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STATEMENT OF UNDER SECRETARY EGIL KROGH, JR. BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS OF THE HOUSE INTERSTATE AND FOREIGN COMMERCE COMMITTEE, RESPECTING THE ADMINISTRATION'S CIVIL AVIATION SECURITY PROGRAM, ON TUESDAY, FEBRUARY 27, 1973.

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you to discuss the Administration's civil air security program and to comment on two bills on this subject--H.R. 3858 and S. 39--under consideration by this committee. I hope my appearance today is the first of many beneficial exchanges which I will have with this committee, and I look forward to our establishing a close, working relationship.

As I am sure you know, in response to the more violent tactics experienced in hijackings late last year, the Department, at the direction of the President, has instituted strengthened security procedures to further protect American air travelers against the dangers posed by these incidents. Although the Department presented testimony on these measures to a Senate committee in January, before today we have not had an opportunity to present our security program to the House of Representatives. Therefore, I would like to take a few minutes to explain the measures we have taken and to report on the progress we have made in implementing them.

On December 5 the Federal Aviation Administrator issued new procedures to tighten security at the Nation's airports which serve scheduled air carriers. These procedures place additional responsibilities on the air carriers and

airport operators. First, with respect to the air carriers, each air carrier was required, on and after January 5, 1973, to inspect all carry-on baggage, to clear each passenger by an electronic metal detection device, or, in the absence of a metal detector, to clear each passenger by a consent search prior to boarding the aircraft. Those passengers who activate the detector and cannot satisfactorily explain the presence of metal on their person will be requested to submit to a consent search as a condition to boarding by the airline. If, as a result, a weapon is found on their person or in their carry-on baggage, they will be subject to arrest. The airlines are either to use their own employees or hire special personnel to perform these tasks.

Second, the emergency regulation issued by the Federal Aviation Administration on December 5 directed airport operators to submit to the Administrator an amendment to their master security plans by January 6, 1973. The amended plans were to set forth specific procedures to insure that as soon as possible, but no later than February 6, 1973, at least one armed law enforcement officer is present "at the point of, and prior to and throughout the final passenger screening process prior to boarding for each flight conducted by an air carrier required to have a security program by FAA regulations, and for each foreign air carrier that requests such law enforcement support." The primary function of the armed law enforcement officers provided by the airport operators is to back up the preventive security programs of the airlines and airports and to act in the event of suspected or actual unlawful activity.

It is important to recognize that the action taken by the Federal Government this past December is part of a continuing Federal effort to respond to the threat of hijacking. As you know, aircraft hijacking has been a dangerous and aggravating problem since the early 1960's. Originally, most hijackings were the acts of politically motivated individuals who sought asylum outside the United States--usually in Cuba. By 1970, however, the character of hijackings began to change with the introduction of politically motivated hijackings arising out of national or international disputes. Hijacking also came to be used as a means of committing other crimes--such as extortion.

In late 1972 we were faced with a new breed of hijackers--armed groups of fleeing felons willing to resort to violence in order to gain access to the aircraft. On October 29, 1972, in Houston, a jetliner was commandeered by four alleged murderers and bank robbers who walked through the boarding area into the aircraft jetway. They shot and killed an airline ticket agent encountered in the jetway and after boarding the aircraft but prior to take-off, one of the gunmen shot a ramp serviceman. No other airline or law enforcement personnel were present in the boarding area. Over a period of several hours, thirty-six innocent passengers and crew members faced extreme danger. Twelve days later, on November 10, three persons wanted for criminal offenses took over a jetliner out of Birmingham, Alabama, and for more than 29 hours and eight take-offs and landings, placed the lives of 30 passengers and flight crew members in severe jeopardy. During the incident, one pilot was shot and a passenger suffered an apparent heart attack.

During this period of hijacking attempts, the Federal Government has developed varied responses to meet this danger. Initially, in response to the attempts of politically motivated hijackers, the FAA developed a "profile" by which airline personnel could identify potential hijackers. In September 1970, after Palestinian guerillas seized and destroyed several American and foreign aircraft, the President directed Federal law enforcement personnel to ride on American air carrier flights over international routes. In February 1972 the airlines were ordered by the FAA to use a profile to screen all passengers. In July of last year the President ordered the screening of all passengers and inspection of carry-on baggage on all "shuttle-type" flights. And, in August the FAA required the air carriers to search all profile selectees and all persons in their party and to inspect their carry-on baggage before permitting them to board an aircraft.

