

*The ultimate objectives of U.S. policy in the international [aviation] field are the same as in the domestic: We want safe, reliable, responsive, and efficient transportation. –Alfred Kahn<sup>1</sup>*

## **Chapter 9: International Aviation Landscape Redefined**

The FAA's efforts to ensure safety, environmental compatibility, and security of the nation's airways, aircraft, and airports had international ramifications. With the most extensive airspace system in the world, some nations looked to the FAA for guidance on policies, procedures, and technologies. Other countries, such as Great Britain and France, often found themselves at odds with the FAA, which resulted in international tensions such as those seen with the Concorde's access to U.S. airports.

During the Carter administration, the FAA continued to fulfill its international mission in several ways, including participating with other nations in the International Civil Aviation Organization (ICAO) and with regional organizations to establish international standards for the safe and efficient operation of civil aircraft. For example, the first meeting of the ICAO Dangerous Goods Panel (DGP) was held from January 12-28, 1977, to prepare the draft of ICAO Annex 18 to the Chicago Convention on international civil aviation together with its associated technical instructions for the safe transport of dangerous goods by air (with the ICAO Technical Instructions becoming mandatory for all ICAO member states in 1984). In cooperation with other interested federal departments, the agency negotiated new bilateral and multilateral agreements with foreign nations to facilitate reciprocal civil air transportation rights. It also provided technical assistance, generally on a reimbursable basis, to assist other countries with programs such as aircraft certification and air traffic control. Although civil aviation

technical assistance fell under many types of arrangements, a large part of the FAA's aid came from classroom training. In addition, the agency placed representatives in several countries responsible for coordinating and liaising FAA activities in designated geographic areas.

### **Office Evolution**

Before Congress passed the Civil Aeronautics Act in 1938, an ad hoc group in the Department of Commerce, known as the Interdepartmental Committee on Civil International Aviation, handled some international aviation activities for the federal government.<sup>2</sup> With its creation the same year, the Civil Aeronautics Authority (CAA, later renamed Civil Aeronautics Administration) established an international division. Division staff members represented U.S. interests at aviation conferences and meetings.

The CAA began formal international activities in 1941. That year, the agency established its first Inter-American Aviation Training Program as part of the U.S. national defense effort. By the end of World War II, the CAA had trained 894 Latin Americans in aeronautical sciences, including 365 pilots, 386 mechanics, and 99 airways technicians. After the war, the CAA sent technical missions to Latin America to help improve aviation facilities and training.<sup>3</sup> As of mid-1951, the CAA had missions in Bolivia, Colombia, Ecuador, Panama, and Venezuela.<sup>4</sup>



CAA International Training Class, late 1940s  
Courtesy: FAA

The International Aviation Facilities Act, signed into law on June 16, 1948, expanded the CAA's international role. It authorized the administrator to improve air navigation facilities abroad and to train

foreign nationals to operate such facilities wherever it benefited U.S. air carriers. The act gave the administrator responsibility for maintaining a record of deficiencies in overseas aviation facilities used by U.S. flag carriers and to plan appropriate programs for their correction.<sup>5</sup> As a result of that act, on February 25, 1949, the United States began one of its first non-Latin American missions. An agreement between the U.S. and Greek governments provided for a civil aviation mission to Greece under the sponsorship of the Economic Cooperation Administration. The thirteen CAA specialists named to the task left for Greece in April 1949 to aid in establishing, maintaining, and operating civil aviation facilities. The CAA team also trained Greek personnel in operating and maintaining the facilities.<sup>6</sup>

To oversee the agency's growing international responsibilities, in June 1949, CAA Administrator Delos Wilson Rentzel announced a reorganization that, among other changes, created a new international region located at the agency's headquarters in Washington, DC. Before this action, the field operations office oversaw international

activities.<sup>7</sup> In 1956, the name of the office changed to the Office of International Cooperation.

The Federal Aviation Agency replaced the CAA in 1958. On January 15, 1959, FAA Agency Order 1 prescribed the basic organizational structure of the new agency. It included an Office of International Coordination, later renamed International Aviation Service.<sup>8</sup> In a 1963 reorganization designed to decentralize international aviation activities, the FAA reconstituted its international aviation service as the international aviation affairs office under an assistant administrator reporting to the administrator. The order directed the decentralization of operational responsibility for the agency's international aviation activities to the regions. The FAA opened the Africa, Europe, and Middle East Region in London on September 1, 1963. That organization had authority for all FAA international activities except the supervision of technical assistance programs, which remained with the international affairs office. The office oversaw the African, European, and Middle Eastern activities of the agency's international field offices, the FAA representatives working on the European airspace coordination committee, the systems research and development international office, and the air traffic control advisers stationed abroad.<sup>9</sup>

On August 12, 1970, the FAA established a technical assistance staff in the international aviation affairs organization to oversee various short-term technical assistance programs in foreign countries. During the first year of its existence, the agency dispatched forty-four technicians on short-term assignments to thirteen countries. Almost two years later, the FAA moved the international aviation affairs office under the direction of the associate administrator for plans, a change made to reduce the number of

people reporting directly to the administrator. In July 1973, however, the FAA again placed the office under an assistant administrator reporting directly to the administrator.<sup>10</sup>

The FAA reorganized the office in 1975 when the international office became a direct report to the new associate administrator for policy and international aviation affairs. On April 26, 1978, the FAA announced that Charles Cary, who directed the agency's international office, would head the newly created overseas post of special representative of the administrator. In this post, Cary, based in Brussels, served as the senior FAA representative overseas. His duties included evaluating FAA operations in Africa, Europe, and the Middle East to improve efficiency and reduce costs. He also served as the administrator's representative at international aviation meetings and regularly liaised with foreign aviation officials.<sup>11</sup>

In a 1979 reorganization, the agency abolished the Africa, Europe, and Middle East Region and assigned the executive direction of that organization to the associate administrator for policy and international affairs. At the same time, the FAA transferred the responsibility for the flight inspection program in the African, European, North Atlantic, and Middle Eastern areas to the flight standards national field office.<sup>12</sup>

### **Inherited Issues**

The Carter administration inherited several serious international aviation issues from the Nixon and Ford administrations. In addition to problems with the British over the microwave landing system and the heated controversy with the British and French over delays in allowing the Concorde to fly into New York, the British announced its intention to renounce the 1946 Bermuda Agreement in 1976. The bilateral air transport

agreement between the United States and the United Kingdom (U.K.) regulated civil air transport between the two countries.

By the early 1970s, British officials began questioning the more liberal aspects of that agreement. They expressed concern that airlines in the United States had become more powerful than those in the United Kingdom. On June 22, 1976, the British gave one year's notice that it planned to terminate the original landmark agreement. British objectives for a new deal included an increase of their share of transatlantic passenger revenue by instituting capacity restrictions and curtailing American air carriers' "fifth freedom" rights to fly passengers east from London and west from Hong Kong. (A fifth-freedom flight allows an air carrier to operate between two countries, neither of which served as the airline's home base.)<sup>13</sup>

Negotiations for a new bilateral agreement began on September 8, 1976, but made little headway. While the U.S. fought for more liberal terms, the British wanted additional restrictions to benefit U.K. air carriers. If the two governments could agree by June 22, 1977, scheduled passenger service between the two countries would continue.

### **Bermuda II Agreement**

On December 7, 1944, U.S. officials and representatives of fifty-one other countries at the International Civil Aviation Conference in Chicago signed the Convention on International Civil Aviation, known as the Chicago Convention. The agreement laid the groundwork for the first truly global organization for civil aviation—the Provisional International Civil Aviation Organization (PICAO)—and created the machinery to assure uniform standards and practices for flight safety and operations. The

United States ratified the convention on August 9, 1946; the 26th state ratified it in March 1947, and it came into force on April 4, 1947. On that date, ICAO formally succeeded its temporary predecessor, PICAO.<sup>14</sup>

The convention reaffirmed the principle of national sovereignty in airspace but did not provide a multilateral framework for exchanging air traffic rights. After World War II, the lack of such a framework led to the need for bilateral civil aviation agreements negotiated between countries. Those agreements typically specified which airlines could operate between the two countries, the routes carriers could use, the airports they could fly into, and whether or not the airlines could offer beyond services or fifth freedom rights. An agreement generally identified the limits on the frequency and capacity the carriers could operate, and often placed controls over airline pricing.

Even before the ratification of the convention, the two aviation superpowers, the United States and Great Britain, signed their first bilateral aviation treaty on February 11, 1946. The provisions of the Bermuda Agreement represented a compromise between the U.S. desire for a liberal agreement and British hopes for strict regulatory controls. The final deal neither predetermined the frequency at which airlines of either country could fly on any given route nor prohibited the designation of more than one airline on any agreed route by either party.<sup>15</sup>

Neither country's airlines could introduce as many services as they wanted within the agreement's overall capacity constraints. Either government could object if the airlines of the other country placed too much capacity on a route. If either country objected, they would review the matter, which could lead to a possible reduction or an increase in frequency. The British permitted international flights by the British Overseas

Airways Corporation, and the United States allowed Pan American World Airways, Trans World Airlines, and American Overseas Airlines to fly routes to the United Kingdom.<sup>16</sup>

The two countries agreed that the International Air Transport Association would set fares subject to their approval.<sup>17</sup> In addition, the United States and Great Britain consented to five “Freedoms of the Skies,” which granted the right of an airline of one country to:

- fly over the territory of another country without landing
- land in another country for nontraffic reasons, such as maintenance or refueling, while en route to another country
- carry traffic from its country of registry to another country
- carry traffic from another country to its own country of registry
- carry traffic between two countries outside of its own country of registry as long as the flight originates or terminates in its own country of registry (i.e., “beyond rights”)<sup>18</sup>

Under the agreement, eleven U.S. cities—Baltimore, Boston, Chicago, Detroit, Los Angeles, Miami, New York, Philadelphia, San Francisco, Seattle, and Washington, DC—served as gateways or cities from which nonstop flights could travel to the U.K. British airports including London, Prestwick in Scotland, and intermediate stops in British colonial territories Bermuda and Gander, Newfoundland.<sup>19</sup> This bilateral agreement became the model for agreements between the United States and other countries, such as Australia, Bolivia, Egypt, Germany, and Spain.





Vice President Walter Mondale with British Prime Minister James Callaghan  
Courtesy: Bob Daugherty AP Wire Photo, *Star Tribune*

Shortly after Carter's inauguration, Vice President Walter Mondale officially visited Great Britain. He met with Prime Minister James Callaghan on January 27, 1977. Callaghan used the opportunity to tell Mondale that while overall U.K.-U.S. relations remained good, he believed aviation

relations were poor. British officials reminded the U.S. delegation that the Bermuda Agreement would end in five months, and the negotiators had made little progress in finalizing new terms.<sup>20</sup>

Early in his tenure as Secretary of Transportation, Brock Adams cautioned the president that although the Bermuda Agreement “was relatively competitive . . . the British would like to replace it with a less competitive system in which capacity would be determined in advance by agreement.” He explained, “This would disadvantage the United States, which now carries 60 percent of the total traffic carried by the United States and the United Kingdom airlines; moreover, 60 percent of all of the passengers who are carried by U.S. and U.K. airlines are U.S. citizens.” Adams asked the president to permit the Department of Transportation (DOT) to “take a major role in the negotiations, and not relinquish the lead completely to the State Department.”<sup>21</sup>

In a memo to Carter on February 3, Adams reported that the U.S. negotiating team comprised representatives from the State, Transportation, and Commerce departments, the Civil Aeronautics Board (CAB), and the Council on International

Economic Policy. Although the State Department was the nominal leader, it did not devote full-time attention to the effort. As a result, Adams believed negotiations had been “fragmented and insufficient.” He worried that “with 60 percent of the [negotiation] time gone, the U.S. and the U.K. are no closer than they were at the beginning to an agreement on major issues.” Because of the lack of progress, Adams related the U.S. carriers “have become so concerned about what they see as a lack of leadership that they have petitioned the CAB for permission to meet, and possibly agree on, a mutual cessation of all US/UK services if no satisfactory agreement can be reached by June 22.”<sup>22</sup>

The Carter administration, aware of the urgency to jump-start negotiations, worked to determine a negotiating strategy and the roles and responsibilities of the negotiating team. After consulting with Secretary of State Cyrus Vance and CAB Chairman John Robson, Adams recommended the president appoint a special ambassador to lead the U.S. negotiating team. Adding that “something more than expressions of concern are needed at this critical stage,” he said the appointment of a high-level presidential representative would signal the importance of the bilateral negotiations and elevate the status of the U.S. team. More importantly, a special ambassador “would be able to take on the leadership role without conflicting with traditional relationships in international aviation matters.”<sup>23</sup> Because the next round of negotiations would start on February 28, Adams urged a quick decision from the president.

The White House forwarded the Adams memo to Robson, Vance, Office of Management and Budget (OMB) Director Bert Lance, Council of Economic Advisors Charles Schultze, and Secretary of Commerce Juanita Krebs for comment, concurrence or nonconcurrence, and recommendations for a special ambassador.<sup>24</sup> Responses to the

memo ran the gamut from nonconcurrency to full support. The State Department, in particular, strongly supported Adam's position and recommended former Secretary of Transportation Alan Boyd as the special ambassador. Carter agreed and announced Boyd's appointment on February 20, 1977.<sup>25</sup> Boyd arrived in London in time for the next series of meetings. Assistant Secretary of Transportation for Policy and International Affairs Chester Davenport represented the DOT on the negotiating team. The delegation included representatives of government agencies and advisors from the private sector.

Several days after negotiations began, Boyd called the British proposals anticompetitive and worried they would jeopardize U.S. aviation agreements with other nations if accepted. He reported to the president, "The U.S. has responded to U.K. charges of predatory competition from U.S. carriers by offering major concessions," such as severely reducing the number of routes on which more than one U.S. airline would compete with a British airline. He added that while making concessions, the U.S. negotiators made it clear they would not agree to a regulated market split, where the United Kingdom could veto U.S. airline capacity increases and limit the right of U.S. airlines to pick up and discharge passengers beyond London. Boyd believed if the two sides could not come to terms before the treaty ended, any cessation of air traffic between the two countries would be of short duration. But in case it was long, Boyd recommended that the United States negotiate for alternative European destinations such as Amsterdam and Dublin.<sup>26</sup>

With a lack of progress on significant issues, Boyd recommended the DOT and the FAA prepare contingency plans in case the negotiators did not meet the June 21 deadline and air services between the two countries ended. Chester Davenport led the

contingency planning, which focused on potential route changes, possible economic loss estimates for the U.S. carriers, and appropriate ways to notify the public about possible disruption in service.<sup>27</sup>

With negotiations stalled and service disruption a likely possibility, National Security Council staffer Timothy Deal, well grounded in aviation diplomacy, advised the United States to refrain from responding to British overtures to extend the deadline. Agreeing to an extension, he argued, “would play into British hands and undercut our negotiators’ credibility.” He believed the United States had to focus efforts on coming to an agreement with the recognition that the United States might have to make extra concessions. Deal recommended that U.S. officials make it clear to their British counterparts the United States was prepared to stop air service between the two countries. He rationalized the U.S. threat to “cut off services during the high tourist season is our strongest bargaining tool.”<sup>28</sup>

Less than forty-eight hours before U.S. rights to land in the United Kingdom would end, Alan Boyd reported that reaching an agreement by midnight on June 21 appeared “slim.” The negotiations, however, remained fluid, and he thought a breakthrough could occur before the deadline. The critical unresolved U.S. issues centered on a long-term liberal charter agreement, fifth and sixth freedom rights, and route authority on Pacific and Atlantic routes. As the president and White House staff readied to announce a suspension of service to London, the negotiators broke the long impasse and averted the shutdown.<sup>29</sup>

With Bermuda II negotiations still underway, President Carter, trying perhaps to break the negotiation deadlock, approved Laker Airways’ low-cost Skytrain transatlantic

service from London to the United States on June 14, 1977.<sup>30</sup> Service began on September 26, 1977, when the Skytrain made its first flight from New York to London. On the same day, President Carter approved a package of new low-cost standby and reserved fares for U.S. scheduled transatlantic flag carriers.<sup>31</sup> On December 21, Carter moved to increase the extent of transatlantic service to Europe, approving new routes from eleven American cities.<sup>32</sup>

With neither side wishing to see a service disruption and several key issues still undecided, the U.S. and U.K. representatives signed an “agreed minute” on June 22, averting a cessation of services between the two countries. The pact specified that although the two countries had agreed upon terms for a new air service agreement, each would review the draft by July 31, resolve any issues the negotiating teams brought to the table during the review period, make revisions, and produce a final draft. The U.S. delegation hosted a drafting session in Washington, DC, July 12-15, during which the negotiators identified approximately twenty substantive points of difference. At the



Laker Airways Skytrain  
Courtesy: Jonathan Payne via Wikimedia Commons

urging of the Bermudian government, the negotiators moved to Southampton, Bermuda, for additional sessions held July 18-23.<sup>33</sup>

On July 23, 1977, Boyd and Secretary of Transportation Brock Adams signed the Bermuda II Agreement on behalf of the United States. The resulting compromise limited American fifth-freedom rights and restricted situations in which more than one U.S. carrier served the same U.S.-UK route. It established a procedure the two governments could use to control capacity. The treaty also opened new routes for airlines of both countries, allowed the entrance of new carriers into the U.S.-UK market, and resulted in lower fares.

