. I don't have the citation with me. It empowers, I believe it is the Attorney General, to appoint deputy marshals; and to swear them in.

If this plan were to be accomplished of course one question which would arise is where would you get the men and how would you make sure that they were adequately trained? That would be first and foremost in importance because you want the most reliable of individuals to serve in this capacity. If anything happened it would be a very trying assignment.

Secondly, of course the question of whether we could obtain additional appropriations to offer this type of activity.

Senator MONRONEY. I am speaking in this case of deputizing employees of an airline.

Mr. MILLER. Deputizing employees of an airline?

Senator MONRONEY. The railroads I know customarily have their special agents. Most of these men for law enforcement in railroad yards and otherwise carry special deputy sheriff commissions. I was wondering, since this transfers the enforcement of this phase to the Federal Government, if there is any mechanism by which some means of placement of officers aboard, particularly during spells when these seem to be occurring, could be provided for at airline expense but still carrying the authority of the Federal Government to make arrests.

Mr. MILLER. I believe, Senator, that the mechanism does exist. Whether the practical problems could be obviated I do not know. I don't know, but I assume that the Attorney General would probably want to screen very carefully any individual who was appointed to a job like this for the simple reason that he would be acting as an agent of the United States and we would have to be very careful as to what individual was chosen and whether or not he would operate in the best interests of all concerned.

Because when he is on that plane, as a marshal, he is in effect representing the United States, and anything that he might accomplish of course the United States would be responsible for.

Senator MONRONEY. Let's not fall between two chairs. Let's not march up a hill and say the great powers of Federal enforcement have been met by passing a law through Congress and then not having any way, particularly in spots that appear to be more subject to hijacking of the fleet from abroad or stealing planes from foreign governments, not having any means of implementing it through proper armed guards.

Mr. MILLER. Senator, if I had realized that this subject was going to be discussed I would have been here to present the position of the Department on it. You must realize, of course, that I cannot bind the Attorney General on this particular aspect. But, at your suggestion, I would be very happy to study the problem.

Senator MONRONEY. Maybe the suggestion is not cogent. What do you think, as an Assistant Attorney General in charge of the Criminal Division? Is the passage of a law enough, or does it in your mind need to be implemented perhaps to some degree at least by the addition of some means of having the presence of armed officers aboard, either in plainclothes or as uniformed guards?

Mr. MILLER. I would say this, as a private citizen, Senator: There are two facets to this case, and I don't know sufficiently about one of them to really give an answer. The thing that disturbs me about armed guards or arms on the aircraft itself—certainly it may very well stop a hijacking, but what would happen if there were gunplay? This is the problem that I face.

I think the real solution to this problem is to establish some means—and perhaps it is going to need a vigorous surveillance before getting on the plane—to try to make sure that no weapons are aboard the aircraft. This is my private opinion, I hasten to suggest. But I don't know what happens, for example, if you are flying several miles up in a 707 and somebody pulls the trigger and a bullet goes through the side of the aircraft. I don't know if this affects the aircraft.

Senator MONRONEY. I think it would hold together and decompress slowly enough. They all carry oxygen masks which drop automatically in your lap.

So I am not too concerned about a bullet hole through the plane, and I doubt very seriously if it would puncture a fuel tank if there would be any danger there.

The feeling I have is that we may depend too much on the written word of law and find that we have just made a gesture at meeting what could be and what has been in the last 3 weeks a sort of a wave of this, a thing which stimulates those who are psychopathic to think it is a good idea and to see if they can get away with it.

Senator ENGLE. Will the Senator yield?

Senator MONRONEY. Yes.

Senator ENGLE. Let's assume that an airline came to the Attorney General right now and said, "We are running some flights which could be hijacked to go to Cuba. We think there is a plan afoot, or may be, to take on some of these airplanes. We want to put an armed guard in the cockpit with the pilots and would like to have him deputized." Is there present authority in the law for the Attorney General to do that?

Mr. MILLER. I would say that there is, yes. Subject to reading the actual language of the statute which I don't have with me.

Senator ENGLE. We would not have to amend this bill in order to do that?

Mr. MILLER. No; I don't think it would be necessary to amend this bill.

Senator ENGLE. Will you reassure your mind on that point?

Mr. MILLER. I certainly shall.

Senator ENGLE. If it appears necessary to give the Attorney General that authority, would you draft the language to do it?

Mr. MILLER. I certainly shall, Senator.

Senator ENGLE. I agree with the chairman, we ought to have that authority. The Attorney General ought to have it.

I agree that he is not going to hand just any joker a gun and tell him to ride shotgun, or whatever you want to call it, on an airplane.

In particular cases he ought to have that authority, and under proper application from the airline he ought to be able to do it. If he doesn't now have it in the law, we can give it to him very quickly in this bill. It will probably be one of the most constructive things we can do. They talk of locking a cabin. That won't get the job done.

Somebody will put a gun at the head of the stewardess and she will open the door, or else. So that loses its effect.

I was impressed by Mr. Gilman's testimony. He said if those fellows knew the men in the cockpits were armed, it would deter them at least a little. In some instances if it was known that armed guards were riding an airplane that were capable of flying overseas or going to Havana or some place else, that has a deterrent effect. They will take a long look at it.

If it is not in the law now I would like to have an amendment drafted so that the committee at an appropriate time, Mr. Chairman, could consider it.

Mr. MILLER. We can take care of that.

As I say I think it is in the law now. I haven't the statute with me; so I could give you a reading of it right here.

Senator MONRONEY. You envision now that since the bill would prohibit the carrying of concealed firearms aboard, that this would provide for Federal authority to stop a passenger or disarm a passenger who is seeking to board a plane with a weapon.

How would this be accomplished?

Mr. MILLER. If, for example, somebody was attempting to enter an aircraft, and he had a weapon on his person—I don't recall if this has an attempt provision in it—no, it does not—we would have to wait until he actually got on the plane before we arrested him.

Senator MONRONEY. In other words a man standing in the check-in line, surrenders his ticket, unless he was actually aboard the plane would not be subject to being stopped or asked to be searched?

Mr. MILLER. Senator, when you say would not be subject to being stopped, I am talking about a Federal agent. I would certainly think that the people working for the airline would have the jurisdiction.

Senator MONRONEY. Here again we fall between two chairs. The man is on the airplane and you can't stop him if he is armed. Maybe the door is closed and he then pulls out a gun. It is too late to do any good. If you observe a certain bulge under his shoulder, before he gets aboard, this law I think should be broad enough—do you not think so, Senator Engle—to where he would be subject to being detained at least from boarding the plane by officers of the law?

Mr. MILLER. It would be a very simple matter to amend subparagraph 3 to include "or attempts to." That should cover the problem.

Senator ENGLE. Senator Bridges has that in his bill, by the way. It is something it seems to me we ought to take a look at. Let's assume that I walked up to an airplane and I had what appeared to be a small violin case under my topcoat, but it could very well be a submachinegun covered up in that fashion. What authority would a law enforcement officer have to determine whether or not it was a small violin or a small submachinegun?

Mr. MILLER. A Federal officer? Unless he had reason to believe that a crime was being committed, he would have no jurisdiction.

Senator ENGLE. That is precisely what I think. It would violate the laws against reasonable search and seizure, and we could get in trouble over that.

Senator MONRONEY. What I am pointing out is that the airline might have to make the decision to not let the passenger aboard. At that point you might get a bunch of solutions thrown around the loading ramp or something.

Senator ENGLE. Let me read the section in Senator Bridges' bill. I don't know where he got it. This is what he says, subsection (2), S. 2370:

Any air carrier in air transportation may, under regulations prescribed by the Administrator, require that any person seeking to board an aircraft operated by such carrier, submit to a reasonable search for the purpose of ascertaining whether such person is carrying on or about his person a weapon in violation of this subsection.

And the preceding subsection relates to taking concealed weapons, concealed deadly or dangerous weapons, on an airplane.

Senator MONRONEY. Or attempting to board. It includes that language.

Senator ENGLE. Yes.

Is there anything about that particular language that violates the Constitution as far as you know?

Mr. MILLER. Under the circumstances, where you would in effect have a contractual relationship between the airline and the particular passenger, I would think that the airline itself would have the right to investigate the contents of the gentleman's baggage because it would be in effect a contractual agreement, and he would in effect waive his right not to be searched. Of course the constitutional provision of unlawful search and seizure is primarily directed at the police, and not to private individuals.

Senator ENGLE. In other words it is your view that the language proposed by Senator Bridges does not violate the provisions of the Constitution against unlawful searches and seizures.

Mr. MILLER. That is my view at the present time. I would like to study it before I gave you a flat opinion. I just listened to you read it, Senator. I don't think it would.

Senator ENGLE. Can you study that between now and Monday?

Mr. MILLER. Yes, sir.

Senator ENGLE. If you would come up with an opinion on it it would be very helpful to us in determining whether or not we should include this section from Senator Bridges' bill.