However, the Houston and Birmingham incidents called for the further tightening of security. The threat of future incidents of a similar high violence character warrants continuing these measures. Where a simple screening of a selected few passengers might have deterred hijackers in earlier years, we now must be ready to forcefully stop them at the boarding gate and deny them access to the ramp area. Our program has three basic objectives: first, to keep unauthorized persons from boarding an aircraft in possession of a deadly weapon; second, to prevent sabotage devices from being carried or placed aboard these aircraft; and finally, to insure that the airport operators serving these aircraft have maintained a proper level of security in operating areas. To achieve these goals, we have required the

action I described a few minutes ago: electronic screening of all passengers, a physical inspection of all carry-on articles, and the presence of armed law enforcement officers at the boarding gates.

As I stated earlier, under our program airport operators were required to submit by January 6 their plans for providing the requisite law enforcement personnel and by February 6 to have these officers in place at their airports. An analysis of these plans conducted on February 5 indicated that almost all the airports would have been able to comply with the rule by its effective date. Specifically, complete compliance was assured at 483 of the 504 airports subject to the regulation. Of the others, 17 were remote, minimum-traffic airports in Alaska which had been granted exemptions. The compliance status of four small airports was not known on that day.

The effective date of the requirements for airport operators was postponed until February 16 by proceedings in the Federal courts brought by the Airport Operators Council International (AOCI). On February 5, a Federal district court in the District of Columbia, on the motion of AOCI, issued an order temporarily restraining implementation of the air security requirements directed at the airport operators. The issues presented to the court were (1) whether the security regulations were promulgated in violation of the Administrative Procedure Act, and (2) whether the requirements established by the Administrator were unreasonable, arbitrary and capricious.

Following a subsequent hearing, the district court on February 12 overturned its previous order and denied AOCI's motion to continue the

injunction. AOCI then brought the case before a United States court of appeals. On February 15, that court upheld the airport security regulation, subject to certain conditions, the major one being that the Administrator conduct administrative hearings on the regulation. At 12:01 a.m. on February 16 the Federal regulation requiring the presence of law enforcement officers at boarding areas during the boarding process of all scheduled air carriers went into effect.

Today, all airports have a level of officer protection which complies with the regulation, although some 20 are temporarily utilizing on a reimbursable basis the services of Federal personnel. All the air carriers have been complying with their obligations since January 5, 1973.

Now that the Administration's program has been sustained by the courts, and we are receiving, as always, excellent cooperation from the air carriers and airport operators, we believe the Nation's air travelers have much better protection from the threat of hijacking. It is noteworthy that since the program was implemented, the incidence of weapons detected on boarding passengers has decreased significantly. We think that this is an indication that the massive effort of the airlines, the airport operators and the local, State and Federal law enforcement agencies and the publicity attendant with the establishment of the security program are breaking the will of potential hijackers.

One important factor which we believe will help discourage future hijacking attempts is the elimination of a nearby "safe haven" achieved by the recent accord with Cuba. This significant agreement assures that hijackers who flee to Cuba will be brought to justice.

Our program, now in place and operating efficiently, deserves to be tested. We are concerned that the Congress may not give us this opportunity. As you know, last week the Senate passed a bill (S. 39) which provides, in part, for the establishment of a new air transportation security force in the Federal Aviation Administration. This provision would terminate the Federal Government's civil aviation security program now in operation and call upon the Federal Government to provide Federal law enforcement personnel at airports in the United States adequate to insure the safety from criminal violence and air piracy of persons traveling in air transportation. A similar provision was included in a bill (S. 2280--92d Congress) which passed the Senate last year in spite of the Administration's strong opposition. Fortunately, your full committee shared our view that a new Federal security force should not be established, and the bill was not passed.

This year we again are faced with a Senate bill looking to the creation of a Federal force. The Administration continues its strenuous objection to the Senate provision. In fact, our opposition to this provision is even more vigorous this year because by our air security program we can effectively meet today's hijacking problem. We are pleased that the bill (H.R. 3858) introduced by the chairman of the full committee shares our position on this important question. We urge this committee to support that position and once again this year oppose the establishment of this new Federal police force.