On March 17, 1978, after complex negotiations, the United States announced a new bilateral agreement with the United Kingdom within the context of the Bermuda II Agreement, making a range of lower fares possible between the two nations. The agreement permitted budget and standby fares on scheduled flights between the United Kingdom and fourteen U.S. gateway cities. The agreement also liberalized charter rules and ensured charter rate freedom.<sup>34</sup>

### **Establishing Policy**

Many in the aviation industry feared Bermuda II would harm U.S. airlines because of its more restrictive measures. As John Barnum, a former deputy secretary of transportation, explained:

Paradoxically, Bermuda II, the new U.S.-U.K. agreement on commercial air transport, increases government regulation in international air markets at the very time when Congress, at the urging of the President, is moving toward a more competitive regime for domestic air markets. Even more paradoxically, in Bermuda II, the executive branch itself has—in the name of foreign policy—limited competition by executive agreement rather than

left economic regulation to the appropriate regulatory agency, the Civil Aeronautics Board.<sup>35</sup>

Within months of the Bermuda II signing, the Senate and House aviation subcommittees held hearings on the agreement and the future direction of U.S. international air transport policy. While reaction to the Bermuda II Agreement remained mixed, criticism of the negotiating process proved severe. In testimony to the House aviation subcommittee, CAB Chairman Alfred Kahn criticized the process the U.S. used to negotiate bilateral aviation agreements. He stated, “The roles of the various agencies concerned with international aviation policy are not clearly defined, and the collaboration among agencies has been largely ad hoc, negotiation by negotiation.”<sup>36</sup> Assistant Secretary of Transportation for Policy, Plans, and International Affairs Chester Davenport agreed with Kahn. He claimed U.S. international air transportation policy needed to be more focused and sustained. “At present,” he testified, “our activities and the level of involvement of the various interested agencies are fragmented and ad hoc in nature. There is often unnecessary duplication of effort and occasional friction . . . the designation of clearer agency roles and responsibilities for international aviation activities would improve the situation.”<sup>37</sup>

John J. O’Donnell, president of the Air Line Pilots Association, echoed Kahn and Davenport’s sentiments. He informed the subcommittee that the United States “needs a new negotiating position and policy. We must ensure the same opportunities for our industry to survive and prosper under truly fair competitive rules.” O’Donnell recommended, “Congress should insist on the establishment of an international aviation office in the highest level of our executive branch . . . headed by an experienced aviation leader.”<sup>38</sup>

Senate hearings on November 29 and December 1, 1977, resulted in similar testimony and concerns. Senator Howard Cannon (D-NV) bluntly stated, “The hearings are beginning at a time of confusion and disarray in international aviation with the old order of business established after World War II slowly disintegrating.” He worried, “The rules by which the game was played in the past, established by the Chicago convention in 1944 and the historic Bermuda agreement of 1946 . . . are now changing as other nations seek to challenge U.S. leadership.”<sup>39</sup> With negotiations underway with the Japanese for a new bilateral agreement, Congress and many in the Carter administration hoped that Bermuda II did not set the tone for other bilateral agreements.

White House staffers, also concerned about losing primacy in international aviation affairs, deliberated how best to organize the conduct of international aviation relations. The State Department traditionally had the lead in negotiations, but DOT officials believed their department should be the predominant agency to handle all national and international aviation matters. The ongoing wrangling with the British over a new bilateral agreement highlighted areas for improvement in the ad hoc manner in which the State Department handled such issues, resulting in congressional calls for a new paradigm. This was especially true in light of the need to negotiate new bilateral agreements with other nations.

In addition to the airlines’ desire for more liberal international aviation agreements, others in the U.S. aviation industry wanted help to hold back increasing competition from manufacturers abroad. For example, U.S. aviation firms urged the Carter administration to guarantee U.S. supremacy through protectionist measures. They also advocated that the federal government encourage foreign nations to adopt U.S.



technologies.

In the wake of criticism of the Bermuda II Agreement, and with negotiations underway or about to start with other nations, on September 8, 1977, Deputy Secretary of State Warren Christopher met with Stuart Eizenstat to discuss how federal agencies could organize better for international aviation negotiations. Christopher outlined plans for future negotiations in a memo to Eizenstat the following day. He recommended that the ad hoc committee created for the Bermuda II talks become a permanent interagency committee chaired by Under Secretary of State for Economic Affairs Richard Cooper. He also wanted the State Department to prepare and issue a set of procedures to enhance working-level coordination and preparations for negotiations by September 14. With talks with Japan about to start, the State Department nominated Assistant Secretary Julius Katz to head that team with a deputy assistant secretary for transportation.<sup>40</sup>

Christopher surmised a “State-chaired Interagency Committee will provide the appropriate [U.S. government] agencies with a permanent means for participating in decisions on policy and negotiating strategy.” He reasoned, “The committee structure will assure that international aviation negotiations are not viewed solely in a narrow aviation context.” In his view, since other nations tied aviation negotiations to better political and economic relations with the United States, a State Department-lead team would be able to handle the broader aspects of aviation negotiations best. According to Christopher, “the leadership and composition of the Committee will also enable it to use non-aviation aspects of specific bilateral relationships as leverage to achieve aviation objectives.” This move was essential, he said, because “our current national aviation policy runs counter to the aviation policies of most other countries.”<sup>41</sup>

Wanting the DOT to serve as the lead agency in aviation negotiations, transportation officials took exception to Christopher's proposal. Chester Davenport highlighted, "The U.S. Government is essentially operating under a June 1963 letter from the President to the Department of State assigning the Department a leadership role in international aviation policy." This decision had not been re-evaluated with the establishment of the DOT in 1967. Davenport reasoned, "In any reorganization or assignment of responsibility among executive branch agencies, all transportation-related matters should be the responsibility of the Department of Transportation." He added that giving the DOT responsibility "would be consistent with the central thrust of the President's objectives for reorganizing government."<sup>42</sup>

More importantly, according to Davenport, the primary focus of international air transportation agreements between nations should be transportation policy, not State Department concerns. "If aviation and non-aviation foreign policy concerns are traded," he pointed out, "then U.S. transportation interests may lose . . . trading in a foreign policy sense is often not consistent with a transportation policy that aims to move toward a system that places principal reliance on effective competition in the marketplace." Davenport insisted a State Department-led committee would not work. "The ad hoc interagency committee created for the U.S.-U.K. bilateral negotiations proved less than effective." He contended international aviation policy should clearly define departmental roles and responsibilities. Since the State Department's proposal failed to do that, the DOT could not endorse Warren Christopher's proposals.<sup>43</sup>



Richard Cooper  
Courtesy: Yale University Library

With congressional and media attention focused on the conduct of international aviation policy, the State Department worked to make a public case for its primacy. In a speech to the International Aviation Club on January

18, 1978, Richard Cooper told the

audience the United States was “in a period of unusual accord among agencies on our objectives on international aviation. . . . We are, perhaps, in a new era when agencies agree, and airlines compete rather than the other way around. For our part, the State Department will continue to work closely with other agencies in preparing our negotiating position and in the negotiations themselves.”<sup>44</sup>

While the debate continued over which agency should lead international aviation matters, another controversy erupted over whether or not the president should issue a policy statement outlining the administration’s global aviation goals. The Ford administration issued such a statement in 1976, and some believed Carter needed to release a policy, especially in the wake of what many thought to be the failed Bermuda II Agreement. On September 15, 1977, OMB’s James McIntyre sent a message to the president recommending he issue such a statement. McIntyre suggested the policy statement should include the following:

1. designation of more than one U.S. flag carrier in large markets
2. expansion of the number of nonstop gateways
3. liberalization of restrictions on charters
4. low-fare scheduled service
5. reduction or elimination of capacity restrictions

He also wanted the policy to include a directive requiring international aviation negotiators to obtain presidential approval before agreeing to bilateral agreements that did not adequately achieve the first and second objectives.<sup>45</sup>



President Carter with Robert Lipshutz  
Courtesy: NARA

Carter's National Security Advisor, Zbigniew Brzezinski, White House Counsel Robert Lipshutz, and Stuart Eizenstat disagreed with issuing a formal policy statement. They worried such a statement issued so soon after the Bermuda II Agreement might make it difficult to defend the treaty. In addition, they did not believe presidential approval of bilateral agreements was warranted. They posited, "The more serious problem in international aviation negotiations is how to translate broad policy objectives into a workable negotiating strategy. Many difficulties in the U.S.-U.K. negotiations stemmed from organizational inefficiencies and an inadequate interagency coordinating mechanism. While there is general agreement that we must improve the process of negotiating international aviation agreements, there is disagreement among the agencies on how that process should be organized. Both State and DOT have indicated a desire to play a central role."<sup>46</sup> In a decision memo for the president, the three advisors recommended "you direct us and OMB to work with these agencies to develop a consensus or options on how the negotiations should be conducted, and report back to you. Until this is accomplished, an interagency group, chaired by the State Department has been established to conduct the Japanese bilateral."<sup>47</sup> They also advised the president not to

issue the OMB-initiated policy statement but rather send a letter to the current aviation negotiators outlining his views on items such as competition and low fares.<sup>48</sup>

McIntyre learned about the decision memo sent to Carter and threatened to send his brief to the president. The Domestic Policy Staff offered a compromise. Eizenstat agreed to include a paragraph in his memo outlining OMB's views on why a policy statement should be issued "rather than involve the President in their squabble." The new decision memo stated OMB believed "that you should also endorse the policy statement. They believe that unless you specially instruct and guide our negotiators that the institutional momentum will work toward compromise agreements that do not fully reflect your commitments to free competition."<sup>49</sup>

Despite the objections of some of his key advisors, Carter opted to issue an international aviation policy statement. He suggested, however, the State Department review it one more time before issuance.<sup>50</sup> With OMB and the State Department at loggerheads, consensus proved challenging, and the agencies involved did not agree on a compromise statement for over a year. On August 21, 1978, Carter finally issued the International Air Transportation Negotiations Statement of U.S. Policy for the Conduct of Negotiations. The statement stated, in part:

Bilateral aviation agreements, like other international agreements, should serve the interests of both parties. Other countries have an interest in the economic prosperity of their airline industries, as we do in the prosperity of ours. The United States believes this interest is best served by a policy of expansion of competitive opportunity rather than restriction. By offering more services to the public, in a healthy and fair competitive environment, the international air transport industry can stimulate the growth in traffic which contributes both to profitable industry operations and to maximum public benefits.<sup>51</sup>

The policy listed seven negotiating objectives:

1. creation of new and greater opportunities for innovative and competitive pricing that will encourage and permit the use of new price and service options to meet the needs of different travelers and shippers
2. elimination of discrimination and unfair competitive practices faced by U.S. airlines in international transportation
3. encouragement of maximum traveler and shipper access to international markets by authorizing more cities for nonstop or direct service and by improving the integration of domestic and international airline services
4. expansion of scheduled service through the elimination of restrictions on capacity, frequency, and route and operating rights
5. flexibility to designate multiple U.S. airlines in international air markets
6. flexibility to permit the development and facilitation of competitive air cargo services
7. liberalization of charter rules and elimination of restrictions on charter operations<sup>52</sup>

The statement's release, however, did not resolve the tumultuous issue of which agency should have the lead in international aviation talks. As the dispute continued into 1978, the president asked the Domestic Policy staff and OMB to help reach a consensus on the organization of international aviation policy.<sup>53</sup> At a May 15, 1978, meeting, Brock Adams argued the DOT should have primary responsibility for aviation negotiations with foreign nations. Warren Christopher, Alfred Kahn, and OMB's Bowman Cutter disagreed, saying the unwarranted leadership transfer would only disrupt ongoing negotiations.<sup>54</sup> The group sent a memo to the president for a decision. Carter eventually decided the State Department should remain in control of international aviation discussions.

As Carter's cabinet and staff worked to develop the appropriate mechanisms and policies for international aviation negotiations, so did Congress. On June 7, 1979, Howard Cannon (D-NV) and Nancy Kassebaum (R-KS) introduced the International Air Transportation Competition Act of 1979 in an attempt to institutionalize a competitive international aviation negotiating policy. Glenn Anderson (D-CA) introduced a similar

bill in the House on September 29. On February 15, 1980, President Carter signed the act into law.<sup>55</sup>

The legislation required, “In formulating United States international air transportation policy, the Congress intends that the Secretary of State, the Secretary of Transportation, and the Civil Aeronautics Board shall develop a negotiating policy which emphasizes the greatest degree of competition that is compatible with a well-functioning international air transportation system.” That policy, which echoed the president’s policy statement issued in 1978, included ten goals for U.S. international aviation:

1. allowing U.S. and foreign air carriers to offer fares and rates that corresponded with consumer demand
2. creating opportunities for carriers of foreign countries to increase access to U.S. points if exchanged for benefits of similar magnitude for U.S. carriers or the traveling public with a permanent linkage between rights granted and rights given away
3. eliminating discrimination and unfair competitive practices faced by U.S. airlines in foreign air transportation
4. eliminating operational and marketing restrictions to the greatest extent possible
5. ensuring the maximum degree of multiple and permissive international authority for U.S. air carriers so they will be able to respond quickly to shifts in market demand
6. increasing the number of nonstop U.S. gateway cities
7. integrating domestic and international air transportation
8. placing the fewest possible restrictions on charter air transportation
9. promoting, encouraging, and developing civil aeronautics as a viable, privately owned U.S. air transport industry
10. strengthening the competitive position of U.S. air carriers to at least assure equality with foreign air carriers, including the attainment of opportunities for U.S. air carriers to maintain and increase their profitability in foreign air transportation<sup>56</sup>

The law also reduced the CAB's power to regulate U.S. international airlines but authorized the agency to retaliate against the airlines of nations that discriminated against U.S. carriers. Other provisions included defining circumstances under which foreign-registered aircraft might operate on U.S. domestic routes and revising the rules governing

the federal use of foreign air carriers. As a result, a new FAA regulation, effective October 16, permitted U.S. airlines to fly passengers and mail in foreign-registered aircraft. The agency allowed airlines to use leased or chartered aircraft on foreign and domestic flights. Section 29 of the law, named the “Wright Amendment” for House Majority Leader James C. Wright, Jr. (D-TX), limited scheduled airline operations at Love Field, Dallas, Texas, to aircraft seating fifty-six passengers or less, except for service within Texas and States sharing a border with Texas.<sup>57</sup>

### **New Agreements**

Although the Bermuda II Agreement proved more restrictive than the United States hoped, the Carter administration concluded several more liberal aviation agreements with other nations. Those agreements helped establish a trend that imposed less restrictive pricing, capacity, frequency, and aircraft type requirements. On August 21, 1977, the Carter administration declared, "maximum consumer benefits can be best achieved through the preservation and extension of competition between airlines in a fair marketplace."<sup>58</sup>

On March 10, 1978, in the first of this type of agreement, the United States and the Netherlands signed a new bilateral agreement based on the principle of free competition. It became the model for similar arrangements the United States negotiated with Belgium, Costa Rica, Finland, Germany, Hungary, Israel, Ivory Coast, Jamaica, Jordan, Poland, Singapore, South Korea, and Thailand.<sup>59</sup>



## Thawing Tensions

The FAA's predecessor organization, the Department of Commerce Aeronautics Branch, took an early interest in China, as it did with other nations. As early as November 1931, the Aeronautics Branch published "procedures governing flights in China by American airmen." Those rules required pilots to provide details of the proposed flight to the Chinese Government one month before the contemplated flight. Flight details had to include the name of the aviator, the type and symbol of the airplane, the type and horsepower of the motor, and information on any stops and the length of stay. The flight could not take place until the pilot received permission from the Chinese government.

Photographic apparatus, radio instruments, mail, and merchandise could not be transported into China. However, arms and munitions for self-defense could be brought into China if the pilot received prior approval from the Chinese government.<sup>60</sup> A revised requirement published in December 1931 mandated airmen "desiring to fly foreign airplanes into China must also inform the Ministry of Foreign Affairs at Nanking five days prior to entering Chinese territory, to enable the Chinese Government to notify local authorities."<sup>61</sup> As the number of U.S. citizens living in and visiting China increased, the Bureau of Air Commerce (the Aeronautics Branch had been renamed in July 1934) announced it had hired someone part-time to handle applications for renewal of airmen and aircraft certificates.

In late 1934, Allen L. "Pat" Patterson, president of the Airmotive Company in Shanghai, became the agency's first Bureau of Air Commerce representative in China. Serving as an inspector for several years, Patterson found himself amid the second Sino-Japanese War in July 1937. By November, the Japanese army was advancing toward

Nanking, operating on the bank of the Yangtze River. On December 5, the U.S. Embassy issued an evacuation notice stating, “The Embassy considers it inadvisable that Americans remain longer in Nanking. All Americans are urged to foregather at the Embassy west compound tomorrow morning, December 6th, at 9:30 a.m., to proceed in a group to the Bund and embark on the USS *Panay*.”<sup>62</sup>

Patterson made it safely to the U.S. Navy gunboat *Panay*, anchored in the Yangtze River outside Nanjing. He was onboard the *Panay* on December 12, 1937, when the Japanese attacked and sunk the ship. Patterson survived the attack.<sup>63</sup> After evacuating China, Patterson eventually returned and, as president of the Consolidated Trading Company, represented U.S. aircraft manufacturers in China hoping to sell aircraft to the Chinese military.<sup>64</sup>

On October 1, 1949, after the Chinese communists defeated the nationalists, Mao Zedong proclaimed the founding of the People's Republic of China (PRC). He quickly established a political and economic order modeled on the Soviet example. The new government created the Civil Aviation Administration of China (CAAC) in 1949 to manage all non-military aviation and provide general and commercial flight services.

The defeated Chinese Nationalist government under Chiang Kai-shek established the Republic of China with its capital in Taipei, Taiwan. The U.S. recognized the Republic of China but not the PRC. With the outbreak of the Korean War in 1950, the United States government prohibited all trade and travel to the PRC. The ban lasted over twenty years, until November 22, 1972, when President Nixon lifted the restriction on U.S. airliner flights to the People's Republic of China as part of a general rapprochement between the two countries.