Mr. MILLER. May I ask what the number of the bill is?

Senator ENGLE. S. 2370, introduced by Senator Bridges yesterday, August 3, 1961.

Senator MONRONEY. Mr. Schoepel and Mr. Williams of Delaware are cosponsors of the bill.

Senator ENGLE. Yes.

Senator MONRONEY. Are there any further questions?

Senator ENGLE. No.

Senator MONRONEY. Thank you very much, Mr. Miller, for your very helpful testimony on this. We will try our best to cooperate with you.

Our next witness is Mr. John H. Wanner, General Counsel, Civil Aeronautics Board.

Senator ENGLE. Thank you, Mr. Miller. You have been very constructive in your help.

Mr. MILLER. Thank you.

Senator MONRONEY. We are happy to have you here, Mr. Wanner. You may proceed in your own way.

**STATEMENT OF JOHN H. WANNER, GENERAL COUNSEL, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.**

Mr. WANNER. Thank you, Mr. Chairman and members of the committee.

My name is John H. Wanner, and I am General Counsel of the Civil Aeronautics Board.

The Board appreciates very much this opportunity to appear before you and testify in regard to S. 2268, as amended. With your permission, Mr. Chairman, I will omit the recitation or recital of the provisions of the bill, since you have those now before you. I think there is no need to do that.

I would like to say, also, that the Chairman regrets very much that he could not be here today because of an oral argument, a rather important oral argument, that had been scheduled for some time and is still going on.

S. 2268 as amended would modify section 902 of the Federal Aviation Act to extend the penalties now provided in title 18, United States Code, for assaults (sec. 113), maiming (sec. 114), murder (sec. 1111), manslaughter (sec. 1113), and robbery (sec. 2111) to these same acts when committed aboard an aircraft in flight in air commerce. These acts are now violations of the United States Code when committed within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of title 18, United States Code.

The bill would also make it a criminal offense for any person to assault, intimidate, threaten, or interfere with flight crew members while engaged in the performance of their duties. Violations of this provision would be subject to fine of \$10,000 and imprisonment for 20 years. If a deadly or dangerous weapon is used the punishment is increased to imprisonment for life, or for not less than 20 years.

Except for certain Government employees and officials, and persons authorized by the air carrier, it is provided that no person, while a passenger aboard an aircraft may carry on or about his person a concealed deadly or dangerous weapon. The penalty for violation of this provision is a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both.

The bill also provides that whoever while on board an aircraft in flight in air commerce commits an act which if committed aboard a vessel on the high seas would constitute piracy as defined in the United States Code shall be imprisoned as provided therein.

The Board believes that legislation of this kind is highly desirable. Under present conditions of high speed air transportation, State criminal laws are no longer adequate as a deterrent to crimes on board aircraft, not because of a deficiency in the laws themselves, but because of the jurisdictional problems created by reason of the swift transit of aircraft from one State to another and consequent doubts as to the situs of the aircraft at the time of the commission of the crime. Under

these circumstances excessive delays and difficulties in prosecuting the wrongdoer are almost inevitable. If provision could be made that offenses committed on aircraft while in flight in air commerce are Federal crimes, these jurisdictional problems and difficulties would be eliminated.

The Board strongly concurs in the purpose and objectives of S. 2268, as amended, and recommends that the legislation proposed therein, or such similar legislation as may be favorably considered by the committee, be enacted.

I would like to add, Mr. Chairman, that the brevity of this statement of ours is not due to our lack of interest in the subject matter, but rather to the recognition that in this area in particular it is necessary for us to work through the Department of Justice and the FAA. We are not only ready but willing to do so, and anxious to do so.

We hope and urge that this matter will go forward with all due speed.

Senator MONRONEY. If the scheduled airlines found it necessary in order to discourage attempts such as we had yesterday at El Paso, or would the CAB look with favor on the expenses of placing special agents on the airlines by the companies as a properly deductible item in their accounting procedures?

Mr. WANNER. I really don't know the thoughts of the Board on that subject, Mr. Chairman. Whatever expenses are reasonably necessary to insure safety, I would think it would certainly be approved as proper items of expense. The situation here is obviously critical and an important one and requires some, perhaps, heroic measures.

Senator MONRONEY. In other words, while this committee is not trying to suggest extra crew members or extra staff aboard, I am reminded that practically all oceangoing ships, whether U.S. registry or otherwise, have an officer or several officers called masters at arms whose duty it is on shipboard to preserve order, prevent crime, and if one should take place, to properly arrest and to properly investigate the crime.

If it were found necessary, you feel that would be a perfectly allowable expense item; is that it?

Mr. WANNER. I don't believe the Board has really focused on that, but I could hardly imagine they would disallow it.

Senator MONRONEY. We wouldn't require a special provision in the legislation to certify that.

Mr. WANNER. Particularly with the qualification you put on it, that it be found necessary.

Senator MONRONEY. Senator Engle, do you have any questions?

Senator ENGLE. Not at this time.

Senator MONRONEY. Thank you very much, Mr. Wanner, for answering the call of this committee for your testimony. We appreciate the support of the CAB for legislation of this type.

Senator MONRONEY. If Mr. Tipton, who is the very next witness, will excuse this one very brief witness—

Mr. TIPTON. I would be very glad to yield.

Senator MONRONEY. Thank you.

Mr. O'Brien?

**STATEMENT OF HARRY S. O'BRIEN, EXECUTIVE VICE PRESIDENT,  
FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO,  
WASHINGTON, D.C.; ACCOMPANIED BY P. A. KNUDSEN, FLIGHT  
ENGINEER, EASTERN AIR LINES**

Mr. O'BRIEN. Mr. Chairman and members of the committee, I am Harry S. O'Brien, executive vice president of the Flight Engineers' International Association, AFL-CIO. I have with me today Flight Engineer P. A. Knudsen of Eastern Air Lines, who was the engineer aboard the Eastern Air Lines Electra that was hijacked on July 24 and flown at gunpoint to Cuba. When I conclude this short statement, which represents our association's opinion on S. 2268 as proposed by Senator Engle, I would like to ask Mr. Knudsen to give you a short account of what happened aboard the Eastern Air Lines Electra on July 24. He will be glad to answer any questions which the committee might have.

Our association represents professional flight engineers on 11 of the Nation's carriers including the 2 international American-flag carriers—Pan American and TWA. In addition, we represent the engineers on Eastern and National Airlines, both of which fly either into or near Cuba. Therefore, we have great interest in the proposed bill and amendment.

We firmly support S. 2268 and amendments thereto. We feel that this hijacking of airplanes and the attendant threat to life and limb of passengers and crews must be brought to a halt.

There have been suggestions in the press and elsewhere, including a statement by FAA Administrator Halaby yesterday, about arming the flight crews and locking the cockpit doors. We feel that these measures are at best only a deterrent. We think that it would be a simple matter for an airborne Blackbeard to point a gun at the head of a stewardess or passenger and force the crew to comply with their orders. Locking the doors or having a crewmember armed would have little effect in such a case.

Indeed, it might bring on other consequences such as a gun battle in a 600- to 700-mile-an-hour jet, 5 miles high in the sky. The effect of a bullet passing through the pressurized hull of the aircraft, or windows, could be disastrous. This, of course, is to say nothing of the danger to the passengers.

We think the answer to this stealing of airplanes lies within the law. If the penalty, and the enforcement of the penalty, is severe enough, these airborne pirates and crackpots may think twice before hijacking American aircraft. We have on the books in this country the Lindbergh law concerning kidnaping and crossing of State lines. We think that any person who steals an airplane should be prosecuted under this law and suffer its dire penalties. We would recommend that the penalty for aviation piracy be made as strong as the law allows.

In the meantime, we would recommend that the Federal Aviation Agency be requested by the committee to make the locking of cabin doors mandatory on all passenger flights. This will at least keep the crackpots out of the cockpits. We also ask that the law be expressly worded to make the penalties applicable to anyone who interferes with cabin attendants as well as flight crew members.

I thank the committee for this chance to express our views here today and regret that our president, Mr. Ron Brown, could not be here due to pressing out-of-town business.

I would like now, with your permission, to ask Flight Engineer Knudsen to give you a short rundown on what happened aboard his flight which was hijacked at gunpoint on July 24 and flown to Cuba.

Thank you.

Senator MONRONEY. We are happy to have you, Mr. Knudsen.

Would you give us a short statement as to your experience and what happened, and how the hijacking occurred? It might help the committee understand a little bit more about the dangers.

Mr. KNUDSEN. Thank you.

My name is Phillip A. Knudsen. I am a flight engineer with Eastern Air Lines, and have been employed with them as an engineer for 6 years.

I was a flight engineer on flight 202, the morning of the 24th of July. It was a routine flight as far as the beginning of it was concerned. We were out at 9 o'clock, and at 9:05 we were in the air.

Senator MONRONEY. You were out of Miami at 9?