Let me take a moment and discuss with you the reasons that the Administration strongly opposes a legislatively mandated Federal role in the preventive law enforcement aspects of our civil aviation security program. First, the Administration views the creation of yet another Federal enforcement arm for this sole purpose as presenting a very dangerous precedent. We all should be sensitive to the ever-increasing pressures on the Federal Government to expand and intrude into local and State affairs. To do so in the law enforcement area would be particularly unfortunate.

Second, we feel that the obligation to provide a law enforcement officer during the passenger boarding process is properly a local responsibility. Merely because the need for police security and crime prevention is present at our airports does not make the patrol of the airports a Federal responsibility any more than it is at other public places in the community where a similar need exists. We see no rationale for distinguishing the airport from the bus depot or the train station in the provision of police protection. That the protection at airports is provided principally for those traveling in interstate commerce should not be considered an adequate justification for the creation of a Federal force. For example, State law enforcement personnel police our Interstate highway system, and local officers patrol our bus and train stations. Moreover, the railroads provide their own security force to protect their property and passengers.

The policy underlying the program is entirely consistent with the principles of federalism. State and local governments are not being asked in their governmental capacity to provide local law enforcement support to

the passenger screening program. To the extent State and local governments are required to provide law enforcement support, they are doing so because they are operating a facility in interstate commerce and are thereby subject to the Constitutional power of the Federal Government to regulate interstate commerce. In deciding to operate a facility in interstate commerce, a State or local government subjects itself to that degree of Federal regulation necessary to assure safety in air commerce in accordance with the mandates of the Federal Aviation Act.

In addition, there are many practical reasons why a Federal security force should not be established. The airport operator is responsible, generally, for the security of the airport. The larger airports maintain a permanent force for general protection purposes. The airport operator is also in the best position to utilize law enforcement personnel in the most efficient manner. By altering access to "fingers" or concourses, the airport operator can maximize the gate coverage per man. He can also utilize his law enforcement manpower for general airport security purposes when the officers are not engaged in providing protection during the boarding process. At some 200 airports less than 50 passengers are boarded per day and full-time law enforcement support at the boarding gate is not necessary. At these smaller airports, the airport operator is in the best position to obtain, on a reimbursable basis if appropriate, part-time law enforcement service from State or local law enforcement agencies.

By this discussion I by no means intend to deny the proper Federal enforcement responsibility in this area. When, in spite of all preventive

measures, a hijacking does occur the FBI will respond immediately with the hope of aborting it without the loss of life or property. The FBI also will investigate exhaustively all air piracy incidents and subsequently bring to justice all violators. One need not be concerned about the ability of the FBI to coordinate its efforts with that of State and local officers. Frequently, Federal, State and local officers coordinate successfully their efforts when pursuing fleeing felons or interdicting the commission of heinous crimes, such as murder or kidnapping. There is no reason to believe that they cannot cooperate and be equally effective when responding to a hijacking attempt. Nor should there be concern about the competence of State and local law enforcement officers to perform their preventive responsibilities under the security program. I would like to call your attention to the recent action of a policewoman on the Louisville, Kentucky, force who thwarted the efforts of an armed would-be hijacker at Standiford Field. The conduct of this officer exemplifies the excellent performance by local officers which we are confident will continue.

The Federal Government also is participating financially in the security program. Approximately $6 million has been set aside for fiscal year 1973 for the purchase of electronic inspection devices. Capital expenditures for security equipment--such as fencing--are also eligible for 50 percent Federal funding under the Airport and Airway Development Act. The Administration endorsed last year and is supporting again this year measures to increase the Federal share of such expenditures to 82 percent. In addition,

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the Federal Aviation Administration is conducting aviation security training programs for local law enforcement officers, instructing flight crews on how to neutralize in-flight hijackers, and working on the development of improved weapons and explosive detection devices and techniques.