Vice Premier of China Deng Xiaoping and Jimmy Carter at the signing ceremony  
Courtesy: NARA

On January 1, 1979, the United States and China established diplomatic relations. In September of the following year, the two countries signed a bilateral air transportation agreement that granted each country the right to designate two airlines to provide international service between the two

nations. The agreement limited the number of flights each country's airlines could operate and restricted those flights to two airports in China and five in the United States. In addition, each nation had the right to review and reject fares charged by the other's airlines. As a result of this agreement, on January 7, 1981, a CAAC Boeing 747 touched down at San Francisco International Airport, marking the resumption of air service between the People's Republic of China and the United States for the first time since 1949.<sup>65</sup>

The resumption of air service between the two countries paved the way for greater cooperation between FAA and Chinese aviation officials. In 1982, for example, FAA Administrator J. Lynn Helms invited a CAAC delegation to visit the agency's headquarters to learn about the FAA's airworthiness processes. The Chinese delegation received a five-week immersion course, and the FAA subsequently offered a reimbursable technical assistance program to help the Chinese establish airworthiness regulations. In response to the offer, the Chinese suggested the two nations develop an "umbrella" agreement with details negotiated later.

## **Vacating the Canal**

As new bilateral aviation agreements were signed, one long-term treaty ended. The presence of the FAA and its predecessor agency in Panama dated back to 1942, when the Civil Aeronautics Administration established a communications station in that country at the request of the U.S. Navy. A 1949 agreement called for the United States to provide air traffic control services for Panama, a function initially performed by the Air Force but transferred to the FAA after its creation in 1958.



Jimmy Carter and Omar Torrijos signing the Panama Canal Treaty  
Courtesy: NARA

On September 7, 1977, President Carter signed the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, commonly known as the Neutrality Treaty and the Panama Canal Treaty. Under the agreement, the United States retained the permanent right to defend the canal from any threat that might interfere with

its continued neutral service to ships of all nations. On December 31, 1999, a second treaty stipulated that Panama would assume complete control of canal operations and become primarily responsible for its defense.

As a result of the Panama Canal Treaty, on January 8, 1979, the FAA and Panama's Department of Civil Aviation signed an agreement gradually turning over the FAA's air traffic facilities to the Republic of Panama over five years. The transfer began on October 1, 1979, when the Panama Canal Treaty went into effect, and the U.S. Canal Zone officially ceased to exist. The agreement affected over 125 FAA personnel employed at the international flight service station, the center and terminal radar approach control facility (CERAP), and related operational and maintenance agency employees. As part of the agreement, some FAA employees remained in Panama to train Panamanian personnel for their new air traffic responsibilities.<sup>66</sup>

In a ceremony on April 22, 1983, the FAA turned over the CERAP, its last facility in Panama, to the government of that country. Four FAA technicians remained to perform maintenance and training for another year.<sup>67</sup>

### **Technical Assistance**

Since World War II, the FAA and its predecessor organization had provided aviation technical assistance and training to countries worldwide. The work, primarily under the auspices of the U.S. Agency for International Development and through other U.S. and international organizations on a direct country-to-country basis, covered a broad spectrum of activities. The FAA also negotiated technical assistance agreements directly with foreign civil aviation authorities under memorandums of agreement. The recipient

country generally reimbursed the agency for the cost of the assistance. The programs involved cooperative projects, personnel exchanges, and training mainly in air traffic control, air navigation facilities, radar and communications facilities, aircraft inspection and certification, flight inspection, and airman and aircraft safety regulation and certification.<sup>68</sup> The FAA subsequently stationed representatives in nine countries responsible for overseeing U.S. aviation interests in their assigned countries.

During the Carter administration, the FAA expanded its foreign technical assistance and training programs by establishing new technical advisory groups to assist the civil aviation authorities of Spain, Venezuela, and Iran develop their national airspace systems. The countries programmed major expenditures for system improvements and the FAA's cost in each case. The agency also provided shorter-term aid to numerous countries, generally for improving civil aviation security measures and flight inspection of air navigation aids. For example, in 1977, FAA specialists studied Jordan's civil aviation safety programs, recommended a safety surveillance program, and developed a set of abbreviated civil air regulations based on FAA regulations.<sup>69</sup>

On June 22, 1977, the FAA agreed to establish a technical assistance program to help modernize Iran's air traffic control system. Under the agreement, the FAA sent a fourteen-member aviation assistance group to Tehran, the capital of Iran. An advance group began work in mid-July, with the full contingent arriving within six months. The agency designed the assistance program, conducted under a two-year reimbursable agreement, so agency technical experts could help upgrade the Iranian national airspace system and establish a new en route air traffic control center in Tehran. The FAA also trained controllers and recommended procedures for improving administration and

logistics. Since the Iranian military operated the country's air traffic control radar system, the FAA technical group worked closely with the Imperial Iranian Air Force to ensure coordination between the military and civil air traffic control systems. The FAA had worked with the Iranian Civil Aviation Organization to a lesser degree since 1973 when the Iranian government asked the FAA to develop a modernization plan for its airway system.<sup>70</sup>

On December 14, 1977, the FAA began work with the South Korean government to expand Kimpo International Airport. The effort, reimbursed by the South Korean government, included a FAA technical assistance group resident in South Korea for thirty months. Agency specialists provided technical evaluations of contracts and supervisory oversight of construction projects. They also supported acquiring and installing air traffic control equipment, such as radar, non-directional beacons, and aeronautical fixed telecommunications systems.<sup>71</sup>

During fiscal year 1978, the FAA sent civil aviation assistance groups to Venezuela, Oman, South Korea, and Spain. In addition, the agency undertook fifty-three short-term technical assistance missions in nineteen countries. It also trained 460 nationals from seventy-one countries.<sup>72</sup>

After two years of discussion, on August 18, 1978, the FAA signed a memorandum of agreement with the Hellenic Republic Civil Aviation Authority. Agency technical representatives worked with their Greek counterparts to assess the air traffic control system and recommend improvements. A ten-person FAA study team arrived in Athens on October 15, 1978, for an initial two-month study period.<sup>73</sup>

The FAA provided technical input to bilateral negotiations, which resulted in the new air transport service agreement between the United States and the People's Republic of China, a bilateral airworthiness agreement with Poland providing for the reciprocal recognition of the safety certification of certain aeronautical products, and an agreement setting forth the terms and conditions under which the FAA would continue to perform safety and regulatory services in the Trust Territory of the Pacific Islands following termination of the U.S. trusteeship.

In addition, as part of its international responsibilities, the agency provided technical advice to foreign governments to improve the safety, efficiency, and capacity of their air traffic control systems and safety regulations. The assistance included providing full-time resident advisors in Korea, Oman, Spain, and Venezuela and sending approximately fifty short-term missions to sixteen other countries. Agency specialists trained 458 nationals from seventy countries in air traffic control and safety regulation. Upon request, the FAA provided flight inspection services for fifty foreign countries worldwide.<sup>74</sup>



*Clearly, there is a need to strengthen worldwide measures not only to condemn terrorism but to work toward its elimination. –Brock Adams<sup>1</sup>*

## **Chapter 10: Security**

International relationships played a prominent role in the FAA's battle to combat terrorism. With global terrorism rising in the 1970s and terrorist groups willing to support one another, aircraft and specific airlines became favorite targets. Terrorists often viewed some of the world's larger airlines as representative of a country's power and wealth, and planes proved obvious targets readily associated with specific nations. A successful attack could generate many casualties and tremendous press coverage. FAA spokesperson Fred Farrer explained, "Airplanes are a very tempting target."<sup>2</sup>

A continually evolving terrorist threat presented unique challenges to the Department of Transportation (DOT), the FAA, federal and local law enforcement agencies, and U.S. international partners. Terrorists and would-be hijackers continually tested the FAA's aviation security measures, looking for ways to defeat it. For example, after the agency deployed metal detectors at domestic airports in response to the rash of hijackings in the late 1960s and early 1970s, terrorists began to board aircraft with explosive devices in their carry-on baggage. When the FAA started examining carry-on baggage, terrorists succeeded in placing incendiary devices on board aircraft via checked baggage or carrying items such as plastic bottles containing fuel, undetectable by metal detectors, on board the plane.

As the FAA responded to each new threat, terrorists adapted their tactics, making it increasingly difficult for the agency and law enforcement authorities to identify the perpetrators. Because of the uncertain nature of terrorist acts, the FAA, the Federal

Bureau of Investigation (FBI), and the State Department had difficulty agreeing on a long-term view of the security threat to aviation, deterrence measures, and how and when to negotiate, if at all, with terrorists. For example, as a matter of general policy, U.S. government procedures centered on granting no concessions to terrorists. On the other hand, the FAA's mission focused on doing whatever necessary to save the crew and passengers' lives.

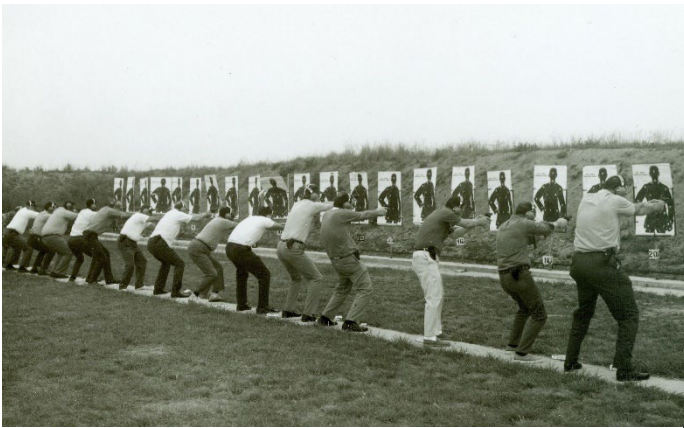
As the number of global hijackings and acts of aviation sabotage increased during the Carter administration, the president underscored the need for the federal government to reassess aviation threats continually and to devise ways to deter hijackers. The FAA increased some security activities, initiated new ones, tightened security measures with new regulations, and continued to search for new screening technologies through its research and development program. In addition, it continued to work with its international partners through technical assistance and information exchange programs to improve security measures abroad.

### **Countering Terrorism**

The first known case of sabotage to a U.S. commercial aircraft occurred on November 1, 1955, when a bomb destroyed a United Airlines Douglas DC-6B airliner after it took off from Denver, Colorado, killing all forty-four people on board. The FBI arrested J.G. Graham, who had taken out a life insurance policy on his mother, a passenger on the ill-fated aircraft. Graham was convicted and sentenced to death.<sup>3</sup>

A second incident happened on July 25, 1957, when dynamite exploded in a Western Airlines Convair CV-240's lavatory. The explosion blew the bomber through the

side of the aircraft. The pilot successfully landed the plane with no other casualties. A third instance occurred on January 6, 1960, when a National Airlines Douglas DC-6B crashed near Bolivia, North Carolina, killing the thirty-four passengers and crew. The Civil Aeronautics Board accident investigation revealed the plane had disintegrated in flight because of a dynamite explosion. Investigators found bomb fragments embedded in the body of passenger Julian Frank, who had taken out more than one million dollars in life insurance the preceding year. These early examples of sabotage sparked demands for the use of passenger screening and baggage inspection devices.<sup>4</sup>



FAA safety inspectors training in small arms use at the Border Patrol Academy  
Courtesy: FAA

The first hijacking to a foreign destination happened on May 1, 1961, when a passenger on a flight to Key West, Florida, forced the pilot to fly to Cuba. Four other hijackings to Cuba ensued before the end of August of that year. On September 5,

1961, President John F. Kennedy signed Public Law 87-197, which prescribed death or imprisonment for no less than twenty years for attempting to commit or committing aircraft piracy, interfering with aircrew members or flight attendants in the performance of their duties, carrying a weapon aboard air carrier aircraft, committing other crimes while aboard aircraft, or giving false information about the listed offenses. To help enforce the act, a special corps of FAA safety inspectors, the first sky marshals, trained at

the U.S. Customs Service Border Patrol Academy and began to fly on selected flights to prevent hijacking attempts.<sup>5</sup>

With international terrorism rising in the 1960s, the United States began working with the global community to combat air piracy. The legal committee of the International Civil Aviation Organization (ICAO) worked for several years drafting the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, known as the Tokyo Convention. The document clarified international jurisdictional issues concerning hijacked aircraft and recognized the authority of aircraft crews to use reasonable force to preserve law and order aboard their plane. In particular, the convention provided that any ratifying nation could apply its rules to incidents on board aircraft of its registry, no matter where the incident occurred. The agreement obligated signatory countries where a hijacked airliner might land to restore the plane to its lawful owner and permit passengers and crew to continue their journey as soon as possible. ICAO opened the document for signature on September 14, 1963; the convention would become effective ninety days after the twelfth signatory state deposited its instrument of ratification. The United States ratified the agreement on September 4, 1969, as the twelfth signatory, and it became effective on December 4, 1969.<sup>6</sup>

The late 1960s saw a rash of hijackings to Cuba. On February 21, 1968, a fugitive aboard a Delta Air Lines DC-8 forced the pilot to divert to Havana. By July 17, hijackers diverted four more U.S. airliners to the same destination. With no metal detectors developed for airport use, the airports, airlines, and the FAA could not stop the hijackers. As a FAA spokesperson explained: “It’s an impossible problem short of searching every

passenger.” He continued, “If you’ve got a man aboard that wants to go to Havana, and he has got a gun, that’s all he needs.”<sup>7</sup>

In July 1968, the FAA announced it had ordered sky marshals to fly on some Florida-bound airline flights. They flew unannounced on random flights. However, hijackings continued, and hijackers diverted twelve airliners and six general aviation aircraft to Cuba in 1968. According to the DOT, “After some seven years of almost complete quiescence, aircraft hijacking in the United States erupted in 1968 on an epidemic scale and continued into 1969.”<sup>8</sup>

In January 1969, hijackers diverted eight U.S. airliners to Cuba. The following month, the FAA established an eight-man Task Force on the Deterrence of Air Piracy led by the agency’s deputy federal air surgeon, H. L. Reighard. Task force members created a hijacker profile from behavioral characteristics shared by past perpetrators. When used with the newly developed magnetometer weapons-screening device, the profile system offered a promising method of preventing potential hijackers from boarding aircraft.<sup>9</sup>

In March 1969, the FAA began testing metal detectors, or magnetometers, for use at airports. At a press briefing, the agency demonstrated a configuration of two paneled boxes; each held three different prototype metal detectors. The machines detected changes in the magnetic field caused by the passage of metal objects. In June, the agency announced it had selected one of the three prototype detectors. After successful laboratory tests, Eastern Airlines conducted field tests of the equipment and the profiling system at several airports nationwide, including Atlanta, Dallas, Miami, New Orleans, New York, St. Louis, San Juan, Tampa, and Washington, DC.<sup>10</sup> In November, the Department of Justice agreed to provide U.S. marshals to search those who failed the

profile or magnetometer.<sup>11</sup> Trans World Airlines (TWA) began using the profiling and magnetometer systems in December 1969, and Pan American World Airways (Pan Am) in January 1970. By June 15, 1970, four U.S. air carriers employed the profiling system at some of their boarding gates.<sup>12</sup>

On July 17, 1970, New Orleans' Moisant International Airport became the first U.S. airport to subject all passengers to the behavioral profile used with a magnetometer. If security personnel identified a person as a possible risk, a U.S. marshal or deputy marshal stationed at the airport would investigate the individual. That same month, the FAA began testing a computer-assisted weapons detection system at Dulles International Airport. The new system screened passengers at a rate of twenty per minute as they passed through an electromagnetic field in a four-foot-long passageway.<sup>13</sup> In late 1972, the FAA also began testing two X-ray devices to detect weapons and explosives in carry-on luggage.<sup>14</sup>



FAA airport security sign  
Courtesy: FAA

The FAA publicized its anti-hijacking system to deter would-be hijackers and posted signs at airport ticket counters and boarding areas warning them about the severe penalties if they tried to hijack an aircraft. The notices in English and Spanish informed passengers that they and their luggage were subject to search, and carrying a concealed weapon on board an airplane was a federal offense.<sup>15</sup>

The FAA's new screening procedures initially increased security and slowed hijacking attempts. There were fourteen hijackings in the first three months of 1969 compared to three in the same period in 1970. Not a single flight covered by FAA screening had been the subject of a hijacking attempt. But FAA Administrator John Shaffer soon faced new types of hijackers—individuals choosing destinations outside of the Americas and others willing to kill to have their demands met. On August 29, 1969, in the first hijacking of a U.S. aircraft outside the Western Hemisphere, three terrorists connected to the Popular Front for the Liberation of Palestine seized control of a TWA Boeing 707 with 113 people on board bound for Israel and diverted it to Syria.<sup>16</sup>

Two months later, on October 31, Rafael Minichiello, a U.S. Marine absent without leave, commandeered a TWA Boeing 707 in Los Angeles and embarked on a seventeen-hour journey that ended in Rome, Italy. The plane first landed in Denver, where all passengers and three of the four flight attendants disembarked. The pilot landed at New York's John F. Kennedy International Airport (JFK). From there, the hijackers ordered the pilot to Maine. There two pilots qualified for overseas flights came on board. After departing Maine, the plane landed in Rome, where Italian police arrested Minichiello.<sup>17</sup> He became the first hijacker to force a crew to land and refuel repeatedly and the first transatlantic diversion of a U.S.-registered aircraft.