Mr. KNUDSEN. Yes, sir. We left the ramp at 9 and were off the ground at 9:05.

About 10 minutes later the stewardess came up with coffee, and as soon as she left this character was in the cockpit. There was nothing we could do to stop him.

Senator MONRONEY. How soon would you say this occurred after takeoff?

Mr. KNUDSEN. About 10 or 15 minutes after.

Senator MONRONEY. You had leveled off in full flight?

Mr. KNUDSEN. Cruise altitude; yes, sir.

He stood behind me all the time. In fact, even if we were armed, I don't think there was anything we could have done about it. He was certain to stay behind me, so there was no chance of me getting at him, which would have been silly, I think, anyway.

It was pretty well planned, because I think he planned his move when the stewardess left. He knew that she wouldn't be back for 20 or 30 minutes at least. He just told us to turn around and head to Cuba.

The captain asked him why he didn't take a regular flight, and he said, "They wouldn't let me."

So we did as he said. It all turned out for the best as far as the crew and passengers were concerned.

Senator MONRONEY. Had he been sitting in the front of the plane?

Mr. KNUDSEN. Yes, sir. The front seat on the right side, right by the cockpit door.

Senator MONRONEY. And the door was unlocked?

Mr. KNUDSEN. Yes, sir.

Senator MONRONEY. Since that time have the doors been locked?

Mr. KNUDSEN. Yes, sir.

Senator MONRONEY. Are they sufficiently strong to prohibit or to deny access to the cockpit of an unauthorized person?

Mr. KNUDSEN. I don't think so. A good kick would probably bust the lock on it.

It wasn't funny, but he seemed to have security from that door. He was backed against the door, with his foot on my seat.

One time the steward came up and tried to get in and he opened it about a foot, and this man just pushed it back and locked it. And from then on he knew he was all right from behind, and he just had the gun there.

Senator MONRONEY. He made no threats in the cabin or anything?

Mr. KNUDSEN. Well, he tapped me on the head with the gun.

Senator MONRONEY. I mean, he made no threats to the passengers in the cabin?

Mr. KNUDSEN. Oh, no, sir.

Senator MONRONEY. Did the passengers know what was going on?

Mr. KNUDSEN. One passenger saw him go in there, but they didn't realize. They thought he was a company man or FAA official.

Senator MONRONEY. This was a Cuban national?

Mr. KNUDSEN. He was born in Cuba but an American citizen, he said. He said he was an American citizen.

Senator MONRONEY. The course of the flight was what, about 20 or 30 minutes?

Mr. KNUDSEN. We estimate he got in there about 9:20 and we landed in Havana about 10:30.

Senator MONRONEY. A direct flight?

Mr. KNUDSEN. Yes, sir. We were heading toward Tampa. He told us to turn to 210°, which is not correct, but nearly correct for Havana. And the captain made a wide turn to the right instead of going quicker to the left. We could have got around 210 quicker. And we were picked up by the Miami radar right away.

Senator MONRONEY. Did the Air Force come aloft, or fly patrol along the plane?

Mr. KNUDSEN. Yes, sir. They were up above us.

Senator MONRONEY. And, of course, unable to do anything about it.

Mr. KNUDSEN. Yes, sir.

Senator MONRONEY. Were you allowed to communicate by radio to your control tower?

Mr. KNUDSEN. The first time, the first thing, one of the first things he told us was to turn the radio switches off, and take your headsets off; which we did, of course.

Senator MONRONEY. That could endanger air traffic considerably as well.

Mr. KNUDSEN. We were at the wrong altitude, going the wrong way.

He wouldn't let us turn the radio on until he could see the island of Cuba. Then he felt pretty secure.

Senator MONRONEY. Then did he tell you to turn the radio on?

Mr. KNUDSEN. Not just then, either. We didn't know the frequencies or anything. So we had to call Key West and get the proper frequencies to talk to them.

We explained to him that if they didn't know we were coming, when we got down there they would start shooting at us. He seemed to realize that, so he let us talk to them.

Senator MONRONEY. Did they then give you clearance to come in?

Mr. KNUDSEN. They told us to circle. We circled off Havana about 10 miles for about 10 minutes—10 or 15 minutes.

Senator MONRONEY. Was there any indication that they were expecting this plane to be hijacked and brought in?

Mr. KNUDSEN. Well, Gagarin was coming there that same day. He landed 2 or 3 hours after we did. All the big wheels were in town at that time. We just saw the flunkies around the airport, and they didn't expect us at all, as far as I could see.

Senator MONRONEY. Do you agree with Mr. O'Brien that it would be futile to arm the crews? In other words, had any of the crew been armed, would that have helped?

Mr. KNUDSEN. Not in our situation. He was behind us all the time, and there was nothing we could have done.

Senator MONRONEY. Did you have two stewardesses aboard?

Mr. KNUDSEN. We had a stewardess and a male steward.

Senator MONRONEY. If the airlines would choose to have, say, one stewardess and one master at arms who would help, would that have been of any assistance to you in the predicament you were in?

Mr. KNUDSEN. He had his back to the door. If they had known that, maybe they could have shot him through the door.

Senator MONRONEY. And they might have shot the pilot.

Mr. KNUDSEN. My back is to the door, too. In that case he would have probably sat over in the jump seat, which is on the left, and he would have been right behind the captain at that time and he would have been protected that way, if you know the layout of this particular airplane.

Senator MONRONEY. You sit in the slot between the two, with your back to it?

Mr. KNUDSEN. Yes, sir.

Senator MONRONEY. Senator Engle?

Senator ENGLE. I would like to ask Mr. O'Brien whether or not the language in the bill "flight crewmember" includes, in his opinion, cabin attendants? The present language says, "While on board an aircraft in flight in air commerce, assaults, intimidates, or interferes with any flight crewmember of such aircraft." Do I understand, Mr. O'Brien, that you believe that that language would only apply to men like Mr. Knudsen as those directly involved in flight operations and would not therefore include, say, threatening a stewardess or steward; is that right?

Mr. O'BRIEN. I have heard this interpretation from the Government agencies such as the FAA, yes, that they do not include the cabin attendants as a flight crewmember. This is the reason for that statement.

Senator ENGLE. We can fix that pretty easily, either in the report, to make it clear from the standpoint of legislative intent that that is what we mean; or at line 2, page 2, after the word "member" we can insert the words "and/or cabin attendant," and on line 3, after the word "his" put "or her." So the language would then read: "flight crewmember and/or cabin attendant of such aircraft, while engaged in the performance of his or her duties."

Mr. Chairman, I offer that for the consideration of the committee when the bill is ready for marking.

Senator MONRONEY. That would be very helpful.

I believe you represent the Stewardesses' Union now, do you not? Have they gone with the Engineers?

Mr. O'BRIEN. No, sir; just the Flight Engineers. Some of the stewardesses are represented by the AWU, some by the ALPA.

Senator MONRONEY. Thank you very much for your helpful testimony on this, Mr. O'Brien and Mr. Knudsen. We appreciate your appearance.

Our next witness is Mr. Stuart Tipton, president, Air Transport Association.

Mr. Tipton, we are happy to have you here to testify. I know you have given this a great deal of thought as a representative of our great airline system.

**STATEMENT OF STUART TIPTON, PRESIDENT, AIR TRANSPORT ASSOCIATION, WASHINGTON, D.C.**

Mr. TIPTON. Thank you Mr. Chairman and Senator Engle.

For the record, I should say that I am president of the Air Transport Association, representing virtually all of the scheduled certificated airlines of the United States.

I have no prepared statement at this time. I want to start my statement in a fashion that I often find appropriate before this committee, and that is again to thank you very much on behalf of the industry for aggressively and promptly tackling industry problems as they arise.

I think the committee will agree with me that in presiding over the legislative affairs of the air transport industry we seem to give you frequent occasion to tackle our problems. I do hope that there will come a day when we can have a situation in which the pressure is not so constant and severe.

Senator MONRONEY. That is a mutual hope, but not one that we expect to come to reality soon.

We do appreciate the efforts you have made, and representatives of the Airline Pilots Association, and representatives of the FAA, CAB, Flight Engineers, and all the other men, including Bill Lawton of the Business Aircraft, who helped keep this committee informed. The information we have received has been very helpful in meeting many of the problems which aviation faces.

Mr. TIPTON. Thank you, Mr. Chairman.

My statement will be roughly dealing with two issues, both of which the committee has expressed a very proper and commendable interest in this morning. The first issue is the legislation itself that is before the committee. The second issue is methods, techniques, procedures, that can be adopted to avoid hijackings in the future.

As to the legislation, we support legislation before the committee with great enthusiasm and express the hope that it can be adopted promptly. I think Senator Engle is certainly due our appreciation for preparing and supporting this legislation because in dealing with the type of legal problems that we have been encountering increasingly with the high speed aircraft, it is perfectly plain that in order to provide the passengers on aircraft, the aircraft crews with adequate protection, we need some explanation and clarification of the criminal statutes as they apply to aircraft.