It is my sincere belief that much of the controversy concerning the relative responsibilities of the Federal, State and local governments in this area stems from a concern over the cost and funding of this law enforcement support. The Administration's policy on this question is based on the principle that the users of the air transportation system should pay for its costs, and that the cost of providing police officers at airports should be considered as part of the system's costs. Indeed, all costs related to the Federal aviation security program should be considered an integral part of the total system cost. These costs should not be considered any differently than costs such as aircraft maintenance, flight crew training, pilots' wages, and crash and fire services. These new security-related costs should not be considered as a separate cost item and should not be borne solely by the local community or by the local airport or by the air carriers. Any additional charges necessary to protect passenger and crew sustained by the air carriers and the airport operators should be reflected in the passenger fares.

Financial arrangements for recovering the cost of law enforcement officers at boarding gates will vary among the airports, depending on local circumstances. We have advised the airport operators that their avenue for

covering cost is through adjustment or renegotiation of existing cost formulas or contracts with tenant air carriers, or through the negotiation of new contracts covering payments for security services rendered by the airport operator. At many major airports, the air carrier contracts with the airport operators include cost escalation and adjustment clauses which would appear to permit the pass-through of the law enforcement officer costs to the airlines. It is up to each airline either to absorb the costs of law enforcement officers, as well as their own security costs, or take the necessary procedural steps before the Civil Aeronautics Board to pass these costs on to the users.

The carriers filed petitions in January with the CAB requesting an increase in passenger fares to cover anticipated law enforcement officer costs and the cost of the airline security programs. The Department filed comments supporting the fare increases on the condition that the carriers agreed to pass on to the airport operators that portion of the fare increase attributable to the law enforcement officer costs. In rejecting the carriers' filings on procedural grounds, the Board said that it would be appropriate that the carriers' tariffs set forth any separate charge they propose to impose to cover the costs incurred under the security program. Several carriers have now filed tariffs following the Board's direction, and it is expected that unless the Board finds the carriers' economic justifications are not satisfactory, ticket surcharges will go into effect starting March 15. The Board also noted that the carriers have not yet entered into supplemental agreements with airports for the reimbursement of the airport

operators' costs of implementing the Federal security program and that there was a question as to the extent to which law enforcement officer costs would be passed on to the airlines by local airport operators. The Board indicated that at such time as there is a clear indication of the cost ramifications of this aspect of the security program, the carriers will be free to file an appropriate amendment to their tariffs. We believe that the carriers will soon be filing requests for surcharges on tickets to cover law enforcement officer costs.

Now I would like to comment on the provisions in H.R. 3858 and the proposals other than the Federal police force contained in S. 39. First, I wish to stress our strong support for the provisions in both bills which would implement the Convention for the Unlawful Seizure of Aircraft for the United States (the Hague Convention). As you know, this Convention obligates contracting States to establish severe penalties for air piracy and to extradite or submit to prosecution hijackers in their custody. Title I of the bills provides the changes in our laws necessary to satisfy the United States' obligations under the Hague Convention.

Both bills also contain provisions which would authorize the President to suspend air service to any foreign nation which he determines is encouraging aircraft hijacking by acting in a manner inconsistent with the Hague Convention. The Administration does not have any objection to the provisions which contemplate primary boycotts of other nations. Our preference, however, is that such a boycott be instituted only in concert with other countries and not by unilateral action.

We do have a reservation with respect to the provisions which relate to a secondary boycott. Our concern is that under certain circumstances a secondary boycott would do more damage to our friends and allies than to the country which is not acting in accord with the principles of the Tokyo, Hague and Montreal Conventions. Consequently, we are opposed at this time to the adoption of any statutory provision providing for secondary boycotts.

In addition, we support the provisions in H.R. 3858 and S. 39 entitled "Suspension of Air Services" which would provide a mechanism for bringing pressures on countries to comply with international security standards.

There is one feature of S. 39 which we favor, but which is not contrained in H.R. 3858. Under existing law the offense of carrying, or attempting to carry, a concealed weapon aboard an aircraft is a misdemeanor. We support the proposal contained in section 26 of S. 39 which would continue the misdemeanor offense and provide, in addition, a felony offense when this act is done willfully and without regard for the safety of human life. We also agree with the Senate bill that these same criminal sanctions should apply to the unlawful carriage or placement for carriage aboard an aircraft of a concealed explosive or other destructive substance.

Mr. Chairman, this concludes my prepared testimony. I now will be happy to attempt to answer the questions of the committee.