On March 17, 1970, the first death in a domestic U.S. aircraft hijacking incident occurred when a hijacker shot and killed the copilot on an Eastern Airlines shuttle en route from Newark, New Jersey, to Boston, Massachusetts. Although fatally wounded, the copilot shot and severely injured the hijacker with the latter's gun. The aircraft's

captain, wounded in both arms, landed the DC-9 safely in Boston. In the wake of increased violence, the FAA expanded its screening program.<sup>18</sup>



In addition to deploying new security technologies to airports, on June 15, 1970, FAA Administrator John Shaffer announced that a permanent organization would replace the FAA's Task Force on the Deterrence of Air Piracy. The agency tasked the new organization, staffed with specialists trained to handle aircraft piracy, with developing a comprehensive approach to air transportation security.<sup>19</sup> The air operations security division was responsible for dealing with bomb threats, aircraft and cargo security, and developing and implementing deterrent systems to prevent criminal acts against air transportation.<sup>20</sup>

During a hijacking, the new division would establish a command post in the emergency operations center adjacent to the communications center at FAA headquarters. The agency equipped the facility with telephones, tables, maps, and other necessary equipment and staffed it with agency experts from the air traffic, security, aviation safety, administrator's office, and specialists from other agency organizations. The center, completely remodeled and upgraded with new technology in 1979, coordinated activities with other federal agencies, such as the FBI, the Departments of Justice and State, and the White House. As a FAA spokesperson explained: "We have a plan" for hijackings. "We call experts on the type of plane, experts on explosives, security and air traffic people. We even have a model of the airplane and a diagram of the plane." During any security



incident, the nearest FAA regional office to the hijacking attempt set up a similar command center to help coordinate FAA headquarters activities.<sup>21</sup>

## Airlines, Governments Fail In Efforts To End Hijackings

New York Times News Service  
NEW YORK — Sunday's virtually simultaneous hijacking of four airliners headed for New York is the worst single outbreak yet of a disease for which airlines and governments, individually and collectively, have failed to find a specific cure. Since World War II there have been occasional hijackings over Balkan countries. Just outside U.S. air space, there were several planes hijacked from Cuba in the 1950's before Fidel Castro

tage mostly growing out of Middle East hostilities. The hijacker may be a desperate individual with a private problem, a fugitive from justice or a member of a political group serving its own concept of justice. Their common denominator is the vulnerability of an airliner in flight to the hijacker's threat of violence. If someone fights back, everyone in the plane is a hostage to sudden death if the plane goes out of control and plummets to the

At Montreal the United States called for a strong resolution against hijacking and sabotage of aircraft, but stopped short of advocating sanctions against governments that do not cooperate. The Israeli delegation had sought sanctions against any country that is found to be harboring either hijackers or saboteurs. Many delegations expressed sympathy for Israel's problem, since El Al has been a

*Corpus Christi Caller-Times*, September 7, 1970

Courtesy: [www.newspapers.com](http://www.newspapers.com)

The FAA soon found itself embroiled with a new type of air piracy, which the DOT called “organized international blackmail.” From September 6-9, 1970, members of the Popular Front for the Liberation of Palestine hijacked four airliners. The hijackers planned to seize two Israeli, one Swiss, and one U.S. aircraft. When the hijackers failed to take control of the first Israeli plane, they hijacked a U.S. aircraft. Discovering the wide-body jet too large to land at their airstrip, they ordered it to Cairo, where they blew it up after deplaning its occupants. Front members succeeded in boarding one Israeli airliner in Amsterdam, but their hijacking attempt failed when the passengers and crew thwarted the hijackers. One hijacker died, and British authorities arrested the other when the plane landed in London.<sup>22</sup> The terrorists freed all but six hostages on September 27. Those six were freed two days later in return for the release of the hijacker under arrest in London and six other Front members held in Switzerland and West Germany.<sup>23</sup>

The terrorists hijacked a U.S. and Swiss airliner on September 6. They landed the planes at a makeshift airfield in the desert they called Revolution Airport, also known as Dawson's Field, twenty-six miles north of Amman, Jordan. To gain bargaining power for the release of the female hijacker arrested in London, Front members hijacked a British airliner and forced it to land at their airstrip. The terrorists blew up the three empty planes.



Terrorists destroy hijacked aircraft at Revolution Airport  
Courtesy: <https://www.vc10.net/History/Hijackings.html>

In reaction to the hijackings, President Richard Nixon announced on September 11, 1970, a comprehensive anti-hijacking program that called for:

- acceleration of efforts by U.S. federal agencies to develop security measures, including new methods for detecting weapons and explosive devices
- acceptance by all countries of a multilateral convention, to be considered at a conference held under the auspices of ICAO, regarding the extradition or punishment of hijackers
- consultation between the U.S. State Department and other appropriate agencies and foreign carriers on anti-hijacking techniques
- extension, under DOT auspices, of electronic and other surveillance techniques by U.S. flag carriers to all gateway airports in the United States and other countries wherever possible
- placement of armed guards, provided and specially trained by the U.S. government, on American commercial airline flights<sup>24</sup>

In addition, the president called on the international community to suspend airline service to countries refusing to extradite or punish hijackers involved in international blackmail. He said the United States would hold nations that permitted the landing of a hijacked plane responsible for protecting the lives and property of U.S. citizens. Two weeks later, the Departments of Justice and Transportation signed a memorandum of understanding dividing responsibilities for responding to hijackings. The FBI did not have jurisdiction when an aircraft was airborne or moving on the runway for purposes of takeoff or landing. The pilot retained command, and the FAA's recommendations to the

captain had precedence. A further agreement in December 1971 assigned the pilot the responsibility of signaling whether the aircraft should be disabled or stormed.<sup>25</sup>

As part of its enhanced security measures, Secretary of Transportation John Volpe announced the appointment of Benjamin O. Davis, Jr., a retired Air Force lieutenant general, as the department's first director of civil aviation security on September 21, 1970. Davis advised on the department's anti-hijacking program. He coordinated the functions of the airport and airborne security force, composed of components from the Departments of Defense, Justice, Transportation, Treasury, and other government agencies.<sup>26</sup>

In October 1970, the secretaries of Transportation and Treasury agreed the U.S. Bureau of Customs would recruit and train a permanent force of customs security officers who would be assigned to the FAA for service aboard commercial passenger flights. After training at Fort Belvoir, Virginia, 1,784 men and women became air security officers, more familiarly known as sky marshals, on December 23, 1970. By May 1971, they had replaced the interim force organized under the program announced by President Nixon on September 11, 1970. In June 1974, the DOT announced the end of the joint Treasury and Transportation program.<sup>27</sup>

Hoping to bring diplomatic pressure on nations to prevent hijackings, on December 16, the United States and forty-nine other countries signed the Convention for the Suppression of Unlawful Seizure of Aircraft (known as The Hague or Hijacking Convention) at an ICAO conference. The U.S. representatives played an active role in developing the agreement, which declared the hijacking of civil aircraft an offense punishable by severe penalties. The convention obligated contracting states to extradite

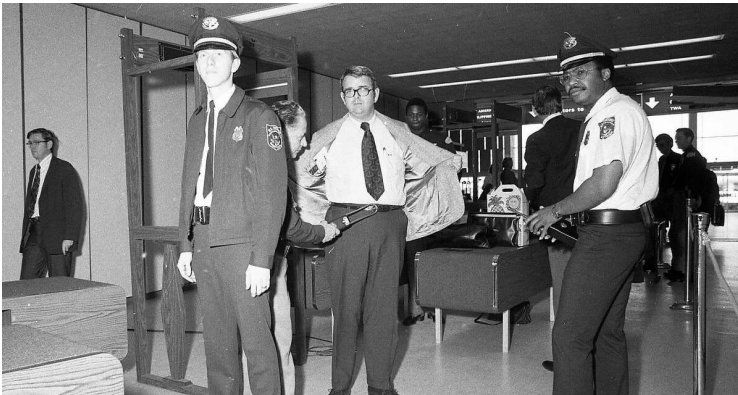
hijackers or to submit their cases to prosecutorial authorities. The U.S. Senate ratified the agreement on September 8, 1971, and the United States deposited its instrument of ratification on September 14. This action completed the ten ratifications needed to bring the convention into force among participating states. The agreement became effective on October 14, 1971.<sup>28</sup>

On September 23, 1971, the United States and twenty-nine other nations signed the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (known as the Sabotage or Montreal Convention). This agreement, directed against offenders who committed acts of violence against persons aboard civil aircraft in flight or who destroyed or endangered such aircraft through sabotage, interference with air navigation facilities, and/or communication of false information, placed an obligation on contracting states to extradite offenders or submit their cases to prosecutorial authorities. The convention would go into effect thirty days after depositing instruments of ratification by ten of the original signatory states. The U.S. ratified the agreement on November 1, 1972, and the treaty went into force on January 26, 1973.<sup>29</sup>

Despite a coordinated international effort, the air piracy problem persisted. On June 12, 1971, the first passenger death in a domestic hijacking incident occurred on a TWA aircraft bound from Albuquerque to New York City. The hijacker forced his way aboard the Boeing 727 aircraft during a scheduled stop at Chicago's O'Hare International Airport, seized a flight attendant, and demanded to be flown to Vietnam. The hijacker killed a passenger who attempted to aid the attendant. When the medium-range aircraft landed at John F. Kennedy International Airport to exchange the plane for a long-range aircraft, authorities wounded and arrested the hijacker.<sup>30</sup>

In November 1971, the first in a series of hijackings involving extortion occurred when a passenger on a flight from Portland to Seattle, Washington, successfully demanded \$200,000 and four parachutes. He parachuted from the rear stairway of the plane during the night. Authorities never found the hijacker, known as D. B. Cooper. Cooper's getaway became the first time a hijacker used a parachute for a successful escape and the most money a hijacker ever escaped with. Another incident involving a demand for ransom and parachutes occurred on December 24, 1971, and U.S. airlines faced seventeen more extortion attempts over the next six months.<sup>31</sup>

In January 1972, the FAA began an experimental program with the Fairfax County Police Department in Virginia to use trained dogs for security at Washington National Airport. According to FAA Administrator John Shaffer, "Dogs already have demonstrated their effectiveness in a wide variety of law enforcement and security tasks and should prove a valuable addition to ground security at airports." The FAA paid the county police \$34,000 for four dogs, two station wagons, kennels, other equipment, and to cover the salaries of the police dog handlers. After a twenty-week training program, the dogs worked at the airport for forty-five days to determine their effectiveness.<sup>32</sup> The FAA deemed the experiment successful and expanded the program the following year.<sup>33</sup>



San Francisco International Airport, 1973  
Courtesy: *San Francisco Chronicle*

In early 1972, the FAA made its voluntary screening system mandatory. In an emergency rule issued on January 31, the agency required scheduled air

carriers and certain commercial operators of large aircraft to implement a 100 percent passenger and baggage screening system acceptable to the administrator. Administrator Shaffer gave airlines until February 5 to comply “because of the alarming increase in hijackings during January, including several incidents involving extortion of large sums of money.”<sup>34</sup> The airlines could screen passengers using a behavioral profile, magnetometer, identification check, physical search, or a combination of methods.<sup>35</sup> The FAA also required airport operators to provide local law enforcement officers at each passenger boarding checkpoint no later than February 6, 1973.<sup>36</sup>

On March 6, 1972, the agency issued a new rule requiring the airlines to develop and implement a comprehensive anti-hijacking security program. Airlines had until June 5 to submit their programs for FAA approval. In announcing the new mandate, Administrator Shaffer explained, “The risk to life and property requires prompt and vigorous government action to ensure the establishment of reliable ground security systems.”<sup>37</sup> On the same day, at the FAA’s request, the Federal Communications Commission (FCC) notified broadcasters and FCC licensees that the Communications Act of 1934 prohibited unauthorized broadcast of FAA air-to-ground communications. This action followed instances in which media outlets monitored and rebroadcast FAA communications, seriously hampering the agency’s efforts to control aerial piracy.<sup>38</sup>

A series of incidents from March 7-9, 1972, prompted more FAA security measures. On March 7, authorities discovered a bomb planted as part of an extortion plot against TWA and defused it aboard an airliner at JFK. Two days later, another bomb damaged a TWA airliner parked in Las Vegas, and security personnel found a third bomb aboard a United Airlines jet in Seattle. That day, President Nixon ordered into immediate

effect the rule announced in March requiring scheduled air carriers and certain commercial operators of large aircraft to submit written security programs.<sup>39</sup>

The president's directive required the airlines to implement their programs immediately and submit them to the FAA by May 8 for formal approval. These measures, intended to prevent or deter unauthorized persons, baggage, or cargo from entering the carrier's aircraft, also mandated the use of a passenger screening system and specified procedures to be followed in case of a bomb or air piracy threat. Nixon said he planned to mobilize all federal security forces "to keep our airports, our airways and our air travelers safe."<sup>40</sup>

Maintaining the momentum of increased security actions, the president established a cabinet-level task force chaired by Secretary of Transportation Volpe. On March 15, Volpe and the other task force members from the departments of Defense, Justice, Treasury, and State; the White House; and the Civil Aeronautics Board approved the following steps:

- deploy sky marshals from airborne duty to posts at major airports
- expedite prosecution of extortion and hijacking suspects
- increase research and development funding for weapons and explosives detection systems
- increase the number of personnel on the FAA's security task force
- use trained dogs for the detection of explosives at major airports and assist in the training of additional dogs<sup>41</sup>

These new measures, however, failed to prevent a new series of hijackings, some perpetuated by a new type of hijacker—fugitives hijacking planes to escape arrest. On October 29, 1972, four hijackers killed a ticket agent, hijacked an Eastern Airlines Boeing 727 in Houston, Texas, and forced it to fly to Cuba. A sensational incident followed on November 10-12 when three wanted criminals hijacked a Southern Airways

DC-9 in Birmingham, Alabama. During the following twenty-nine hours, they flew to Jackson, Mississippi; Cleveland, Ohio; Toronto, Ontario; Lexington, Kentucky; Chattanooga, Tennessee; Havana, Cuba; Key West, Florida; and Orlando, Florida. In a desperate attempt to keep the DC-9 on the ground at Orlando, FBI agents shot out its tires. The hijackers responded by seriously wounding the copilot and ordering a takeoff. The pilot cleared the runway and made a second and final landing in Havana. Cuban authorities initially imprisoned the four hijackers but later released them. U.S. officials subsequently arrested all four.<sup>42</sup>

Those hijackings resulted in more federal anti-hijacking measures. On December 5, 1972, the FAA issued an emergency rule requiring U.S. air carriers, beginning on January 5, 1973, to inspect all carry-on baggage for weapons or other dangerous objects and scan each passenger with a metal detector before boarding. If the airline did not have a detector, personnel would have to search or pat down the passenger physically. The carrier could deny boarding to any passenger refusing such a search. The rule also required, beginning on February 5, 1973, that the nation's 531 air carrier airports have a law enforcement officer in the boarding area during the screening and boarding process. Previously, the FAA required air carriers to conduct a weapons scan of only those passengers who fit a hijacker profile—about 1 percent of the 500,000 passengers boarding airliners daily.<sup>43</sup>





John F. Kennedy Airport, 1973

Courtesy: <https://www.irememberjfk.com/wp/wp-content/uploads/2019/07/1973.jpg>

On August 5, 1974, President Nixon signed the Anti-Hijacking Act of 1974 into law.<sup>44</sup> The act:

- authorized the president to suspend air transportation between the United States and nations that aided terrorist groups who used the illegal seizure of aircraft as an instrument of policy
- empowered the Secretary of Transportation, with the approval of the Secretary of State, to impose sanctions against the carriers of nations that failed to maintain minimum security standards in the transportation of persons, property, and mail, as required by the Convention on International Civil Aviation
- required air carriers to refuse to carry persons unwilling to submit to personal search and refusing to allow agents to inspect their luggage
- Required the FAA to keep passenger and baggage screening procedures in effect
- allowed the FAA to use, for as long as necessary, federal personnel, including FAA employees, to supplement state, local, and private law enforcement

officers in airport security programs [In anticipation of this responsibility, the FAA drew upon resources of the defunct anti-hijacking and cargo security section of the Office of Air Transportation Security to establish a new unit, the civil aviation security service

- required the FAA to submit to Congress twice a year a report on the effectiveness of its aviation security program

On February 26, 1975, the FAA and the FBI signed a memorandum of understanding again outlining the authority and responsibility of each agency during aircraft hijacking situations. Under the agreement, the FAA had exclusive responsibility for the direction of any law enforcement activity when the aircraft is in flight—from when all external doors are closed following embarkation until the doors open for disembarkation. After the agency considered the wishes of the pilot in command, the airline's operator, and the FBI, it would determine the appropriate actions. When the aircraft was not in flight and the doors open, the FBI had responsibility. The State Department would aid the FBI and the FAA if hijackers seized a U.S. aircraft overseas.<sup>45</sup>

The passenger screening program and other preventive measures effectively combatted the hijacking menace. Between 1973 and 1975, no hijacker succeeded in commandeering an airliner in the United States.<sup>46</sup> The first successful hijacking of a scheduled U.S. carrier in forty-six months occurred on September 10, 1976. Five Croatian nationalists commandeered a TWA airliner shortly after takeoff from New York's LaGuardia Airport en route to Chicago. In this first international terrorist hijacking in the United States, the hijackers threatened to destroy the plane with realistic-looking bombs they assembled in a lavatory from an assortment of objects they brought onto the plane. To encourage authorities to acquiesce to their demands, they announced the location of an actual bomb planted in a New York subway locker. That device exploded after removal to a disposal area, killing one policeman. The hijackers demanded

newspapers publish a pro-Croatian manifesto and aircraft drop leaflets over cities in the United States, Canada, England, and France. Authorities complied with those demands, and the hijackers eventually surrendered when the plane landed in France.<sup>47</sup>



John McLucas  
Courtesy: FAA

FAA Administrator John McLucas announced new security rules effective April 15, 1976. One requirement mandated that airlines institute a FAA-approved program to screen checked baggage. Another regulation, effective in October, required foreign air carriers operating in the United States to implement a security program for screening passengers and carry-on items. The airlines had to design security programs to prevent or deter unauthorized access to aircraft and prevent cargo and checked baggage from being tampered with. In addition, they had to develop procedures for handling threats of bombs, piracy, or both.<sup>48</sup>

Overall, the FAA's evolving airport and aircraft security measures initially proved highly effective, as did the bomb-sniffing dogs deployed at major U.S. airports. And despite Cuban President Fidel Castro's renunciation of the 1973 U.S.-Cuba agreement to return or prosecute hijackers, the agreement's expiration in April 1977 did not immediately begin a new outbreak of hijackings to Cuba. The two countries initially signed the deal to stop a wave of boat and airline hijacking in the 1960s. Castro abrogated the agreement after a Cuban jetliner exploded in the air off Barbados, killing more than seventy people. Castro blamed the explosion on the U.S. Central Intelligence Agency.<sup>49</sup>

Despite a lack of renewed terrorist activity directed at aircraft and airports, the FAA remained vigilant. In a report to Congress concerning the effectiveness of its civil aviation security program in 1976, the FAA detailed an increase in worldwide aviation terrorism. Reporting, “there appears to be an increase in cooperation between terrorist organizations in various parts of the world,” the agency’s security office predicted, the greatest danger would come from “Europe, the Middle East, and South America where terrorist groups have strengthened their coordination and contacts with other revolutionary groups.” Despite the limited activity in the United States., the security staff warned, “This is not to imply that a terrorist operation cannot be planned and carried out in the U.S. . . . there is a good chance that in the next few years foreign-linked terrorists increasingly will be tempted to stage major actions within the U.S.”<sup>50</sup>

### **Hike in Hijackings**

When Jimmy Carter became president, the FAA’s security regulations covered thirty-six U.S. and seventy-three foreign air carriers. Those airlines operated 15,000 daily scheduled passenger flights to and from 620 U.S. and foreign airports and boarded 585,000 passengers and 800,000 pieces of carry-on baggage. Those numbers would grow after the passage of the Airline Deregulation Act in late 1978.<sup>51</sup> As the Carter administration settled into Washington, DC, it soon confronted increasing threats to civil aviation.