I will not attempt to analyze the existing law on the subject or the attempt of this legislation because it has been well and effectively done before the committee already.

We do support it, and I hope it will go forward.

I should say also that we have not analyzed this legislation from the standpoint of the criminal law and procedure aspects of the legislation. We assume, and of course we were right in assuming, that the Department of Justice Criminal Division would examine it carefully and would advise the committee on that.

We do have one or two comments to make. One, we raised the question with the committee as to whether it is necessary to restrict some of these provisions to the operation—the provision I am referring to is (i)(1)—whether it is necessary to restrict these provisions to aircraft in flight. I can of course see immediately the reason for putting such a restriction in because the real and difficult jurisdictional problem arises when the aircraft is in flight. But I raise the question as to whether it would not be wise to also include the operations of aircraft on the ground, and include them all in order that they would be under Federal jurisdiction since these aircraft are of course Federal instrumentalities, so to speak.

Senator MONRONEY. Would that not, however, present a problem unrelated to this. For example, if two mechanics were to engage in a fight in the preparation of the plane for flight, this would not seem to me to bring into bearing the very severe penalties that are provided for in this act. I think if you wanted to define it to aircraft on the ground, it should be "in readiness for flight" or something more limited than merely the presence within an aircraft.

In other words, Mr. Engle's bill makes this law apply to such things as assault or assault by striking and being wounded, and things of that kind where it brings in a special jurisdictional matter, including up to the crime of rape. The laws of the State, the laws of the ground properly would provide for that whether it occurred in a parked aircraft on a lonely airport or whether in the flight or in the readiness for flight, which I think would be your qualification for the unusual features of this act.

Mr. TIPTON. I think it might well be restricted to preparation for operation or in operation on the field in order to eliminate what you might call the routine occurrences on an airport.

I recommend that this problem be looked into in view of the fact that of course one of our very severe problems is that which occurred in the Pacific not long ago, which was of course on the ground. In part the activity involved in the Continental incident was on the ground, too, although the effective act took place in the air.

I raise that question as to whether it might not be broadened in that respect.

Senator ENGLE. Mr. Tipton may I make a comment there and say that we gave that some thought. But local law enforcement officers are jealous of their jurisdiction. Police powers have traditionally been reserved to the States and local jurisdictions.

We don't want to transgress upon that very sound principle any more than we have to. We think that when an airplane gets up in the air and starts to move in that element, that it presents to law enforcement problems that are unique and are not susceptible of solution on the ground.

Let's take the case at Chico, for instance, and that by the way is just 40 miles from my hometown and I am very familiar with that airline operation. That plane was boarded. It started taxiing. This gunman shot the pilot and inflicted dreadful injuries on him.

But the local jurisdiction has him just as hard and tight as you can possibly imagine, and he will go to jail for a long, long while. If that pilot dies he may end up even worse than going to jail.

So the reason that we avoided the situation where we had occurrences on the ground, although in an airplane, No. 1, for the reasons specified by the chairman, that those crimes are easily susceptible of local law right then and there. And secondly, they do not bring to bear the difficult problems of jurisdiction and management that you have when you have an aircraft in flight.

That is the reason it was left out and was left out deliberately.

Mr. TIPTON. I wouldn't want to press the point. Having raised it, I think the jurisdictional aspects that you point up are of course important ones.

I would like to make one or two comments on questions that have been raised in the course of the testimony.

The representative of the Department of Justice suggested the possibility that there be eliminated from the applicability of this legislation operations by American-flag airlines over foreign countries; as contrasted with over the high seas. And he suggested that the legislation actually be limited to applicability within the territorial jurisdiction of the United States. I would like to raise a question with respect to that recommendation because I think it might well turn out to be, in experience over the years, another loophole that would cause us trouble.

He pointed up the fact that there is a provision in the 1944 International Civil Aviation Treaty which establishes sovereignty by each nation over its airspace, and was concerned as to whether a law of this kind, covering the scope that it does, would be in conflict with that treaty.

I obviously haven't researched the question at length but I am quite familiar with that treaty and I would be greatly surprised if it were found that it would be in conflict in a case which could conceivably happen where one of the crimes referred to in this statute were committed over a foreign country and the criminal apprehended at the end of the flight within the United States.

It is obviously a somewhat complex question. But I would believe that the committee, if it adopted that recommendation, would be opening up a loophole that need not be opened.

Another question that has arisen is the definition of flight crew member. I made a mental note to agree with the previous witness that the present term flight crew member does not include, in normal parlance, the cabin attendants.

Senator ENGLE. A moment ago I suggested some language. It occurred to me that we could accomplish the same objective by just striking the word "flight" and make it say "crew member."

Mr. TIPTON. I think you could.

Senator ENGLE. And say in the report that we are deliberately doing that, and making that amendment to the bill in the original form. Our intention is to include everybody in the crew and not just those who are directly involved with operation of the aircraft and involved in its safety.

Mr. TIPTON. Yes; I think that would do it, to strike the word "flight" and make it "crew member" which in common parlance does include cabin attendants.

Those are the comments that I have with respect to the legislation itself, Mr. Chairman.

I would like to emphasize the point I believe made by Mr. Halaby that this problem takes on additional urgency in view of the fact that these legal problems have become so well known.

Consequently I know this committee will be anxious to move forward and we hope that it will.

Now to turn to the question of the airlines' efforts along with the Government to thwart this threat of continued hijacking.

Clearly this legislation is one of the steps, and an important step, in helping to stop that.

We have examined the airlines among themselves, the airlines working with the Federal-aid to Aviation Agency, and have studied a variety of methods of dealing with this problem. Our situation at the moment is as follows: The airlines are locking cockpit doors. It has not, obviously, always been an airline custom to lock cockpit doors.

I think it is well to understand the airline reason for not locking cockpit doors, even though we have now decided to change it. It has always been the belief among the airlines that free access was important in the event of accident or other misfortune from the cabin to the cockpit. And for that reason they have made every effort to make that access available.

There comes a time, of course, when you have to measure advantages against disadvantages. We have reached that time. We are now locking cockpit doors, even though it carries with it the disadvantage that we have always felt was important.

Senator MONRONEY. Are you satisfied, Mr. Tipton, that the doors would withstand the normal thrust of an average-sized man's weight, or a heavy kick?

Mr. TIPTON. I think that the character of the door is not a heavy door, but it is such as to block sufficiently an effort to crash into the cockpit. If locked, it would serve as a very substantial impediment to getting up there.

Whether or not continued assaults on it, battering from the cabin would block it, we feel that it is a sufficient deterrent to getting up in the cockpit if that door is locked.

The second step is one which has been discussed a great deal in the last 2 weeks with the Federal Aviation Agency and ourselves, and that is the close surveillance of passengers boarding aircraft.

It is quite clear that if you could make an absolutely successful surveillance of all passengers getting on board, the problem would be solved. The difficulty has been developing a method within feasible limits of preventing armed persons or demented or drunk persons from getting on board.

The procedure which has been worked out, and which has been recommended to the airlines by the FAA, has been the assignment of supervisory personnel on the gates, the close observation of persons getting on board, the rejection of passengers who give reason to believe, in the judgment of those observing, that they involve a potential hazard to be held for search by local enforcement officers. And that procedure is in effect.

There is no question that that is going to make it more difficult for us to load passengers. I am sure that the traveling public that moves on airlines are going to find it more difficult and inconvenient to get on

board. But I think if they understand the reasons for the measures that we will have the cooperation of the public. At least I feel sure we will.

One difficulty involved in this is of course that the airlines themselves have no police power. They are just private citizens. And it does involve them in the possibility of mistakes and some civil liability. Therefore we look forward to the cooperation of local enforcement officers and Federal enforcement officers in order to help us get this done. As Mr. Halaby said, the Federal Government has made that request on local enforcement officers and we look forward to that kind of cooperation from him. The point I want to make is that we need it very badly in order to get this done.

Senator MONRONEY. Would it relieve you of any liability if, under the terms of your contract with the passengers, you required identification of the man's proper name, his proper address, and residence, so that if there was any doubt in minds of the officials or agents of the company, to require a man to show a driver's license, registration certificate or some other personal papers to clearly identify the man as a proper citizen with whom the operating company would contract for his carriage.

Mr. TIPTON. I think that we could, yes, require identification.

Senator MONRONEY. In other words I am thinking in terms, as you must be, of the person who is psychopathic or who is disturbed or who is a criminal in flight or who has a conspiracy in mind to hijack a plane or to take it out of the country. It seems to me that whatever impediment of this nature may be thrown in their way, that they will be more carefully scrutinized as to their respectability and that it might be helpful in a way.

