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STATEMENT OF BENJAMIN O. DAVIS, JR., ASSISTANT SECRETARY FOR SAFETY AND CONSUMER AFFAIRS, DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON AVIATION OF THE SENATE COMMERCE COMMITTEE RESPECTING S. 2280 AND S. 2299, ON MONDAY, MARCH 6, 1972.

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you today to discuss S. 2280 and S. 2299, two bills amending in different respects provisions of the Federal Aviation Act applicable to aircraft piracy and certain other crimes aboard aircraft.

Aircraft hijacking is a dangerous and aggravating problem which has been with us since the early 1960's. We have taken a number of positive steps in an attempt to suppress it, but it is not a problem which is easily solved. Among the factors which contribute to the difficulty in stopping it are its international scope, the widely divergent motives of hijackers, and the critical aviation safety problem that is involved. As often as it is perpetrated, the crime of hijacking has the awful potential of causing a major air disaster.

It has been apparent for some time that in addition to taking security measures to thwart hijackers, it is important that action be taken to provide for their prosecution when they divert aircraft from one country to another. This led to the drafting in 1970 at The Hague of the Convention for the Suppression of Unlawful Seizure of Aircraft, which has now been signed by 81 countries, of which 24 have completed the ratification process. The aim of the countries that participated in drafting the Convention was to ensure that all hijackers, wherever found, would be subject to severe punishment. The

Senate gave its advice and consent to the ratification of the Convention early last September and on September 14 the United States deposited its instrument of ratification.

Mr. Chairman, John Barnum, the General Counsel of the Department, will provide in his statement more detail on the background and scope of the Convention and discuss the particulars of S. 2280, the implementing legislation submitted by the Department on which we urge the Committee to act favorably. Before he does that, however, I would like first to make a number of remarks about our current anti-hijacking program and then briefly discuss S. 2299.

We developed some time ago a basic system for screening passengers and their hand luggage before they board air carrier aircraft, and a number of airlines put it in use at many locations on a voluntary basis. To the extent it has been used, the system has been highly effective. In January of this year, however, hijackings again reached almost epidemic proportions and, as a result, the FAA issued early in February an emergency regulation requiring most U.S. air carriers to adopt and put into use a screening system acceptable to the FAA Administrator. We believe that use of these screening systems on a wider scale should be of considerable value in thwarting would-be hijackers. In fact, we believe that nine of the thirteen hijackings which occurred during the past six months could have been prevented if there had been adequate preboarding passenger screening.

The FAA emergency regulation has made it necessary to have more law enforcement officers available to assist the airlines. Therefore, we are presently taking steps to effect a switch in emphasis from air guards to ground security. We still believe, however, that the use of sky marshals

serves as a valuable deterrent to would-be hijackers. We will continue to use these marshals on flights which we consider to be especially vulnerable to hijacking. It is quite clear, however, that the primary place for achieving security is on the ground before the aircraft is boarded.

I would like to add a point about follow-up procedures when a hijacking does occur. We are learning new ways of dealing with a hijacking once it does occur, and recent law enforcement efforts following a hijacking have been very successful. Eight of the last thirteen hijackings ended with the capture or death of the hijacker. The FAA, the FBI, and the U.S. Air Force have demonstrated a high degree of expertise in marshalling their resources to advise the crews of hijacked aircraft, to trail the aircraft, and to apprehend the hijacker.

Now, I would like to turn to S. 2299. That bill contains a number of amendments to the piracy and other criminal provisions of title IX of the Federal Aviation Act. The principal amendment would provide a penalty of only five years in prison for hijacking in a case where a person in the process of hijacking an aircraft surrenders himself and his weapons to the crew thus allowing the aircraft to land at a point under U.S. control. Apparently the intent of the bill is to arm the pilot of a hijacked aircraft with a forceful argument as to why the hijacker should return control of the seized aircraft to the crew. At first blush it would appear that such could be the logical result where a hijacker has second thoughts about his crime and realizes that he can escape the full penalty of what may have been

A spur-of-the-moment act by surrendering himself and his weapons. I cannot categorically state that such an "out" for both the hijacker and his victims would not be desirable under certain circumstances. I am very fearful, however, that S. 2299 might have an adverse effect. Based on the experience we have gained in this area, it appears that by reducing the existing penalty, S. 2299 might well encourage more hijackings.

I believe that the present statute with its penalty of death or imprisonment for not less than 20 years serves as a deterrent. Even desperate men would think twice before performing an act with such a penalty attached. The same desperate men, however, might decide to give it a try if they knew that they could escape the full penalty for their deed if they were to surrender at a point in time when it became apparent they could not succeed. Accordingly, we do not recommend enactment of this provision.

S. 2299 also would increase substantially the penalties for carrying a concealed weapon aboard an air carrier aircraft. The Department of Justice has also recommended an increase in these penalties in a bill introduced in the Senate as S. 2567. The Justice proposal, however, leaves intact the existing penalties under section 902(1) of the Federal Aviation Act in cases where the crime is not committed willfully and with reckless disregard for the safety of human life. We believe the Justice proposal properly identifies the situations where more stringent penalties are appropriate and we recommend that their version be adopted.

Mr. Chairman, that concludes my prepared testimony. Now, with your permission, I would like to have Mr. Barnum continue with a discussion of S. 2280.