On January 8, 1977, just before Carter’s inauguration, two men attempted to hijack a general aviation aircraft. Three days later, a passenger tried to hijack a TWA Boeing 747 en route from New York to London. The man claimed to have a hand

grenade and demanded the pilot fly to Uganda. He had no weapon, and British authorities took him into custody when the plane landed in London. Since law enforcement arrested him after the plane landed at its original destination, the FAA categorized the hijacking attempt as incomplete. The agency characterized a hijacking as successful if the hijackers controlled the flight and reached their destination. It considered a hijacking a failure if the hijackers failed in their attempt to take over a plane. The agency categorized a hijacking attempt incomplete if law enforcement apprehended or killed the hijacker during the hijacking or immediately right after it.<sup>52</sup>

On May 8, 1977, a passenger attempted to seize control of a Northwest Airlines Boeing 747 en route from Tokyo to Honolulu. He grabbed an airline employee, held a razor to her throat, and demanded the pilot fly to Moscow. Another flight crew member hit the hijacker with an ax, and the crew overpowered and restrained him until the aircraft returned to Tokyo.<sup>53</sup>

A lone gunman took over a Western Airlines Honolulu to Denver flight with thirty-one people on board on August 20. The hijacker ordered the pilot to fly to Salt Lake City, and when the plane landed, he surrendered. Another U.S. hijacking occurred on October 20, when Thomas Hannon hijacked a Frontier Airlines aircraft at the Grand Island, Nebraska, airport. He displayed a sawed-off shotgun at the security checkpoint and proceeded onto the airplane.<sup>54</sup>

The hijacked plane flew from Grand Island to the Kansas City, Missouri, airport for refueling. Hannon allowed the women and children to deplane, then ordered the pilot to fly to Atlanta, Georgia, with the remaining eleven male passengers and four crew members. Hannon, wanted in Atlanta on bank robbery charges, demanded two

parachutes, \$3 million, and the release of his convicted partner in the bank robbery from the Fulton County Jail in Atlanta. After hours of negotiation, Hannon released the rest of the passengers and crew, talked with his attorney while still on board the plane, and then fatally shot himself.<sup>55</sup>

The United States experienced a fifth hijacking in 1977, on December 25, when a passenger on an Eastern Airlines aircraft en route from Jacksonville, Florida, to Atlanta, demanded the pilot fly to Cuba. After landing in Atlanta, he released all women and children and permitted law enforcement to board to talk with him. The officers overpowered him and seized a plastic toy pistol and a fake explosive device.<sup>56</sup>

The U.S. aviation community also incurred sabotage incidents during Carter's first year in office. On April 23, a pipe bomb exploded in an employee locker room at the FAA-operated National Airport in Washington, DC, killing an FAA-employed airport custodian. No one claimed responsibility for the bomb, and the FBI found no motive for the killing.<sup>57</sup> The following month, an explosive device damaged five helicopters in an aircraft parking area of the general aviation airport in Salinas, California. Law enforcement personnel removed two other explosive devices from another helicopter and a fixed-wing aircraft. Nine days later, on May 10, a bomb exploded at Emanuel County Airport in Swainsboro, Georgia, injuring a maintenance technician. Fifteen days after that, a bomb exploded outside the main office of Mackey Airlines in Fort Lauderdale, Florida.<sup>58</sup>

Officials found an explosives device in the terminal lobby of the Seattle airport on August 1. A bomb exploded at Miami International Airport twelve days later near a parked Venezuelan military plane with no injuries or damage. A caller saying he

represented a Cuban activist group claimed responsibility for that bomb, claiming retaliation for the jailing of political prisoners in Venezuela. The next day, a bomb threat forced the evacuation of the terminal at LaGuardia Airport. That incident resulted in diverting two flights and delaying more than a dozen flights. Law enforcement personnel found no bombs, and the airport reopened.<sup>59</sup> In 1977, the FAA recorded 890 bomb threats against U.S. aircraft, resulting in approximately 160 flight delays or diversions, forty airport evacuations, and 430 airport and aircraft searches.<sup>60</sup>

Hijacking attempts in the United States reached a six-year high in 1978 with eight incidents—the highest total since the agency mandated screening of all enplaning airline passengers and carry-on luggage in 1973.<sup>61</sup>

1. On January 28, a passenger hijacked a Piedmont Airlines aircraft before takeoff at Kingston, North Carolina. He demanded the plane go to Cuba, but the crew and passengers overpowered him when the plane stopped to refuel in New Bern, North Carolina.
2. On March 13, a man claiming to have an explosive device hijacked a United Airlines plane shortly after takeoff from San Francisco, California. He demanded to go to Memphis, Tennessee. The aircraft diverted to Oakland, California, where the hijacker released all passengers and all but three crew members. Upon takeoff from Oakland, he demanded the pilot fly to Cuba. The plane landed in Denver, Colorado, where the three crewmembers escaped, and the hijacker eventually surrendered.
3. On April 1, a male armed with a .22 caliber rifle attempted to hijack a Piedmont Airlines aircraft during boarding. All passengers deplaned while the pilot talked to the man. When the crewmembers subsequently deplaned, the hijacker surrendered.
4. On August 25, a passenger aboard a TWA international flight passed a note to a flight attendant threatening that onboard hijackers would destroy the aircraft unless authorities released several individuals from prison. The plane continued to its destination—Geneva, Switzerland. Eight hours after landing, all passengers and crew deplaned, and local authorities arrested the hijacker.
5. On August 27, a passenger placed a note in the aircraft galley of a United Airlines flight saying she had a bomb and wanted the aircraft diverted to Vancouver, Canada. The plane landed in Vancouver, where law enforcement officers arrested her.
6. On November 23, a man rammed his car through the security gate at the Dane County Regional Airport in Madison, Wisconsin. He boarded a North Central

Airlines plane and demanded the aircraft go to Mexico. The passengers and crew escaped, and local law enforcement officers arrested him.

7. On December 14, a passenger commandeered a National Airlines flight en route to Miami and demanded the pilot fly to Cuba. The flight diverted to Charleston, South Carolina, where he surrendered to authorities.
8. On December 21, a passenger hijacked a TWA flight en route to Kansas City and demanded the release of a prisoner in Marion, Illinois. The plane landed at Marion, where she released some passengers. All remaining passengers and crew eventually escaped. Local authorities arrested her.<sup>62</sup>

In 1979, hijackers attempted to commandeer eleven aircraft:

1. On January 27, a woman hijacked a United Airlines aircraft en route to New York from Los Angeles. The FBI arrested her in Los Angeles.
2. On March 16, a man hijacked a Continental Airlines plane en route from Phoenix to Tucson, Arizona, and demanded the pilot fly to Cuba. The FBI arrested him when the plane landed in Tucson.
3. On April 4, a man took a woman hostage at an airport screening checkpoint in Sydney, Australia. He forced his way onto a Pan Am aircraft and demanded to go to Moscow via Rome. The police rescued the hostage before takeoff and eventually shot and killed the hijacker.
4. On June 11, a hijacker took over a Delta Air Lines plane en route from New York to Fort Lauderdale, Florida, and demanded the aircraft fly to Cuba. When the plane landed in Cuba, Cuban authorities arrested him.
5. On June 20, a male commandeered an American Airlines plane en route from New York to Chicago. He demanded to be taken to Peru and asked for a prisoner in federal custody to be released. After landing in Chicago, the man allowed passengers and flight attendants to disembark. The other prisoner refused to be released. The aircraft then flew to New York, where the hijacker and his attorney transferred to another plane, which flew them to Ireland, where the hijacker surrendered.
6. On June 30, a man hijacked an Eastern Airlines plane en route from San Juan, Puerto Rico, to Miami and demanded to go to Cuba. A flight attendant overpowered him with the help of other crewmembers and passengers.
7. On July 20, a passenger aboard a United Airlines flight en route from Denver, Colorado, to Omaha, Nebraska, demanded to be taken to Cuba. The plane landed at Omaha, where the passengers and flight attendants deplaned. FBI agents eventually overpowered the man and arrested him.
8. On August 16, a man on an Eastern Airlines flight from Guatemala City, Guatemala, to Miami demanded the pilot fly to Cuba. Crew and passengers subdued the man, and authorities arrested him when the plane landed in Miami.
9. On August 22, a passenger hijacked a United Airlines flight en route from Portland, Oregon, to Los Angeles. Negotiators convinced him to surrender when the plane landed in San Francisco to refuel.



10. On October 30, a passenger commandeered a Pacific Southwest Airlines plane en route from Los Angeles to San Diego, California, and demanded to go to Mexico City. When the plane landed in Tijuana, Mexico, to refuel, Mexican authorities arrested him.
11. On November 12, during a scheduled stop at El Paso, Texas, a man held a flight attendant on an American Airlines plane at knifepoint and demanded to be taken to Iran. FBI agents arrested the man after several hours of negotiations.<sup>63</sup>

Through a combination of passenger profiling, passenger and carry-on baggage screening, local law enforcement stationed at checkpoints, and bomb-sniffing dogs, FAA security regulations focused on preventive measures on the ground at the airports. The goal of the agency's aviation security program, designed to keep weapons off airplanes, worked well and as intended. From 1973 to January 1980, no hijacker brought firearms or explosives through an airport screening point.

**Table 10-1: Hijacking Attempts on U.S. Scheduled Air Carrier Aircraft, January 1, 1977-December 31, 1980**

<b>Year</b>	<b>1977</b>	<b>1978</b>	<b>1979</b>	<b>1980</b>
<b>Total</b>	5	8	11	21
<b>Successful</b>	0	0	4	13
<b>Incomplete</b>	3	4	5	3
<b>Unsuccessful</b>	2	4	2	5

Source: FAA, "Thirteenth Semiannual Report to Congress on the Effectiveness of the Civil Aviation Security Program"

That changed on January 25, 1980, when the first U.S. air carrier hijacking occurred in which real weapons or explosives passed through the passenger screening system. A hijacker armed with a pistol and pretending to have a bomb diverted a Delta Air Lines Lockheed L-1011 to Cuba. Once in Cuba, he demanded to be flown to Iran but eventually surrendered to Cuban authorities.

**Table 10-2: Airline Passenger Screening Results, January 1, 1977-December 31, 1980**

<b>Year</b>	<b>1977</b>	<b>1978</b>	<b>1979</b>	<b>1980</b>
Persons Screened (Millions)	508.8	579.7	592.5	585
Weapons Detected	2,039	2,061	2,164	2,030
Persons Arrested	854	960	1,107	1,063

Source: FAA, "Semiannual Report to Congress on the Effectiveness of the Civil Aviation Security Program, July 1- December 31, 1980"

A second hijacking occurred in July when a passenger, holding what seemed to be a small handgun to the back of a flight attendant, diverted another Delta Air Lines L-1011 to Cuba. This incident became the first in a series of hijackings by Cuban refugees who had arrived in the United States during the boat lift beginning in April from the port of Mariel, Cuba. Three more such hijackings took place in one week in mid-August. The airport metal detectors did not find the hijackers' real and fake weapons—bottles of gasoline and a bar of soap wrapped to look like a bomb.

The agency began an all-out offensive against Cubans trying to hijack planes to return home. On August 14, FAA officials met in Miami with sixty representatives from the airlines, FBI, local police, and local airports to discuss the increasing number of hijackings. In an interview on August 16, FAA spokesperson Fred Farrar said the agency planned again to use the behavioral profiling systems at all Florida airports and some airports in other states, which it developed years before but abandoned in 1972 with the implementation of security technologies, such as metal detectors at airports. The profile provided measures that ticket agents and other airline employees could use to identify potential hijackers. If they became suspicious of a passenger based on the profile, security personnel would subject that passenger to additional screening.<sup>64</sup>

Two days after the FAA announcement, Cuban refugees hijacked another three planes to Havana before the airlines began using the profiling system. The agency announced on August 17 that armed federal air marshals, some in uniform and some in plain clothes, would fly on all airline flights leaving airports in Florida and other selected cities.<sup>65</sup> Besides new regulations and increased security, the FAA also stepped up its regular inspections of U.S. and foreign carriers flying in and out of the United States and at U.S. airports, as well as its inspection program at major airports around the world that served U.S. airlines to ensure compliance with security regulations.

On September 18, 1980, the Cuban government agreed to return two hijackers to the United States for prosecution for the first time in history. They had hijacked a Delta Air Lines flight carrying 111 passengers from Atlanta to Columbia. FAA spokesperson Dennis Feldman called the return “a real breakthrough.” By denying the hijackers asylum, he said, this “should bring to an end the current rash of hijackings” to Cuba. *Granma*, the official newspaper of the Cuban government, had warned hijackers two days earlier they would be sent to the U.S. for prosecution. Cuban radio announced the return of the hijackers to the United States was a “drastic measure” to show “no one can play with the work and the honor of the Cuban revolution.” The FAA dispatched a plane with a sky marshal onboard from Washington, DC. After a stop in Atlanta to pick up two more sky marshals and a U.S. marshal, the aircraft flew to Havana to arrest the hijackers.<sup>66</sup>

In 1980, Cuban refugees carried out seventeen of the twenty-one attempts to hijack planes.<sup>67</sup> The 1980 non-Cuban hijacking attempts were:

- On April 14, a man boarded a Continental Airlines flight in Denver, Colorado, and demanded the aircraft immediately take off. The hijacker ultimately dropped his knife and surrendered before takeoff.

- On May 1, a man scaled an airport fence at Stockton, California, boarded a Pacific Southwest Airlines plane destined for Los Angeles, and demanded to go to Iran. During the negotiations, he read a statement to the press. The flight engineer eventually disarmed him, and the man surrendered.
- On May 15, a man boarded a Chalk’s International Airlines plane undergoing maintenance at the seaplane dock in Miami and demanded a maintenance man fly him to Cape Town, South Africa. After learning the maintenance man could not fly the aircraft, he requested a pilot come onboard. He eventually surrendered.
- On July 11, a man threatened to bomb a Northwest Airlines aircraft taxiing for takeoff from Seattle, Washington. He demanded \$100,000 and two parachutes. He released all but two crewmembers. When convinced he could not parachute from a Boeing 727, he ordered a small aircraft. When poor weather conditions prohibited small aircraft flight, he demanded an automobile. When he headed toward the car with two hostages, FBI agents apprehended him.<sup>68</sup>

Although hijackers generally focused on the larger air carriers, some targeted general aviation aircraft. In 1977, hijackers attempted to seize two general aviation aircraft, five in 1978, two in 1979, and one in 1980.<sup>69</sup> In addition, U.S. aviation also incurred several bomb threats against aircraft and airports during the Carter administration.

**Table 10-3: Bomb Threats against U.S. Aircraft and Foreign Aircraft in the United States, January 1, 1977-December 31, 1980**

<b>Year</b>	<b>Aircraft</b>	<b>Airports</b>
1977	1,229 636	519
1978	1,032 552	318
1979	1,121 679	309
1980	1,179 775	268

Sources: FAA, “Semiannual Report to Congress on the Effectiveness of the Civil Aviation Security Program, July 1- December 31, 1980;” “Semiannual Report to Congress on the Effectiveness of the Civil Aviation Security Program, July 1- December 31, 1978.”