Mr. TIPTON. I think we have to explore all sorts of matters in attempting to make such identification. At the present time the method is necessarily dependent, as it always will be, upon the judgment of supervisory officials observing the passengers as they get on board. That is what it is based on now, and I don't know whether it would contribute to a solution of this to require identification or not. That clearly would take a long time.

Senator MONRONEY. Generally speaking a man has his driver's license with him wherever he drives. He has some papers which he carries. If there was a question it would be up to finally the person to pass him, if he had no identification it would give you an out against a lawsuit because of prohibiting a person from boarding if it was thought he was a dangerous character when you could say his identification didn't check out, "We called your residence and there is no such residence" or something.

Senator ENGLE. May I suggest, Mr. Chairman, that if Mr. Miller is correct on the law—and I assume he is—that since this is a contractual relation between the airline company and the passenger, that you presently have the authority to do that, and your passenger supervisors would have the authority to do it now if they wanted to. Otherwise you could refuse to go into the contract of carriage.

Certainly I asked him whether or not he thought this section in Senator Bridges' bill authorizing search was a violation of the search and seizure clause of the Constitution and he said it wasn't. That is his preliminary opinion. It would seem to me that you might have

that authority now if you wanted to exercise it. I didn't want to interrupt him.

Senator MONRONEY. I am glad you did.

Mr. TIPTON. I reviewed that section of Senator Bridges' bill, and—

Senator ENGLE. You would feel safer with it in the law, wouldn't you?

Mr. TIPTON. You bet we would. It introduces problems. I wouldn't like to be very positive on what our legal position is; because we may have occasion to argue about it at some later time.

Senator ENGLE. I would agree that searching a person's personal effects, or searching him or her, is a very different matter than asking for plain identification as to who you are. That doesn't involve any intrusion on privacy, whereas this business of digging through people's luggage and "shaking them down" with reference to trying to find concealed weapons gets pretty close to the limit.

If I were an airline executive I would much prefer to have this authority in the law so that if somebody sued, I wouldn't be just wholly without anything to lean on.

Mr. TIPTON. I quite agree with you, Senator Engle, on that. I think it would be a useful provision; though I don't want to be held to say that such a provision is essential.

To go further with these steps that we have been working on, we appreciate very much the efforts made by the Government in issuing a reward. That is a good step.

Now we come to another about which we have had some discussion. The committee has had some discussion today on this, and that is the arming of flight crews.

That the airlines would not like to do. As a general matter, we believe that that would introduce more hazard, more difficulty, than it would eliminate. Consequently we would prefer not to do that, even though, as Mr. Halaby has said, he has issued an order which gives the airlines the right to authorize their crews to carry arms if they are competent in the management of them.

But we would prefer not to do it.

On the question of armed guards, that is still under consideration and discussion with the Government. It carries with it again some real problems of having armed guards on board because we would be concerned about the possibility of any gun play on board an aircraft which might result from armed guards being aboard. However, as I say that question is still under consideration; the heavy emphasis being now on the locking of the cockpit door and surveillance of passengers as they get on board.

In conclusion, Mr. Chairman, I would like to, on behalf of the industry, pay a tribute to the people who had so much to do with the Continental incident of yesterday. I think that our industry wants to express its appreciation to the Government agencies who helped out, and I think also that the action of Continental Airlines, its management and its crew, should be recognized as a very fine performance. In the case of Continental, they were in the very difficult position for many hours of having to deal with not only a dangerous situation, but one having very obvious international complications. They were in that position for quite a long time before it was possible for a Government position on these difficult questions to be given to them. And

during that time they managed to hold the situation, so to speak, in midair.

In doing so the crew had some very bad moments particularly in view of what happened in the accident at Chico a few days before.

I would hope that the committee, and the President of the United States, in view of the importance of these questions, would commend Continental and its staff for a very fine handling of this situation, as well as all the Government representatives that were involved in it.

That concludes my statement, Mr. Chairman.

Senator MONRONEY. Thank you very much, Mr. Tipton.

As we pass the law, if we do, the enforcement will be of course a very serious matter. It is ineffective if the law is not observed. About the only enforcement I believe that you have readily approved of would be, one, locking of the door of the cockpit, and two, closer surveillance of passengers.

The airlines would not be willing to consider, under the present situation, a cabin attendant who would be a master at arms of their own choosing, is that correct?

Mr. TIPTON. In our consideration of the questions of armed guards aboard aircraft, we had considered either Federal or local law enforcement officers as that possibility, and had not considered appointing members of our own staff as, shall we say, private security police.

We have security staffs on the airlines. But their work is largely in the area of protecting the airline property on the ground and the shipments on board and the like. It is a small staff. We have never had the type of master at arms that you referred to in the steamships, and consequently I am really not prepared to say what an airline position is on that because I don't know. As I say the Government and the airlines are working on this armed guard problem now. I also should point out that there are now armed guards on some flights operating in the United States at the present time. It is probably just as well not to specify which.

Senator MONRONEY. Of course we all know, and those of us who have investigated the accidents know that when there is one bombing scare, there are a dozen bomb scares. These seem to run in cycles. It is a sort of hysteria that appeals to people of unbalanced minds. This may be one of those one-in-a-million cases. Perhaps it is one-in-a-million cases when you measure the flights by the instances of this kind that happen. It is always a matter of legislative interest to try to see that the law is clear and if possible enforcement is at a maximum to guarantee the safety of the flight.

My feeling is that while it does contribute to air safety, and it is something we must concern ourselves with, if we could solve some of the other problems of air safety we could guarantee a safe arrival for the millions who fly with greater assurance than we can if this stopping of this current wave and future waves will be passed.

This is not to say that we shouldn't put a high priority on it and to fill in any gaps and to give the enforcement. I still feel that law without tightening up the enforcement itself would be less than the Congress would hope it to be in its effectiveness.

Mr. TIPTON. In connection with the enforcement of the law, that that is the Government's responsibility to enforce the law. As far as this problem is concerned it is entitled to the highest priority. The problem is just what you said it was. That these problems tend

to grow on each other. I think we must deal with it as we have had to deal with other similar problems. It is a high priority.

Senator MONRONEY. Senator Engle?

Senator ENGLE. To what extent can you refuse a passenger a ride? Let's assume that you have one of your passenger agents, supervisory employees, who looks at a fellow and he says, "You look just a little bit nuts to me, and I don't believe we are going to let you on this airplane." The prospective passenger takes high umbrage at that characterization of him. What are the rights of the parties, as my law professor would say?

Mr. TIPTON. The rights of the parties are I think just about this: Airlines are common carriers. They are bound to carry those that present themselves up to the extent of their capacity.

Consequently when an airline does that, as it might well have to under these circumstances, they are taking a chance of incurring civil liability.

That is unfortunately quite clear.

In the litigation with respect to the civil liability that would be affected by the justification the carrier had for refusing passage. It is in that area where you would be on slippery ground because you can't really wait until it is fully demonstrated that you have justification for refusing before you do it.

To a large extent this process of surveillance involves the airlines in legal problems.

Whether they would win or lose the lawsuits we don't know. But it is a legal problem every time; and it is for that reason—that reason plus a number of others—that we are very anxious to have the local law enforcement people help us.

Senator MONRONEY. Would it help in any way in increasing your selectivity and observation of passengers if language were written into the act making it a duty contingent in its relationship to safety for this scrutiny of the boarding passengers, and the restatement of the right to withhold, on the grounds of security, the fulfillment of the carriage of the passenger, even though ticketed?

Mr. TIPTON. As I understand it, legislation might be written which would authorize a common carrier by air to reject a passenger in the event that he believed he would be a safety hazard on board the airline.

Senator MONRONEY. In the judgment of the carrier alone, so he wouldn't necessarily have to prove that he was a safety hazard.

Mr. TIPTON. I think it would help a great deal.

Senator MONRONEY. I know it would help with drunks. I have heard stories, and I think you have been sued, involving movie stars—excuse me for talking about the citizens of California—for boarding and then being sued because of the alleged embarrassment that ensued because of being denied transportation.

Mr. TIPTON. First, I think that is an excellent suggestion. Second, I think the important thing is that it be framed as being in the judgment of the air carrier, or its employees. That does give a carrier protection against a mistake, and there may well be mistakes.

Senator MONRONEY. As long as it is an honest mistake—

Mr. TIPTON. If it is an honest mistake then we would be relieved. I think that would be a very useful provision in this statute.

Senator MONRONEY. The chairman has to be temporarily absent. If there are no further questions, Mr. Tipton, we thank you very much.

We will start with the next witness, Capt. John Carroll, first vice president, Air Line Pilots Association.

The chairman will be asked to be excused and Mr. Engle will take over while I go to the floor for the transaction of some necessary business.

Mr. TIPTON. Thank you very much, Mr. Chairman.

Senator MONRONEY. Thank you, Mr. Tipton.

Our next witness is Capt. John Carroll, first vice president of the Air Line Pilots Association, and he is accompanied by Larry Cates and Tom Basnight.

We are happy to have you back, Captain Carroll. We have had you before our committee many, many times. We have always appreciated having the valued contribution of the Air Line Pilots Association in matters of aviation and aviation safety.

You may proceed in your own way.

**STATEMENT OF CAPT. JOHN CARROLL, FIRST VICE PRESIDENT,  
AIR LINE PILOTS ASSOCIATION, NATIONAL PRESS BUILDING,  
WASHINGTON, D.C.; ACCOMPANIED BY LARRY CATES, EXECU-  
TIVE ASSISTANT, WASHINGTON AFFAIRS; AND TOM BAS-  
NIGHT, SAFETY REPRESENTATIVE**

Mr. CARROLL. Thank you, Senator Monroney.

I am John C. Carroll, first vice president of the Air Line Pilots Association. I am here today to represent that organization.

By way of personal background, I hold a bachelor of science degree and have graduate credits toward a master of arts degree. I have been an active airline pilot for 20 years and have accumulated more than 17,000 flying hours. At the present time I am flying both Convair and Boeing jet transports.

The Air Line Pilots Association sincerely appreciates this opportunity to express our views on the proposals expressed in Senator Engle's bill, S. 2268.

We come behind some people who are very expert in their praise of the committee work. We would like to add our voice to this and hope that our intimate knowledge of the air safety field will lend it additional weight.

We admire and appreciate your constant and diligent attention to all facets of air safety. We are pleased that the committee has moved so swiftly to provide needed legislation to cover "crimes aboard aircraft in air commerce."

Our organization is also constantly at work toward improving safety in air commerce. We have long recognized and been concerned with the potential danger of having criminals or other desperate elements board our commercial aircraft in the guise of passengers for the purpose of taking control of the crew and aircraft at gun point.

In December of 1957 our safety committee investigated the areas covered by S. 2268 and subsequently pointed out the associated danger. We requested the FBI, the CAB, and the CAA—as it was known then—to study the problem. We requested Federal authorization for pilots engaged in air commerce to carry arms if the situation dictated. We specifically had in mind those times when law enforcement officers were transferring dangerous criminals to trial or prison. Our requests

were equally applicable to times like the present when there seems to be an organized conspiracy to forcibly take control of a large number of our commercial airliners.

At that same time we also urged the adoption of a Federal regulation that would make it illegal for any but authorized persons to carry firearms or dangerous weapons of any sort into the passenger cabin. We believed then and we believe now that firearms or other dangerous weapons, regardless of type, should be carried only in the baggage compartments. This specifically includes hunting rifles, shotguns, and other so-called sporting arms that are ordinarily carried in cases as part of a passenger's hand baggage.

To bar the carrying of concealed weapons is not enough. Anyone bent upon forcibly taking over an aircraft can accomplish his purpose just as easily with a sporting rifle or shotgun as he can with a pistol.

In short, we feel the only complete answer is to keep all lethal weapons out of the passenger cabin. However, it appears impractical to search every passenger who boards an airliner anywhere in the United States. Therefore, we feel one logical step is to provide a maximum deterrent by passing and enforcing rigid Federal laws which provide grave penalties.

Pilots of a modern airliner are much too occupied with their duties of operating and navigating their aircraft to extensively police the activities of passengers. In fact, we are required by the Civil Air Regulations to stay in our seats in the cockpit at all times except to attend to essential flight duties.

To comment on the specific language of the proposed legislation, we urge deletion of the words "in flight" wherever they appear. We believe these words can be interpreted to be more limiting than is desirable. Many of the previous serious accidents have occurred while the aircraft was on the ground.

Referring to (i)(3), we propose deletion of the word "concealed" for the reasons previously mentioned.

In conclusion, we believe this bill is necessary to establish these crimes as Federal offenses. We recognize the penalties recommended are severe but large numbers of innocent people have been exposed to great danger and every effort must be made to provide a maximum deterrent.

I would like to read from the report that we have on the transfer of these criminals.

The law enforcement agencies have been using the airlines for some time to transport various individuals in custody from one city to another. In some cases these individuals are being extradited from one jurisdiction to another. In other cases prisoners are transferred from one prison to another of maximum security. Still others deal with escaped criminals who have been recaptured and are being returned to the point of escape.

The tariffs are silent as far as any regulations are concerned as to the transportation of such persons. The airlines frequently are not advised that such persons are aboard and in no case, as far as we can determine, have the pilots been advised.

The only time the captain becomes aware that such a person is on board is when the hostess happens to notice that a certain individual is handcuffed to another sitting next to him.

I think that the committee would be well aware that a criminal who is under life sentence or some other severe penalty has very little to lose in a situation like this, and it would be very important for at least us to know about it.

It would also be helpful, when you have two people sitting handcuffed, if we knew which was which.

Senator ENGLE (presiding). Can't you tell by their looks? Not always, I take it.

Mr. CARROLL. I have seen some gentlemen handcuffed and I thought I could make a guess, but it would be most helpful in the event we have them identified. It really was not intended to be facetious, although I am sure it would readily lend itself to that.

If, for example, the criminal should overpower the guard with him and take his arm—and they are usually armed, the guards—if we didn't know in advance of the time they bared and there wasn't proper identification made, the fellow could very easily make off with his guard at the other end.

Senator ENGLE. Doesn't the Federal Aviation Agency or the CAB have authority now, under present law, to require law enforcement officers transporting prisoners to identify themselves so that the airline will know who is on the airplane and under what circumstances? Can you answer that question?

Mr. CARROLL. As far as we know, whether the authority exists or not, it is not done as of now.

Senator ENGLE. I will ask the staff to determine whether or not that is in the present authority.

They ought to be able to say now to law enforcement officers: "When you are transporting a murderer from Chicago, being extradited back to California, you are obliged to tell the airline that you are taking him and under what circumstances, so that they can be apprised," we have been talking here about a contract of passage, to carry passengers, "of what kind of contract they are getting into."

Take a look at that and see if it is not currently within their power to do that. If it is, they ought to at least put the airline on notice so that the airline is not carrying a very dangerous criminal without being forewarned and to take such precautions as the airline itself may feel to be important.

Mr. CARROLL. We would like to proceed here, if we may, with some of this record which was transmitted to some of these agencies.

Senator ENGLE. I suggest you put it in the record, because we are short on time. We will look into that.

Mr. CARROLL. All right.

Senator ENGLE. I have gone through your statement with reference to these other suggestions. I notice you bring up the question of whether or not we ought to be able to carry any firearms in an airplane. You say:

Anyone bent on forcibly taking over an aircraft can accomplish his purpose just as easily with a sporting rifle or shotgun as he can with a pistol.

The duck hunters in my country, and the pheasant hunters, and the deer hunters, ride that specific airline, the one where the shooting occurred in Chicago recently, all the time. When they board an airplane you would think they had a guerrilla squadron of some sort with all the guns they are carrying to go shoot pheasants, duck, or deer in northern California.

I can imagine the roar that would come out of the sporting people of this country if we tell them they can't take a gun on an airplane.

But it seems to me that the last time I tried to take a gun on an airplane I notified the company that I had a gun, and they told me I had to break it down or take the bolt out of it. Some shotguns you can break down, as you know. You can take them apart, and they cannot be fired. Others can't be broken down, such as automatics. And the automatics themselves can't be broken down.

But on this particular point I would like to ask you again: Do you know whether or not either the CAB or the FAA have the power under present law to require safety measures to be taken with firearms transported on commercial aircraft?

Mr. CARROLL. I believe as of the day before yesterday the FAA passed a special regulation which dealt with the carrying of concealed weapons. But as of today, I believe that rule 65 of Agent J. B. Walker's passenger tariff is still in effect. Since this is not included in our statement, it is one page, double-spaced, and I would like to read it because it covers very quickly and thoroughly the subject of the carriage of guns in passenger cabins.

Mr. CARROLL. These sportsmen on the Pacific airlines might very well be able to check their case equipment with the hostess, put it in the coat compartment, and in other cases they may lend themselves to the baggage compartment.

In addition to the pheasant hunters in California, there is extensive travel in Alaska, to which there is substantial transportation of arms. These are frequently in smaller aircraft.

Our proposal, and our proposed wording, revised wording of the bill, would not preclude arrangements being made with the airline to handle these guns in a way that was deemed safe by the airline and the captain of the airplane. This is our opinion on it.

We feel very strongly about the importance of this. As you understand, Senator, one of the best ways now for someone to take over one of these airplanes is simply to buy himself a hunting outfit and have this unloaded rifle in the case and a package of small arms ammunition for personal use when packed in the original package. It would be simplicity itself under the present situation.

As of the day before yesterday, I believe that the FAA regulations prohibit the carrying of concealed weapons, but does not do anything about this sporting equipment.

Senator ENGLE. You know that the Constitution of the United States guarantees to every American citizen the right to bear arms. There isn't anything on earth to keep me from getting out my 30.06 and walking right down Pennsylvania Avenue that I know of, because the Constitution of the United States says that American citizens shall have the right to bear arms.