## **Policy Coordination**

Immediately after the 1976 presidential election, Jimmy Carter's transition team looked at the country's approach to national security policy and procedures. Based on that study, on inauguration day, January 20, 1977, President Carter issued a presidential directive for the National Security Council (NSC) to reorganize. As part of that reorganization, he replaced seven interdepartmental offices with two—the Policy Review Committee and the Special Coordination Committee (SCC). The SCC's mission was to “deal with specific cross-cutting issues requiring coordination in the development of options and the implementation of presidential decisions.”<sup>70</sup> On June 2, 1977, Carter asked the SCC to review the federal government structure responsible for responding to terrorism, including hijackings, and to report back to him by August 1.<sup>71</sup>

In its examination, the members of the SCC reported President Nixon had created the Cabinet Committee to Combat Terrorism in 1972. Chaired by the Secretary of State, the committee had the responsibility to “consider the most effective means by which to prevent terrorism here and abroad” and to “take the lead in establishing procedures to ensure that our government can take appropriate action in response to acts of terrorism swiftly and effectively.” The committee, however, met only once on October 2, 1972, although its working group met regularly. The SCC reported the working group had been effective in increasing the level of informal interagency coordination and exchange of information, “but the inaction of the cabinet committee itself has meant that the working group could neither bring policy issues to executive attention nor exercise crisis management authority in active terrorist incidents.”<sup>72</sup>

In response to Carter's mandate to improve federal coordination and response to acts of terrorism, on September 16, 1977, the NSC established the Special Coordinating Committee Working Group on Terrorism, and the president dissolved the Cabinet Committee to Combat Terrorism. The mandate for the new working group included the following:

- assisting agencies in understanding jurisdiction to facilitate the management of terrorist incidents, but not managing the incidents
- developing effective working relationships among key individuals who had operational responsibility within their agencies for dealing with terrorism
- serving as a forum for a continuing exchange of information and ideas among agencies<sup>73</sup>

Chaired by the NSC, the working group comprised senior-level representatives from all federal agencies having jurisdictional or support responsibilities for combatting terrorism. The DOT's head of security, Daniel Ward, represented the department on the working group and its executive committee. The executive committee, chaired by the State Department representative and staffed by representatives of the departments of State, Justice, Treasury, and Transportation; FAA; Central Intelligence Agency; Energy Research and Development Administration; and the NSC staff, developed recommendations on policy, provided information, and took on other appropriate matters of interagency concern.<sup>74</sup>

The group agreed, as in the past, the State Department retained primary responsibility in terrorist incidents involving U.S. citizens and interests that occurred outside of the United States. The Department of Justice had statutory responsibility for the investigation and prosecution of crimes characterized as terrorism that took place in the United States. The FAA had exclusive responsibility for the direction of law enforcement activity affecting the safety of persons aboard aircraft in flight.

Secretary of Transportation Brock Adams attended the first working group meeting on December 27. That meeting focused on how the administration should respond to a bill proposed by Senator Abraham Ribicoff (D-CT). Ribicoff introduced the “Act to Combat International Terrorism” on October 25. If passed, among other things, the act would:

- allow authorized personnel and officers to carry arms onboard a commercial aircraft
- direct the Secretary of Transportation to assess the effectiveness of security measures maintained at foreign airports serving U.S. carriers and other foreign airports as appropriate
- require security measures to equal or exceed the standards established by the Convention on International Civil Aviation
- require the Secretary of Transportation to identify and publish in the *Federal Register* a list of airports without adequate security measures, post that information at all U.S. airports, and withhold, revoke, or impose conditions on the operating authority of any carrier to use such airport
- extend existing security measures to include chartered air transportation operations
- impose a fine of not more than \$10,000, imprisonment of not more than twenty years, or both on anyone who willfully sets fire to, damages, destroys, or interferes with the operation of any civil aircraft, any air navigation facility, or any appliance, structure, ramp, landing area, or other material used in connection with interstate, overseas, or foreign air commerce
- subject anyone who imparts or conveys false information concerning an attempt or alleged attempt of any crime prohibited by the act, or boards or attempts to board any aircraft with a concealed deadly or dangerous weapon, which is accessible in flight, to a civil penalty of not more than \$1,000<sup>75</sup>

The Carter administration objected to publicizing the names of international airports not complying with security standards. Although not completely satisfied with the proposed bill, Vice President Walter Mondale pointed out at an SCC meeting that the administration should not be put into the position of testifying against an anti-terrorism bill. Brock Adams and Secretary of Defense George Brown posited that the United States already had standard operating procedures in the interagency arena for handling hijackings and implored, “Let’s not try to fix what doesn’t need fixing.” Committee

members decided that rather than trying to revise the bill, they would work with Ribicoff's staff to draft a new bill acceptable to Congress and the administration.<sup>76</sup>

The Senate Committee on Governmental Affairs held extensive hearings on the bill on January 23, 25, 27, 30, February 22, and March 22-23, 1978. Brock Adams, accompanied by the FAA's head of security, Richard Lally, testified on January 25. Adams testified that aviation security, especially internationally, posed complex problems. "We must cope with the reality that people operating the system are subject to human error. Also, basic sovereignty, national traditions, and local habits may complicate a solution that would work in the United States. The task is further complicated by the fact that we are facing trained and dedicated terrorist forces that will attempt again and again to penetrate the system."<sup>77</sup>

Before the hearing, Adams requested the FAA provide its views on aviation security and the names of high-risk international airports. Administrator Langhorne Bond responded the FAA had security concerns about the airports in Ankara, Turkey; Athens, Greece; Casablanca, Morocco; Istanbul, Turkey; and Rome, Italy. As Bond explained:

Our security concern is based on the fact that all of these airports are served by U.S. flag carriers. Three (Athens, Casablanca, and Rome) are also served by foreign air carriers as last points of departure for flights to the U.S. All are located in the area identified as presenting the highest threat. All have a history of aviation incidents, and passenger and carry-on baggage screening procedures at all are considered weak and need improvement. We have worked with all of the nations involved, except Turkey, in an effort to improve their security procedures.<sup>78</sup>

Bond reassured the secretary that the FAA would complete follow-up inspections of the security operations of U.S. flag carriers and pertinent foreign air carriers to identify weaknesses and seek necessary improvements. Those inspections would be completed by February 15, 1978. He also noted the agency planned a comprehensive technical



assistance program with Turkey to help improve aviation security in that country. The FAA would provide the results of the sixty-day technical assistance program for Turkey by March 15.<sup>79</sup>



Abraham Ribicoff

Courtesy: <https://uspresidentialhistory.com/abraham-a-ribicoff/>

During the hearing and under intense questioning, Adams revealed, against administration wishes, the United States had five international airports under special surveillance: Ankara, Athens, Casablanca, Istanbul,

and Rome. He promised to report the FAA's inspection results to Ribicoff in mid-February.<sup>80</sup> Upon discovering the disclosure, William Odom, military assistant to Zbigniew Brzezinski, wrote, "We can expect that Ribicoff will demand unilateral U.S. sanctions against those states with poor security operations, something the FAA insists will be counterproductive."<sup>81</sup> The FAA feared releasing the names of countries with identified security weaknesses would only serve to inform terrorists of possible target airports.

The media applauded the Ribicoff bill. Bill Gold, in a *Washington Post* article, for example, wrote that the senator's "approach to the problem is so simple and effective that the average citizen will have to ask, 'Why did it take so long for somebody to introduce a bill like this.'" Gold explained that every hijacked plane must land somewhere, and if the international community eliminated sanctuaries for such landings, it would stop air

piracy.<sup>82</sup> Despite such accolades, and much to the administration's relief, the bill did not make it out of committee.

In the wake of increasing security incidents in the United States and abroad, the House of Representatives and the Senate spent considerable time discussing security and terrorism. The senators and representatives in the 95<sup>th</sup> and 96<sup>th</sup> Congresses introduced almost forty bills designed to strengthen anti-terrorism measures. Although most, like Ribicoff's bill, never made it out of committee, the sheer volume and the number of hearings seemed indicative of public concern and kept the security staff at the DOT and the FAA busy throughout the Carter administration.<sup>83</sup>

### **Bomb Sniffers**

The FAA Explosives Detection Canine Team program continued to expand during the late 1970s and early 1980s. Initiated in 1972 in cooperation with the Department of Justice Law Enforcement Assistance Administration (LEAA), the program positioned trained explosives detection dog and handler teams in twenty cities near major airports. No aircraft would be ever more than one hour from one of those airports, where, if necessary, it could land, and the teams could check it for explosives. In April 1975, the Air Force, under contract to the LEAA, completed the first evaluation of the canine program. During the assessment, employees hid explosive samples at various locations throughout the air terminals and aircraft, and K9 teams detected all of them.<sup>84</sup>

When the Carter administration began work, the FAA had teams in twenty-four cities. During the second program review, the teams scored 99.2 percent in detecting various quantities and types of explosives in aircraft, ground vehicles, and airport

facilities.<sup>85</sup> By the time the president left office, the FAA had teams at thirty airports positioned to provide emergency support to threatened aircraft over the United States within thirty minutes of flight time. The teams, consisting of one dog and one handler, found twenty-two explosive items during 2,241 aircraft and airport searches and detected eight-one explosives during 3,153 searches in their local communities. It took the dogs sixteen minutes to search an aircraft, twenty minutes for terminal buildings, nine minutes for vehicles, eighteen minutes for cargo areas, and eleven minutes for baggage areas. They had a 96.6 percent detection rate with 8.2 percent false alerts.<sup>86</sup> The FAA assumed full financial support for the program after July 1, 1981, when the LEAA terminated its participation.

### **New Regulations**

The FAA also worked to strengthen security through several new regulations. Airline deregulation brought about an increasing number of charter companies, which did not operate under the same security regulations as the major airlines. Although no charter aircraft operating from a U.S. airport had been hijacked, the agency acted in response to several developments such as the worldwide increase in hijacking attempts and Civil Aeronautics Board (CAB) rulings that relaxed many of the regulations that governed charter operations. In particular, the CAB eased qualifications for charter fares, including eliminating the requirement that only affinity groups—clubs or other groups with common interests—could qualify for reduced charter fares. Previously, the FAA considered charters carrying affinity groups secure since the passengers all knew one

another and, hence, agency officials believed there would be little likelihood of a terrorist incident.

On March 6, 1978, the agency issued a notice of proposed rulemaking requiring charter airlines to screen passengers. The agency explained the “increase in the terrorist threat could trigger attempts to hijack charter flights by terrorists who are looking for easier targets than are now presented by the U.S. scheduled airlines.” The new requirement would apply to the charter operations of thirty flag and domestic certificated carriers, seven supplemental carriers, more than two hundred foreign carriers into and out of the United States, and six commercial carriers conducting scheduled intrastate passenger service. It also required airport operators to provide armed law enforcement officers to assist in screening charter flight passengers. The FAA issued the final rule on June 8, 1978, and it became effective on July 25.<sup>87</sup>

The agency issued two other new rules on March 23, 1978. The first, effective on April 24, specified the requirements governing the carriage of persons in the custody of armed escorts and the carriage of firearms in checked baggage aboard aircraft. Among other things, the rule prohibited scheduled air carriers from flying a passenger in the custody of an armed escort unless the armed guard was a law enforcement officer, the law enforcement organization notified the airline before takeoff, two armed law enforcement officers escorted each passenger in custody, and the officers had sufficient equipment to restrain the person in custody during the flight. The regulation also banned passengers from checking baggage containing a loaded firearm, and passengers had to notify the airline if they had packed an unloaded handgun.<sup>88</sup> The second rule, designed to ease passenger concerns about radiation from the passenger X-ray screening systems,

required airlines to make available the most recent radiation survey and inform passengers they could request a physical inspection of their photographic equipment and film to prevent exposure to an X-ray system.<sup>89</sup>

The FAA issued a notice of proposed rulemaking on June 16, 1977, suggesting a revision of its rules for airport security.<sup>90</sup> After reviewing public comments, the agency issued a final rule on January 2, 1979, with the new requirements effective on March 29.<sup>91</sup> In a departure from previous regulations, the agency permitted some police officers assigned to security checkpoints in some airports to patrol other terminal areas as long as they could respond quickly to trouble at their checkpoints.<sup>92</sup> The agency examined the facilities at each airport that wanted to allow officers to patrol the airport and approved the patrols away from the checkpoints when conditions warranted. The agency, however, said that most large airports with high passenger volumes would not be affected by the new rule.<sup>93</sup>

In another significant change, the agency made it a regulatory violation for anyone to carry guns or explosives into the sterile areas beyond the checkpoints. Before that change, regulations prohibited carrying weapons only aboard aircraft. The FAA originally proposed banning unauthorized firearms and explosives from all areas of airport terminals but relaxed the provision after a negative response from various sporting groups.<sup>94</sup>

In the aftermath of the detonation of an explosive device concealed in mail on board a passenger airliner on November 15, 1979, the FAA passed an emergency rule, effective December 13, 1979, requiring all indirect air carriers, or freight forwarders, to prepare and carry out security programs designed to prevent or deter the introduction of

any unauthorized explosive or incendiary device into cargo. Although the bomb generated a lot of smoke in the cabin, all crew and passengers survived the flight from Chicago to Washington, DC. Local media outlets in Chicago received calls from an individual claiming an Iranian student group planted the bomb. However, a spokesman for the Iranian Student Association reported the group had no involvement in the incident. Many believed the group had planted the bomb in retaliation for President Carter's order to investigate the visa status of Iranian students in response to the kidnapping of sixty American citizens at the U.S. Embassy in Tehran.<sup>95</sup> Decades later, Unabomber Theodore Kaczynski admitted responsibility for the mail bomb.

After that incident, the FAA quickly worked with aviation community representatives and the U.S. Postal Service (USPS) to develop security programs for the USPS and indirect air carriers. The agency signed a memorandum of agreement with the USPS to cooperate in developing and coordinating air parcel security programs. In response, the USPS began screening air mail packages more carefully for bombs and other dangerous materials. Postal clerks paid close attention to anyone sending items through airmail by using six-point criteria that included questioning the sender and assessing the package by size, weight, and appearance.<sup>96</sup>

For the most part, the aviation community accepted these new rules as necessary for operating in an environment where terrorists viewed passenger aircraft as effective targets. However, this spirit of cooperation changed when the FAA proposed increasing security measures for commuter airlines. On November 1, 1979, the agency issued a notice of proposed rulemaking that would revise and consolidate the security regulations for scheduled passenger and public charter operations and the airports they used. The rule

would extend those regulations to commuter and air taxi operations and small airplane operations of U.S. and foreign air carriers. Previously, that segment of the aviation community did not have to abide by the stringent security measures mandated for the larger carriers.<sup>97</sup>

The 1978 Airline Deregulation Act, which gave air carriers more freedom to enter and exit markets without prior government economic approval, brought tremendous growth to commuter and air taxi operations. Under the proposed regulations, companies operating commuter aircraft with twenty or more seats had to meet the exact security requirements as the larger scheduled airlines. Those requirements included hiring police officers and stationing them in passenger loading areas, installing fences or other means to limit access to the boarding areas, and screening all passengers. Companies operating aircraft with fewer than twenty seats would have fewer requirements.<sup>98</sup>

The commuter and air taxi operators vehemently opposed the proposed rule because of the costs associated with implementation. Based on worst-case projections, FAA Security Manager Richard Lally estimated the regulation would cost airports \$7.5 million in the first year and \$5.3 million in the first year for commuter carriers. The additional cost per passenger would be \$1.19 per ticket. F. E. "Pete" Howe, executive vice president of Rio Airways and president of the Commuter Association of America, asserted that no commuter airline hijackings had happened since 1972. He claimed, "The record of air piracy involving commuter carriers is virtually nonexistent." He continued, "The imposition of the rules, as proposed, would present an enormous economic burden on commuter carriers and the consumer and impede small-community air service without any measurable benefit to the traveling public."<sup>99</sup>

John C. Van Arsdale, president of Provincetown-Boston Airlines and Naples Airlines, argued that the FAA had not considered “the economic impact of these regulations on the short-haul market.” He contended the agency had “failed to establish need” for the requirement. “First,” he said, “you have to establish that commuter airlines are being hijacked. Then you have to establish that these measures will prevent further hijackings.”<sup>100</sup> Van Arsdale claimed his airline had only one hijacking in its history. It happened in 1968 when a Cessna 182 was hijacked to Cuba. “The greatest damage was done,” he said when the FBI “tore out all the seatbelts to get fingerprints.”<sup>101</sup>

The FAA received approximately 320 public comments in response to the proposal. Most opposed the rule based on economic concerns. In analyzing the comments and the financial data provided by the airlines, the agency decided to undertake further economic study before issuing a final rule. Although FAA analysts found the original estimated costs accurate, they discovered that costs for a particular airport or flight varied depending on the airport's size and the air carrier's size. Because the hijacking threat against commuters had not significantly increased, and because of the economic burden the rule would impose on small airport and airplane operators, the FAA revised the regulation before publishing it as final on January 18, 1981. Effective April 1, 1981, the agency required scheduled and public charter operations with airplanes having more than sixty seats to implement full security programs. For aircraft operators with more than thirty but less than sixty-one seats, the agency did not require a full security program except when it notified an operator that a security threat existed concerning its operations.<sup>102</sup>



**Table 10-4: U.S. Civil Aviation Security Screening, 1977-1980**

Year	U.S. Air Carriers	Foreign Air Carriers	U.S. Flights Per Day	Foreign Flights Per Day	U.S. Passengers Per Day	Foreign Passengers Per Day	U.S. Carry-On Items Per Day	Foreign Carry-On Items Per Day
1977	36	72	13,600	500	650,000	35,000	880,000	50,000
1978	41	91	14,200	570	800,000	45,000	1,200,000	67,500
1979	87	96	14,400	560	1,667,000	98,000	1,354,000	73,000
1980	100	98	14,790	635	1,604,000	110,000	1,674,000	100,000

Source: FAA, Semiannual Reports to Congress on the Effectiveness of the Civil Aviation Security Program, 1977-1980

### **Developing Defenses**

The Air Transportation Security Act of 1974, also known as the Anti-hijacking Act of 1974 (PL 93-366), signed into law on August 5, 1974, authorized the establishment of the FAA security research and development (R&D) program. The act required the agency to conduct such R&D as necessary to evaluate systems, procedures, facilities, and devices to protect persons and property aboard aircraft. After the law's passage, the agency worked to create an aggressive security R&D program designed to improve security screening equipment and minimize passenger inconvenience. Researchers at the FAA technical center focused on developing and testing equipment that proved affordable, reliable, and easily maintained. They wanted to create a system that relatively unskilled personnel could operate, which would not damage baggage and pose no safety hazards to operators or passengers.

After eight years of development, the FAA tested a promising technology in 1979 and 1980. The X-ray absorption device, a computer-based machine automatically analyzed the size, shape, and X-ray density of checked baggage contents. Initial tests at Washington National and Newark International Airports demonstrated sufficient

detection capabilities to warrant additional development. The agency tested a modified unit in late 1980 at Dulles International Airport, where the machine processed over 65,000 pieces of luggage. It installed a second prototype at its technical center to test advanced computer programming techniques to enhance detection performance.<sup>103</sup>



Thermal neutron explosive detector  
Courtesy: FAA

FAA researchers also explored the technical feasibility of using thermal neutron activation techniques for screening baggage. In 1977, the FAA awarded Westinghouse Electric Corporation a \$1.4 million contract to design and fabricate a thermal neutron explosive detector.<sup>104</sup> The machine

identified explosives using a chemical reaction unique to specific combustible materials. The agency tested the equipment at the Greater Pittsburgh International Airport and Logan Airport in Boston, Massachusetts. After analysis of the test data, researchers concluded that the equipment would be best suited for processing air cargo and planned a test program for late 1981.<sup>105</sup>

Another program focused on developing nuclear magnetic resonance detection equipment. This screening technique detected a characteristic response of explosive molecules when subjected to magnetic and pulsed radiofrequency fields. Researchers tested a scale model of the system to determine operating characteristics during the spring of 1979. After operational tests at Dallas-Fort Worth Regional Airport proved the concept

feasible, the FAA began converting the laboratory model into a functional system and planned an operational evaluation for the summer of 1982.<sup>106</sup>

By the end of 1980, researchers had completed a program to identify the types and quantities of unique vapors associated with different explosives. They distinguished the vapor characteristics of explosives and determined the various vapor emission rates of those explosives in baggage. The FAA developed an explosive vapor detection system specification based on these efforts.<sup>107</sup>

One R&D program caught the attention and imagination of the press and the public alike. In 1978, the FAA awarded a \$100,000 research contract to David G. Moulton, an associate professor of physiology at the University of Pennsylvania's School of Medicine. In August 1980, the agency gave him another \$50,000 contract to continue his research. Based on an experimental program in Canada, Moulton's research focused on teaching gerbils to sniff out bombs in luggage. According to Moulton, the rodents made ideal house pets—small, cuddly, and lovable. Gerbils, easily trained, had a very high sense of smell and expected little in return for their work.<sup>108</sup>

Moulton's experiments involved approximately thirty gerbils, which he put in a box designed for behavior modification experiments for a half-hour a day. The box had three portholes, each covered with a metal door. Purified, odorless air was blown from two of the portholes when open. The third blew air with an odorous chemical, amyl acetate, which smelled like bananas. The gerbils pressed a lever when they thought they detected the odor. Researchers rewarded a correct choice with a drink of water, "which is a big deal if you are a gerbil," Moulton explained. If the gerbil made a wrong selection,

the door closed, and the animal had thirty seconds to think about what it did wrong before being confronted with a new combination of air and smells.<sup>109</sup>

Although a serious researcher, Moulton took skepticism and sarcasm about his work in stride. When asked by reporters about his gerbils, Moulton explained, “We don't expect gerbils to be any better than dogs, but they are certainly cheaper and easier to train. Also, they can fit into smaller spaces, and you can use more of them.” He said that dogs have a short attention span and require walking, petting, scratching, and emotional involvement. “But give a gerbil a clean cage, good food and water, and you have a happy, portable civil servant.”<sup>110</sup>

The press had fun with the whole idea of bomb-sniffing gerbils. One envisioned a corps of tiny uniformed rodents on duty at airport terminals. Another saw gerbils on leashes searching airport property. If Moulton's experiment worked, the FAA planned to station gerbils in small black boxes at airport checkpoints. If a passenger had explosives on his person or in his luggage, the trained gerbil would press a button to turn on a red light and ring an alarm. Airports could also use the gerbil boxes in baggage areas and inside planes.

In reporting on the experiment, a *Washington Post* reporter said the paper had learned the FAA recently “harnessed a herd of gerbils to detect explosives. But, the agency had sadly reported to Congress, the furry Sherlocks ‘could not meet FAA requirements with regard to sensitivity to the odors involved.’” The reporter asked, tongue in check, “Will this vicious exploitation of our fellow mammals never cease? How'd you like to poke your snout into some stranger's Vuittons for half a head of lettuce a day?”<sup>111</sup>

When asked about the gerbil research during a congressional subcommittee hearing in 1979, Administrator Bond had some fun with the members of Congress. He explained that the scientists reported “enormous difficulty in getting the gerbils to announce their discoveries” to their human handlers.” He told the laughing congressman, “Down the road is the stage two gerbil, the attack gerbil.” Bond, however, noted, “More work is needed for the attack gerbil, and also credibility is a problem.”<sup>112</sup>

A novel idea, bomb-sniffing gerbils did not make it beyond the research stage. Although they had a highly developed sense of smell and could detect certain vapors from explosives, Moulton found their sense of smell unreliable, especially if exposed to odors that masked the subtle scent of explosives.

### **International Cooperation**

In early 1977, when the number of hijacking attempts increased in the United States and abroad, the FAA reached out to foreign embassies and offered to help improve airport security. By October 17, twenty-seven countries had accepted the offer. As part of its efforts, the agency began training classes for foreign representatives at the Transportation Safety Institute in Oklahoma City, Oklahoma. The agency established the security training program in 1973 to provide in-depth coverage of U.S. civil aviation security requirements, procedures, and techniques for federal, state, and local law enforcement agencies.<sup>113</sup> The Department of Justice Law Enforcement Assistance Administration helped defer the costs for the eight-day course. In addition, the agency sponsored training classes and seminars to train domestic and foreign law enforcement and airport and airline personnel on anti-hijacking techniques, inflight explosive

procedures, and passenger screening. The agency also provided FAA-produced audiovisual presentations to foreign countries on topics such as:

- Aviation Explosives Security for Group Operations
- Aviation Explosives Security—In-Flight Emergency
- Flight Crew and Cabin Attendants Tactics for Defense Against Hijackers
- U.S. Test Procedures for Weapons Detectors and X-ray Inspection Systems<sup>114</sup>

**Table 10-5: Hijacking Attempts on U.S. and Foreign Aircraft**

Number of Hijackings by Calendar Year	1977	1978	1979	1980
U.S.	6	19	13	22
Foreign	31	18	14	18
Total	37	37	27	40

Source: FAA, "Semiannual Report on the Effectiveness of the Civil Aviation Program, July 1-December 31, 1980"

To help its international partners, the FAA managed a limited bilateral technical assistance program, funded mainly through the LEAA, which it conducted on a government-to-government basis. The agency administered some programs, however, on a reimbursable basis. Under those agreements, FAA security teams visited foreign nations to evaluate security systems, provided training in security procedures, and assessed technical security requirements.

By the end of 1977, a growing number of international incidents indicated a worldwide rise in aircraft piracy and sabotage incidents. In response to a letter from Senator Jacob Javits (R-NY), the State Department answered there is "every indication that international terrorism is on the increase, and we will have to prepare ourselves to deal with further attacks on American citizens and installations abroad, including those of

**Table 10-6: FAA Foreign Technical Assistance, 1977-1980**

Year	FAA Technical Team Visits	Training Program Students	Aviation/Law Enforcement Briefings	Analytical Studies Distribution
1977	20	383	64	15
1978	26	440	66	15
1979	28	510	69	17
1980	28	563	69	20

Source: FAA, "Semiannual Report to Congress on the Effectiveness of the Civil Aviation Security Program, 1977-1980"

American companies." (A former Javits staffer, Harold Rosenthal, was killed in a hijack attempt at Istanbul Airport in Turkey in August 1976.) Javits attached a report to his letter, which singled out four countries as abettors of international terrorists. Those countries included Libya, which "actively assisted a number of terrorist groups and individuals," and the Palestinian "rejectionist" factions. Libya also supported those groups who opposed a negotiated settlement of the Arab-Israeli dispute.<sup>115</sup>



Courtesy:

<https://time.com/vault/year/1977/>

The hijacking of a Lufthansa airliner in November 1977 captured worldwide attention and resulted in calls for better international aviation security programs. The hijackers, eighty-six passengers, and five crew members flew from Mallorca, Spain, to Rome, Cyprus, Bahrain, Dubai, and Aden, where they executed the captain, and then to Somalia. West German commandos ultimately stormed the plane after the six-day ordeal and rescued the hostages.<sup>116</sup>

With the possibility of other attacks on Lufthansa, the FAA instructed all U.S. airports to give Lufthansa flights priority over other air traffic and provided the airline permission to fly particular evasive patterns on takeoffs and landings after receiving information terrorists might use heat-seeking missiles against the airline. The agency also secured communication lines to prevent anyone from monitoring conversations between Lufthansa and an airport control tower.<sup>117</sup> Similar to Germany, the U.S. Army created two Army battalions of rangers, one stationed at Fort Stewart, Georgia, and the other at Fort Lewis, Washington, trained for the forcible rescue of hostages. According to President Carter's national security advisor, Zbigniew Brzezinski, the United States would not hesitate to use the troops abroad.<sup>118</sup>

In the wake of that hijacking, the International Federation of Airline Pilots Associations threatened a forty-eight-hour strike. It canceled strike plans after its president met with United Nations (U.N.) Secretary Kurt Waldheim, who assured him the U.N. General Assembly planned to issue a resolution condemning air piracy. As promised, on November 3, the U.N. issued a nonbinding resolution denouncing airliner hijacking and calling for all nations to prevent further hijackings. Approval of the consensus resolution reflected a growing appreciation by countries of the need for more effective action against hijackings. Congressman Lester Wolff (D-NY) praised the vote and called it a “major step forward in the collective fight against hijacking.”<sup>119</sup>

International Civil Aviation Organization representatives also met at a special session on November 3, 1977, to discuss anti-hijacking measures. At an earlier meeting in October, the organization unanimously adopted two resolutions urging nations that had not yet become parties to the Tokyo, Hague, and Montreal Conventions to implement



those resolutions and previous resolutions, standards, and recommended practices.

Secretary of Transportation Brock Adams urged the international aviation community to adopt more stringent aviation security standards at the November meeting.<sup>120</sup>

Adams said ICAO anti-hijacking standards should include provisions for "passenger and baggage screening, segregation of aircraft under threat, and the exchange of information on technical aspects of security matters."<sup>121</sup> He reminded the ICAO delegates that the United States had the "power to suspend the operating rights of carriers dealing with a country that is not taking anti-hijacking procedures . . . this is a very heavy sanction, one that is not to be taken lightly."<sup>122</sup> The standards should "ensure that all passengers and all carry-on baggage are screened, everywhere and every time," he said.

Adams offered U.S. assistance to nations requesting help in improving anti-hijacking measures.<sup>123</sup>

On December 2, 1977, ICAO adopted another resolution urging all member States to implement specific anti-hijacking measures, including screening passengers and cabin baggage on all flights. It urged member states to pursue the implementation of the following security measures at all international airports within their territories:

- assist and support each other in efforts to safeguard international civil aviation against acts of unlawful interference
- carry out, at irregular intervals, frequent security patrols at airports
- consider the possibility of using technical assistance to protect international civil aviation
- ensure controlled passengers and uncontrolled persons remain separated after passing through the security-control gates of an airport before embarkation
- give maximum possible cooperation to all airline companies in enforcing security measures they apply and which are compatible with the security program of each airport
- guard or lock all entry points to the air side of an airport and ensure strict control of all persons and vehicles requiring access to the air side
- have armed guards readily available at or near each security-control gate in an airport

- inspect and screen all passengers and their cabin baggage before departure on all scheduled and non-scheduled flights
- reduce the number of allowable pieces of cabin baggage
- transmit to the governments concerned all critical information related to activities likely to lead to acts of unlawful interference with civil aviation<sup>124</sup>

At the July 17, 1978, economic summit conference in Bonn, Germany, representatives from the United States, West Germany, France, Great Britain, Japan, Canada, and Italy (the Big Seven) announced the Bonn Declaration to isolate from international air traffic all countries harboring air hijackers. The officials wanted member countries to stop all flights to any country that refused to extradite or prosecute those who have hijacked an aircraft and failed to return such an aircraft. The resolution called for a ban on incoming flights from an offending nation and a prohibition on any traffic to that nation by airlines of participating countries. The conferees informally agreed to make no exceptions, not even for persons escaping from totalitarian governments. Diplomatic efforts began immediately to gain the agreement of as many other countries as possible.<sup>125</sup>

Following the declaration, representatives of the seven countries met again in Bonn on August 1-2 to discuss implementation procedures and how to obtain other nations' commitment and involvement. The U.S. delegation included Anthony Quainton, State Department; Richard Lally, FAA Civil Aviation Security Service; John Stewart, FAA Office of the Chief Counsel; and Cynthia Anthony, DOT Office of the General Counsel.<sup>126</sup> The representatives agreed to name an agency or focal point in each country for continuing communication and coordination by August 31. For the United States, the logical choices for the focal point were the DOT and the Department of State. Since the Bonn Declaration dealt only with aircraft hijackings, the DOT argued it should lead U.S.

efforts. However, since the declaration came into play only after the termination of the hijacking incident and dealt primarily with the behavior of governments in prosecuting or extraditing the hijackers, the State Department believed it should spearhead U.S. efforts. FAA Administrator Langhorne Bond recommended to Secretary Adams that the State Department have the lead.<sup>127</sup>

Bond signed an agreement with the State Department on February 15, 1979, again setting out roles and responsibilities during a hijacking. The FAA and the DOT signed similar agreements with the Department of Justice on February 26, 1975, and with the Department of Defense on September 7, 1978. Through these agreements, the agencies promised ongoing communication and cooperation during aircraft hijacking incidents, coordination of policy decisions, and mutual assistance during incidents. They reaffirmed the FAA's responsibility for hijackings in flight—from when the aircraft doors closed for the flight until the doors opened for passenger disembarkation.<sup>128</sup>

In April 1979, the FAA hosted an international aviation security conference to provide a forum for the aviation community to discuss new procedures, equipment, and requirements. In his remarks to attendees, Secretary Adams warned, “If we are to eradicate terrorism as a political weapon, and eliminate skyjacking internationally, we must adopt and carry out stringent, consistent standards for aviation security” worldwide. He continued, “There can be no loopholes, no soft spots, no chinks in the armor . . . the terrorist must be convinced beyond the shadow of a doubt that . . . any effort to hijack a plane will be defeated.”<sup>129</sup>

At the next meeting of the Big Seven, held in Venice, Italy, in June 1980, representatives reaffirmed the Bonn Declaration. They issued a new statement, “The

heads of state and governments emphasized that hijacking remains a threat to international civil aviation and that there can be no relaxation of efforts to combat this threat."<sup>130</sup> In the aftermath of the November 4, 1979, seizure of fifty-two U.S. diplomats and civilians in Iran, they also condemned "the taking of hostages and the seizure of diplomatic and consular premises and personnel in contravention of the basic norms of international law and practice."<sup>131</sup>

### **Media Circus**

As the number of hijackings increased, so did media coverage of the hijackers. Terrorists and reporters had an interdependent relationship. Coverage of hijackings increased television and radio news ratings and helped sell more newspapers and magazines. That same coverage gave terrorists a forum to air grievances, make demands, and get their causes known. Live coverage of terrorist events, however, also proved problematic for those agencies and organizations trying to free hostages and save lives.

Federal officials, for their part, generally tried to keep the press at bay during an actual incident. They would release pertinent information after the fact through press releases, statements, and interviews. They also made reports, such as the FAA's "Semiannual Report to Congress on the Effectiveness of the Civil Aviation Security Program," publicly available. However, these after-action reports often did not provide the information the press wanted or expected from federal officials during an incident. Without official information, newscasters provided what they could from subject matter experts.