We can prohibit concealed weapons, and the law does prohibit them. But I am just not so sure that we cannot go too far with this.

I think it is proper for the CAB or the FAA to require that guns be broken down where they can be. Guns should always be unloaded and separated from their ammunition, and guns should be carried in the baggage compartment and not with the passenger. If the CAB or the FAA does that, we have that situation pretty well controlled. We would prefer not to write too much law if we can handle it and handle it adequately under regulation, because when you get it into

the law you can never get it out. We have more statutes than we need now.

I take it these proposals have already been submitted to the FAA?

Mr. CARROLL. We were invited to a meeting with them on Wednesday at which time we noted that their regulation only dealt with concealed weapons and that we had advised them in previous years and would like to remind them again that we felt that there was a considerable hazard with weapons which were not concealed.

Senator ENGLE. May I suggest that you call it to their attention again, officially through the Airline Pilots Association? If you don't get something done with it, perhaps we will try to do something through this committee. I would prefer not to put detailed regulations of that character in this bill which is general in character, and where it is not necessary to enact a law because the matter can be handled by regulation.

I am sure FAA and Mr. Halaby are just as interested in making everything as safe as it can be, and nothing could embarrass them more than to have a hunter show up with a shotgun in his hand and taking over one of their airlines, where they could have prevented it by requiring him to keep his gun in a case, separate his ammunition, unload the gun. My recollection is that a passenger supervisor inspected my rifle when I carried it the last time on an airline to be sure that it was unloaded. And I want to be just as sure as he was, too. Nevertheless, I noted that they watched that matter with considerable care. Not that they expected me to shoot anybody, but sometimes the guns go off when you don't want them to.

The last point of your statement deals with the words "in flight" as they appear in the bill. We already discussed that with Mr. Tipton.

I think our view on it, and our comment therefor, is already before you. We just don't want to get involved any deeper in this business than the peculiar requirements of this difficult situation makes necessary.

If an aircraft is on the ground, the local boys can take care of the situation. When an airplane gets in the air we have problems jurisdictionally and in other ways.

Do you have some further comment? We would be glad to have it.

Mr. CARROLL. We do, sir. I have a comment on that. I have a couple of other comments before I reach that, if I may. I will try to be very brief.

For example, it has been stated that efforts were being made to scrutinize the passengers as they board the airplane. Our experience is that the airlines have been very reluctant to do anything other than give someone the benefit of the doubt, for obvious reasons. Therefore, we feel that the bill, S. 2370, should be considered very strongly so as to give them definite legislation which would allow inspections, reasonable inspections.

Senator ENGLE. You are talking about section 2 on page 2 of Mr. Bridges' bill, introduced for himself, Mr. Schoepfel, and Mr. Williams, S. 2370?

Mr. CARROLL. Yes, sir.

Senator ENGLE. I am sure you heard our previous discussion with Mr. Miller here, representing the Attorney General's office.

Mr. CARROLL. Yes, sir.

Senator ENGLE. If we find that not in violation with the Constitution of the United States, I propose to offer section 2 to the bill that I have introduced.

Mr. CARROLL. Splendid. I have a note that the Justice Department said it is very good, very sound, and very important to us.

We would like to comment briefly on the business of locking the door. As has been indicated, it is the present admonition of some of the airlines to their crews to lock their doors. We are aware of one airplane which was in rather extensive service today wherein it is a requirement that the door be left open for takeoff and landings because otherwise the airplane doesn't comply with Civil Air Regulations insofar as enough emergency exits for the passengers are concerned.

Senator ENGLE. What airplane is that?

Mr. CARROLL. It happens to be one of the models of the Constellation. We will check with the FAA to see if they have overlooked that particular item in their ruling here. If so, it will be handled accordingly. We don't like to be in violation.

We feel that it is quite obvious that mandatory locking of the door provides very little protection. The only way that it could provide protection is if it were a very strong door which would really bar someone determined to get in, including firing at the lock and the handle.

The other thing would be the requirement that the door never be opened, because it would be very simple for someone to be near the front of the airplane where the cockpit door is located, either appearing to be waiting in line for one of the facilities or just simply stretching their legs. Any time the cockpit door was opened for any reason it would be very easy for them to force their way in, especially if they were armed.

So we feel that the locking of the door provides a very minimum of protection for any reason whatsoever. And it does have certain safety considerations, one of which we said was a regulation which is currently in existence, and in a few cases the only method of egress from an airplane if crashed was through some of the cockpit exits.

We are not enthusiastic about a mandatory requirement to lock the door for the reasons named. They are fragile, unless they are never opened it doesn't provide protection.

One other thing that I am sure has not been overlooked, but we feel forced to mention. If the door is locked and it is a rule, and we don't intend to open it, and we take a thermos or whatever we need so it will not be opened, and the hostess calls on the intercom, "Captain, there is a man with a gun at my head and he promises to blow my brains out if you don't open the cockpit door." I believe that this man would be able to obtain access to the cockpit even though the door was locked and it was known that it was a rule that it wouldn't be opened.

So we feel that there may have been some failure to explore the locked door protection theory or there wouldn't be perhaps some of the statements that have been made in favor of it as being useful.

We think that it can be locked in flight and that it offers a certain small protection, and this is the practice currently in use. Certainly, we have no objection to doing it and we feel that it doesn't interfere with safety.

Senator ENGLE. I would agree with you about locking the door as far as a well-planned and determined effort to take over an airplane.

But for the convivial drunk who just wanders into the cockpit to shake hands with everybody and falls all over the controls, a locked door might help.

Here is another case where, in my opinion, we ought not to enact a law but we ought to leave the matter to the flexibility and to the discretion which rests in the hands of a sensible Administrator. If you pass a good law, it isn't worth a hoot if you have a bad Administrator. And you can pass all the law in the world and it isn't going to do you any good unless you have a good administration. We have to assume that these fellow will exercise good judgment and not rely on locked doors altogether as far as people like these who undertook to take over that Continental airliner the other day.

Mr. CARROLL. We have one note we would like to introduce here which we feel would be a correction to some previous testimony offered by another party. Mr. Halaby stated that the full weight of his organization has only been recently brought against certain people for drinking in the cockpit.

Senator ENGLE. He corrected the record, with some embarrassment.

Mr. CARROLL. We would like to comment briefly about the "in flight." We urge the deletion of the words which we think does not do anything except clarify the intent of the committee in their bill by thoroughly establishing that when one of these instances takes place on board an aircraft in air commerce, that the Federal law will apply.

We feel that the intent of it, as I am sure the Senator is aware of the incident in California, which took place entirely on the ground, if the only thing involved is the local rule—and there has been quite a bit of testimony explaining the discrepancy between simple assault and the difference in assault with an aircraft in operation. As such, we would like very strongly for the committee to further consider this simple deletion which establishes that the aircraft in air commerce will be subject to these regulations, these laws, because there is a definition in CAR of block-to-block and flight time. A defense attorney would have a very excellent case in defending a client from violation of Federal regulations unless the airplane were actually off the ground.

So we would like again to suggest that this be considered very strongly.

Yesterday afternoon I talked to Captain Rickards shortly after he was released from the airplane. I asked him a couple of questions, since I knew we were appearing here today. I said, "Captain, did you have a weapon of any kind?"

He said, "No."

I asked, "Would you have had an opportunity to use this weapon?"

He said, "Probably not."

I said, "At no time during the several hours you were on there?"

He said, "No. In the particular position I was in for practically the entire time I didn't have time to use it."

I said, "Do you consider it desirable that we have authority to carry a weapon even though he had no opportunity to use it?"

And he said, "Yes, we should have such authority."

This is the position of the Air Line Pilots Association. We would like to have Federal authority for weapons to be carried, and we expect that they will be used and carried only in conjunction and agreement with our airline managements as the situation dictates.

Senator ENGLE. You have that authority now.

Mr. CARROLL. So I have read in the headlines.

One other thing that Captain Rickards said. He had the highest praise for our friend who was here this morning, the border guard, Mr. Gilman. He said that as far as he was concerned, the entire incident was minimized by the presence of this gentleman and by his actions. He was most unstinting in his praise and felt that what could have been very serious was not, largely if not totally because of the efforts of Mr. Gilman.

Senator ENGLE. May I suggest to you, Mr. Carroll, we have two other witnesses, and the Chair has to adjourn this hearing in just 20 minutes. If you can shorten your testimony, we will hear those gentlemen. Otherwise, they may not be heard.

Mr. CARROLL. Large numbers of people have been exposed and every effort should be made to provide a maximum deterrent.

Do you have any questions, Senator?

Senator ENGLE. No.

Thank you very much for your testimony. We very much appreciate it.

The next witness is Mr. William K. Lawton.

#### STATEMENT OF WILLIAM K. LAWTON, EXECUTIVE DIRECTOR OF NATIONAL BUSINESS AIRCRAFT ASSOCIATION

Mr. LAWTON. Thank you, Senator.

Senator ENGLE. Do you have a prepared statement?

Mr. LAWTON. No, I do not. I will be very brief.

My name is William K. Lawton, I am executive director of National Business Aircraft Association, which represents more than 500 companies owning and operating their own aircraft for their company transportation purposes.

The purpose of appearing before the subcommittee this afternoon is twofold: One, it is to give complete and wholehearted endorsement to S. 2268 which the Senator has introduced.

We think it is timely and long needed, although just recently we discovered it was lacking.

I do however wish if I may, to emphasize the fact and hope that this will receive suitable national publicity, that this bill does not concern the airlines alone. The proposals made in this bill affect every civil aircraft in the United States, and the reason I make this statement pointedly is that we have no desire to see the psychopaths, the weirdos, coming to the private aircraft and pointing guns because they realize from publicity that they cannot get away with it on airlines.

The Senator has very wisely included, we believe, the fact that this applies to aircraft in flight in air commerce.

Again, this includes every civil aircraft, private business transportation, air taxi, or whatever, that these provisions of this bill do apply.

We also note that the provisions that the Senator has made in this bill which apply to the carriage of guns specifically exempt, by the terms "the private aircraft" we think this is indicative of the sound judgment and good reasoning that the Senator has demonstrated in the entire bill.

The civil pilot who does not fly for an air carrier is faced with many of the same problems as his brother in the cockpit with the air carrier,

We are subject to having people approach aircraft at airports and demand to fly some place. This I think will help to deter them in their thoughts that they may now, because of the publicity given to air carriers, be able to do this with private aircraft.

I wish to emphasize that, to your bill, Senator, that they will note, and we hope that this is amply publicized.

Senator ENGLE. You have made a very good point. And I am glad you did.

Mr. LAWTON. The second point, Senator, that I would like to make is in regard to the fact that we have already been subject to a form of hijacking. If I may have a minute and your permission I would like to briefly outline this.

Senator ENGLE. You are talking about the case where the man was forced to land in Cuba?

Mr. LAWTON. Yes, sir.

Senator ENGLE. Do you think that we can encompass that type of case in this particular legislation?

In that situation as I understand it, the pilot took off from Florida.

Mr. LAWTON. He took off from Key West.

Senator ENGLE. And he got clearance to fly over Cuba; is that right?

Mr. LAWTON. He was cleared to fly over Cuba, en route to Managua, Nicaragua.

Senator ENGLE. When he got over Cuba they told him to land?

Mr. LAWTON. That is correct, sir. The Cuban authorities first gave permission and then canceled his permission, radioed for military aircraft to intercept him, and then gave him a clearance to land. This American businessman did so, landed at their instructions. He was confined by the Cubans for several days.

Finally, through the intervention of the Swiss delegation, he and his passenger were released, they were returned to the United States, but the airplane is still under Cuban authority.

They have confiscated it. This was a prelude, we believe, to the case now in consideration in the United Nations which involves the Electra, which got a lot of publicity.

Senator ENGLE. What do you think we can do about that in this bill?

Mr. LAWTON. I was using this as an example, to exemplify that we are in the same boat as the air carrier pilots and the air carriers being subjected to hijacking either by, in this case, Government intervention, or we are also faced by exactly the same type of psychopath, drunk aerial hijacker who may now, because of the publicity regarding the air carrier, consider other aircraft fair game.

I don't believe that this would cover the Cuban situation, but I do believe that it indicates that we are all in the same boat and we are all, thanks to you, covered by this legislation which we support to every degree.

I wish to thank you for the opportunity to appear.

Senator ENGLE. Thank you very much, Mr. Lawton, for your statement.

Let me say that I thoroughly sympathize with our friend who lost his Twin Beech.

Mr. LAWTON. It was a Twin Beech valued at over \$70,000. This has been very much neglected.

We have talked with the State Department and asked them if they are able to get the return of the airlines' Electra, that we want them to see that the Twin Bonanza is flying out of Cuba right alongside of it.

Senator ENGLE. I would hope so.

Thank you very much for your statement.

Our last witness is Mr. Francis O'Connell, legislative representative of the Transport Workers Union.

Mr. O'Connell, I see that you have a brief statement.

You may proceed to read it if you wish.

**STATEMENT OF FRANCIS A. O'CONNELL, LEGISLATIVE REPRESENTATIVE, AIR TRANSPORT DIVISION, TRANSPORT WORKERS UNION, AFL-CIO**

Mr. O'CONNELL. Mr. Chairman and members of the committee, my name is Francis A. O'Connell, Washington legislative representative for the Air Transport Division, Transport Workers Union, AFL-CIO.

The Air Transport Division is a labor organization representing more than 30,000 airline employees, including flight navigators, flight attendants—stewards, stewardesses, and pursers—maintenance, stores, office, clerical, and other related ground service personnel.

We are deeply appreciative for this opportunity to appear before the committee to present our views on S. 2268 and the proposed amendment thereto, introduced by Senator Engle.

You have heard testimony this morning from many interested segments of the air transport industry, both governmental and private, in support of this much needed and necessary legislation. We have no desire to belabor the issue. We simply wish to be recorded as being in full accord with the committee's action in getting a law on the books which will, we hope and trust, provide not only penalties of fines and imprisonment for assault on crewmembers, hijacking, and all the criminal acts as are specifically spelled out in the proposed amendment to S. 2268, but more importantly we hope this legislation will serve as the deterrent against any further attempts of violence against crewmembers, passengers, and the civil air transport fleet.

There is, however, in our opinion, one vital and most important deficiency in the amendment language which we believe was simply an oversight by the author and in no way intentional.

This is, a flight attendant, be he a steward, stewardess or purser, is not considered, legally or otherwise, by the FAA as being included in the terminology of a "flight crewmember."

The former CAA, the CAB and the FAA today, defines flight crewmembers as one who "manipulates flight controls or has any duties which have a bearing on the navigation, instrumentation, or direction of an aircraft in flight," specifically excluding flight attendants.

We, therefore, respectfully request that the word "flight" wherever it is used in S. 2268 and the amendment thereto, in conjunction with the word "crewmember," be stricken.

Mr. Chairman, on behalf of the Air Transport Division, I wish to thank you and the committee for allowing me to appear here today to express our views on the proposed legislation.

Senator ENGLE. Thank you very much for your appearance.

We have a couple of telegrams. We have one from H. D. Gatch, chairman, Continental Airlines, Council Air Line Dispatchers Association, supporting this legislation.

Without objection, the telegram will be made a part of the record.

Also a telegram from R. E. Commerce, president, Air Line Dispatchers, sent from Arlington, Va., supporting this legislation.

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

We have a telegram from J. H. Gurr, the chairman of the Airline Dispatchers, United Airlines Local No. 5, also in support of this legislation.

That is from San Francisco, Calif. Without objection, it will be made a part of the record.

(The telegrams referred to follow:)

AUGUST 4, 1961.

Senator CLAIR ENGLE,  
*Senate Building, Washington, D.C.:*

The 20 flight superintendents of Continental Airlines strongly support your proposed legislation, S. 2268, regarding airplane hijacking as most practical measure available in critical situation. Also urge regulation that crew compartment be locked at all times passengers are on board. Today's incident underlines urgent need for immediate action.

H. D. GATCH,  
*Chairman, Continental Airlines,*

*Council Air Line Dispatchers Association.*

ARLINGTON, VA., August 4, 1961.

Senator CLAIR ENGLE,  
*Senate Aviation Subcommittee,  
New Senate Office Building, Washington, D.C.:*

We support your proposed legislation to impose severe Federal penalties for aircraft hijacking and urge speedy enactment by Congress before we have a series of air disasters. Please continue strong stand on piracy issue and demand forceful action to end these acts of aggression.

We believe the failure to move promptly in the Eastern Electra incident set the stage for a whole series of recurrences and gave encouragement to the crackpot element. So let's move now.

R. E. COMMERCE,  
*President, Air Line Dispatchers.*

SAN FRANCISCO INTERNATIONAL AIRPORT, CALIF.,  
August 4, 1961.

Senator CLAIR ENGLE,  
*Old Senate Office Building, Washington, D.C.:*

Flight dispatchers, United Air Lines Local No. 5, support aircraft antipiracy and hijacking bill you recently introduced. We support ALPA views and recommendations. Taking weapons aboard commercial aircraft without declaration and deposit; threats and acts of violence deserve severe penalties. Acts of piracy and hijacking deserve severest penalties.

J. H. GURR, *Chairman.*

Senator ENGLE. The subcommittee will stand in adjournment until 10 o'clock on Monday, at which time we will proceed in executive session to mark up the bill.

(Whereupon, at 4:20 p.m., the subcommittee was adjourned, to reconvene at 10 a.m., Monday, August 7, 1961.)