In an era of increasing media attention, the aviation community expressed concerns about how some media outlets gathered information and reported on hijackings. Airline pilots, for example, blamed the press for the killing of Lufthansa Flight 181 pilot Jürgen Schumann by four members of the Popular Front for the Liberation of Palestine on October 13, 1977. At a conference on “Terrorism and the Media,” held in November 1977, Captain Thomas Ashwood, the Air Line Pilots Association’s director of flight security, said the media had broadcasted reports of the incident at the same time Schumann secretly passed information to police over his plane’s radio. Ashwood believed the terrorists may have heard a news report that resulted in Schumann’s murder.<sup>132</sup>

Ashwood claimed media reports about the tactics used against hijackers sometimes tipped the terrorists off to police activity or alerted them to be watchful of activity outside the plane. He explained that both sides used the media—“the terrorists and the good guys.” He warned, “Media publicity often is the primary goal of terrorists. You’re a part of the act. They require your attention.” At the same conference, Captain William Davidson of the Canadian Airline Pilots Association asked the press to “be careful not to encourage hostility between terrorists and authorities.” He urged reporters to ask themselves one simple question, “If I give out the information, am I going to jeopardize the lives of those being held hostage?”<sup>133</sup>

In a forum for *Harper’s Magazine*, columnist George Will expressed concern that “The competition between the three major networks virtually guarantees there will be maximum coverage of anything spectacular and telegenic.” Cable News Network senior editor Daniel Schorr defined “media terrorism” as primarily a television problem. He

described the issue, saying, “Television has a love affair with drama and a love affair with violence. . . . Being on television confers a kind of reality on people, much more so than being written about in the newspaper.” He questioned the necessity of broadcasting an incident round-the-clock or trying to get terrorists to provide live interviews during an incident.<sup>134</sup>

As terrorism experts Robert M. Kupperman and Harvey A. Smith explained, “Media . . . newspapers, magazines, radio, and television are star actors in a terrorism play. The media can emerge as forces for good, limiting the societal repercussions of an attack, or the media can incite terror. Media coverage cannot be eliminated, nor would that be desirable in free societies.”<sup>135</sup>

Some scholars went so far as to call the media “the terrorist’s best friend.” Author Ralph E. Dowling wrote, “The media are helping terrorists orchestrate a horrifying drama in which the terrorists and their victims are the main actors, creating a spectacle of tension and agony . . . the media sometimes do not merely report the horror of terror. They become part of it.”<sup>136</sup> According to historian Walter Laqueur:

It has been said that journalists are terrorists’ best friends because they are willing to give terrorist operations maximum exposure. This is not to say that journalists as a group are sympathetic to terrorists, although it may appear so. It simply means that violence is news, whereas peace and harmony are not. The terrorists need the media, and the media find in terrorism all the ingredients of an exciting story. . . . Media coverage has supplied constant grist to the terrorist mill; it has magnified the political importance of many terrorist acts out of all proportion. In some cases it has even been responsible for the murder of innocents and obstructed complicated rescue missions. The media cannot ignore terrorism, but society would certainly be better off if the media were not driven by sensationalism.<sup>137</sup>

James Landry, senior vice president and general counsel of the Air Transportation Association, concurred. He declared, “What terrorists really hope to achieve is a great

deal of publicity, in part for themselves, but mostly for their cause. And the more spectacular publicity that is given to the terrorists and their cause, and the success they achieve in getting that spectacular publicity, we feel invites further attempts of terrorism for that cause or other causes. We are very conscious, obviously, of the sensitivities of the First Amendment.”<sup>138</sup>

The federal government had little recourse in stopping the press from doing their jobs. In September 1979, the Federal Communications Commission (FCC) notified three Seattle television stations and one radio station they faced possible disciplinary action for broadcasting the conversation between a FBI agent and a hijacker during an attempted takeover of a Northwest Orient Airlines Boeing 727 on July 11. The FCC took action after the FAA and the FBI complained the broadcasts could have jeopardized negotiations with the hijacker. Federal law prohibited the rebroadcasting of such radio conversations without the permission of the sending party. The broadcasters ultimately got off with a slap on the wrist rather than penalties because the stations had not intercepted the transmissions but had been allowed to listen to them over loudspeakers in the press room at the airport. Although the seventeen-year-old hijacker initially asked for \$600,000, he ultimately settled for three cheeseburgers and a rental car. The FBI arrested him before he got either.<sup>139</sup>

*Many senior FAA managers were veterans of World War II and Korea and managed through authoritarian rather than consultative methods. Faced with Vietnam veterans, cynical toward authority, they have resented and resisted more than they have led the workforce. –Najeeb Halaby<sup>1</sup>*

## **Chapter 11: Labor-Management Tensions**

By the time President Carter took office, management and labor relations had deteriorated as the air traffic controllers union, the Professional Air Traffic Controllers Organization (PATCO), learned how to flex its muscles to increase member benefits. PATCO staged five slowdowns or sick-outs across the country with little repercussion from the FAA between 1968 and 1977, designed to pressure the agency into addressing their concerns over antiquated equipment, working conditions, and wages. It had successfully forced the Civil Service Commission (CSC) to establish new classification standards for controllers that raised pay levels at many facilities.

### **PATCO Established**

On January 17, 1962, President John F. Kennedy issued Executive Order 10988, permitting government employees to organize into unions without the right to strike. Unhappy with working conditions and pay, FAA employees started to join labor unions in 1963. Air traffic controllers initially tried to work with existing unions and professional groups but were unsatisfied. They first approached their professional society, the Air Traffic Control Association (ATCA), established in 1956. Michael J. Rock, a New York controller, asked for formal union-type recognition by ATCA's New York Chapter, of which he was president. Not only did ATCA's national headquarters refuse, but it also disenfranchised the New York chapter.<sup>2</sup>



Discouraged, a group of New York controllers next turned to the National Association of Government Employees (NAGE). NAGE, an aggressive labor organization, was waging a sustained attack on ATCA to convince controllers to join. Calling ATCA too soft in representing controller views to FAA management, NAGE exploited the FAA's missteps in implementing a controller health program and lobbied Congress for higher controller wages and early retirement. In December 1967, New York controllers Stanley Gordon and Jack Maher visited NAGE officials at the union's headquarters in Boston. In discussions with the union, they offered to pay double dues in return for a separate division for air traffic controllers. Uncomfortable with creating a separate division, NAGE refused the offer.<sup>3</sup> Returning to New York, Gordon and Maher reported to Mike Rock that NAGE represented too many other groups and could not respond to the uniqueness of controller concerns.



F. Lee Bailey and his airplane  
Courtesy: Brearley Collection, Boston Public Library

In January 1968, the New York controllers created a new organization. On January 4, they enlisted the aid of noted defense attorney and pilot F. Lee Bailey. Bailey met with nine controllers—two from LaGuardia Airport, two from John F. Kennedy International Airport, two from the Newark Airport, and three from the New York Air Route Traffic Control Center. At the meeting, Bailey agreed to help them create a national, professional organization, PATCO.

Bailey called an organizational meeting at the International Hotel in New York seven days later. The forum attracted 650 people from across the country. At a second meeting held on

February 21, Bailey talked with approximately 120 aviation industry executives and pilots.

Bailey explained to the audience:

The Professional Air Traffic Controllers Organization, which was indeed launched six weeks ago, was more than just an idea: It was such an overwhelming idea that is literally sweeping the ATC profession and will continue to do so. I fully expect that within a very few months, it will be the most solid and unified voice of air traffic control that the United States has ever seen.<sup>4</sup>

Bailey further said:

One slowdown in the New York area, and a slowdown is defined as following FAA regulations, with the spacing required by those regulations, would cut the traffic in the New York area down to 60 percent of its level. It has been done by renegade movements, by discontented controllers in Los Angeles, in Chicago and in New York and its effects are disastrous, and that is not the answer. It is a demonstration much as Martin Luther King's march into Washington with many of the people who are dissatisfied. It is not the method of this group.<sup>5</sup>

By the end of June 1968, PATCO had a national membership of over five thousand air traffic controllers. Assured by Bailey that slowdowns would not be how PATCO operated, FAA managers initially welcomed the creation of the new professional society. With honorary board members such as Johnny Carson, Arnold Palmer, and Arthur Godfrey, agency executives hoped for the best. The honeymoon period, however, proved short-lived.

In the first edition of PATCO's journal, published in May-June 1968, executive editor Robert Sturgill wrote the "primary purpose of the *PATCO Journal* is to reach—in our first issue—all those controllers that we have not been able to visit personally." He continued:

We have waited too long to acquaint the public with our problems, and are now forced to act on an accelerated scale. We must have maximum membership in order that the Congress and the people understand that we speak with one voice and that we mean business.<sup>6</sup>

PATCO held its first annual convention in Chicago from June 30 to July 3, 1968. On the last day of the conference, to highlight difficult working conditions and growing national airspace system congestion, the attendees agreed to follow strictly aircraft separation rules as

outlined in the FAA air traffic control manual. The newly appointed safety committee claimed, “to balance the poor equipment, deficient procedures, unrealistic working conditions and increasing traffic volume, a safety campaign was needed to remedy the faulting system.” The members unanimously voted in favor of the resolution, and PATCO chairman Michael Rock announced Operation Air Safety at a press event. He described it as a campaign to maintain FAA-prescribed separation standards between aircraft. Rock explained that FAA supervisors continually had controllers violate the procedures to accommodate the high traffic levels, but PATCO-affiliated controllers would start following the policies in the manual or going by the book.<sup>7</sup>

The operation contributed to significant system-wide delays and highlighted the inability of the air traffic control system to accommodate heavy tourist-season traffic. On July 19, air traffic congestion reached critical proportions when 1,927 aircraft in the vicinity of New York City faced delays in taking off or landing, some for as long as three hours. Delays spread to other major transportation hubs.

FAA managers reacted to Operation Air Safety with disbelief. They questioned why a professional society would engage in such tactics. Officially, the FAA attributed the delays to severe weather, increased holiday traffic, and equipment breakdowns. After the fact, however, FAA managers discussed the slowdown with PATCO’s leaders, who assured the agency the slowdown was not the result of a labor protest. PATCO officials told the FAA they did not support sick-outs or unnecessary traffic spacing and would abide by FAA rules. Based on PATCO’s assurances, in September 1968, the agency agreed to an automatic payroll deduction plan for dues-paying PATCO members as long as it remained a professional society.<sup>8</sup>

Despite PATCO's agreement to remain a professional society, a CSC ruling in January 1969 defined PATCO, ATCA, the National Association of Air Traffic Specialists, and the Airway Engineering Society as employee organizations, not professional societies, since they had obtained dues-withholding agreements from the FAA. As a result, the organizations fell under the provisions of Executive Order 10988, the Standards of Conduct and the Code of Fair Labor Practices. Five months later, PATCO negated its promise to abide by FAA rules when it protested the FAA's refusal to support a Senate bill introduced by Vance Hartke (D-IN).

On June 11, 1969, PATCO's western coordinator notified the organization of an upcoming hearing on proposed airport and airway development legislation. Hartke indicated he intended to ask about Department of Transportation (DOT) and FAA support for a controller career bill he had introduced in the Senate. His proposal included establishing educational requirements for controllers, removing them from the government's general schedule (GS) pay system, and requiring mandatory early retirement. If the FAA testimony was unfavorable, the PATCO official wrote, "D-Day is June 18th!"<sup>9</sup> As predicted, Hartke asked about support for his bill at the June 17 hearing. Although Secretary of Transportation John Volpe evaded answering the question, FAA Administrator John Shaffer was not so cautious. Shaffer opposed the proposed legislation, and in responding to the senator's contention that controllers were underpaid, Shaffer responded:

Well, I would have to say this—there is no other career in the federal government that pays as well as this for the equivalent educational level. . . . [They] are well-paid men in accordance with the federal government pay schedules, and they have a faster rate of promotion.<sup>10</sup>

Reports of Shaffer's testimony reverberated throughout the air traffic controller community. Many controllers viewed Shaffer's words as derogatory. That evening, F. Lee Bailey appeared on the NBC "Tonight Show" and allegedly told host Johnny Carson, "I'd start walking

if I were you.” From June 18-20, several FAA facilities felt the effects of a work slowdown by PATCO-affiliated controllers who claimed illness and did not report for work. Of the 477 controllers who took sick leave during the job action, the FAA suspended eighty from three to fifteen days. On July 17, the agency terminated its dues-withholding agreement with PATCO, declaring it was not in the public interest to assist an organization that participated in an illegal job action.<sup>11</sup>



John Volpe  
Courtesy: Library of Congress

Hoping to alleviate labor tensions, on July 21, Volpe appointed consultant John Corson to head a committee to study and make recommendations on air traffic controller careers.<sup>12</sup> He formally established the Air Traffic Controller Career Committee on August 8, 1969.<sup>13</sup> In establishing the group, Volpe acknowledged, “I am keenly aware of the problems of the air traffic controller and the pressures of his job.”<sup>14</sup> The seven-member committee investigated controller employment practices, compensation, work environment, training, and employee-management relations. The committee gave special attention to controller occupational stress.<sup>15</sup>

With the committee beginning its work, PATCO petitioned the FAA to reinstate its dues-withholding agreement. The agency denied that request on October 27 because its members had participated in the sick-out. Two days later, however, President Nixon issued Executive Order 11491, replacing Executive Order 10988 as the basis for federal employee-management relations. The order, which went into effect on January 1, 1970, gave the Department of Labor (DOL), not agencies, authority to grant exclusive recognition to federal employee unions.

A new round of tensions between PATCO and the FAA erupted in early 1970 when the agency involuntarily transferred three controllers from the Baton Rouge, Louisiana, combined station-tower to other facilities. As a result, at a January 15, 1970, press conference, PATCO threatened a national strike beginning on February 15. While the controversy over the transfer of the three controllers intensified, on January 29, 1970, the Corson Committee submitted its report to Secretary Volpe. The committee recommended the secretary:

- accelerate and improve the training of developmental controllers
- designate a single official responsible to the FAA administrator to handle all relationships with employee organizations at the national level
- detail qualified journeyman controllers to high-density facilities with critical staffing shortages
- develop incentives to attract controllers to the most challenging positions
- develop a more mobile controller workforce so the needs of the system, rather than the preferences of controllers, determine assignments
- pay special rates for employment in facilities located in high-cost-of-living areas
- reduce the consecutive hours spent by controllers in operational positions to two and the total hours per day in such positions to six
- reduce the overtime work required of controllers in high-density areas
- re-evaluate and revise existing communication policies and procedures to build a more effective interchange between FAA management and employees
- seek legislation providing for the early retirement of controllers who attain a certain age and cannot be retained or reassigned to less arduous duty, e.g., retirement at age fifty after twenty years of air traffic control service with 50 percent of high-three average salary<sup>16</sup>

Several of the committee's recommendations, such as detailing journeyman controllers to facilities with critical personnel shortages and providing developmental controllers with updated training, received immediate attention. In addition, the FAA established nine work groups to consider the remaining recommendations and develop programs for their implementation. On March 23, the FAA appointed a director of labor relations per the recommendation of the Corson Committee.<sup>17</sup> Unfortunately, the report and subsequent actions by the FAA and the DOT came too late to stop a planned PATCO sick-out in support of the Baton Rouge controllers.

Hoping to prevent a threatened strike on February 15, Secretary of Transportation John Volpe entered into discussions with PATCO. Both sides agreed to let DOL's Mediation and Conciliation Service arbitrate the controversial transfers. Three days later, PATCO filed a petition, as permitted by Executive Order 11491, with the Federal Labor Relations Council for certification as the exclusive bargaining representative for all non-supervisory air traffic control specialists.

In the meantime, the FAA reexamined the basis and legality of the transfer and submitted a fact-finding report to Secretary Volpe. On March 17, acting on the FAA report, Volpe upheld the FAA order calling for the transfer. Approximately three thousand air traffic controllers participated in a PATCO-organized sick-out two days later. All but a few involved were en route rather than terminal controllers. Some remained absent for a day or two, others for the entire seventeen-day sick-out period.<sup>18</sup>

Long delays and flight cancellations ensued. FAA Administrator Shaffer refused to negotiate with the controllers and requested a federal court injunction to force PATCO to order its members back to work. Although the absentees claimed sick leave, the DOT viewed their action as a strike and, hence, illegal.<sup>19</sup> The government obtained a temporary restraining order, and federal attorneys received a show-cause order against PATCO's officers when the union failed to comply. The court's heavy fines levied on the union ended the sick-out on April 10. The FAA suspended nearly one thousand controllers and fired fifty-two for their role in the affair.<sup>20</sup>

On April 2, 1970, PATCO elected a new president, John Leyden. Within a month, he appeared at a DOL hearing stemming from his organization's February request to be certified as the exclusive bargaining representative for all non-supervisory air traffic control specialists. It took the DOL almost a year to pass judgment on the PATCO petition. Meanwhile, PATCO faced

strong protests from the aviation community over the strike. For example, the Air Transport Association (ATA) filed a complaint in federal court for \$50 million in damages against the union. As part of a September 10, 1970, order, the court placed PATCO under a permanent injunction against any future job action.

As the conflict with PATCO began to ease, the FAA worked to implement more of the Corson Committee recommendations. In November 1970, the agency established a national en route air traffic controller training program for new hires. The program used the FAA Academy for qualification training and FAA facilities for proficiency training. Its objectives included shortening the training time, reducing the high attrition rate among trainees, and using resources more efficiently. The agency conducted the training in three phases. The first phase, indoctrination and pre-control, took place at an en route facility and covered duties unrelated to air traffic control. Officials conducted the next stage, air traffic control, at the FAA Academy, which consisted of a nine-week nonradar and radar control procedures course. The final phase, sector qualification, occurred at an en route facility. Previously, controller trainees were sent directly to the FAA Academy for a nine-week indoctrination course and then to the centers for on-the-job training, which lasted from two to three years.

The DOL ruled on PATCO's petition to become a bargaining representative on January 29, 1971. Because PATCO had called a strike against the federal government, the DOL stripped it of its organizational status for sixty days. It required PATCO to post a notice declaring it would not engage in illegal job actions. Only then would DOL reconsider its recognition as a labor organization. PATCO took this and other steps to comply with the mandate. On June 4, the DOL allowed PATCO to seek recognition to represent the labor interests of all air traffic



controllers under Executive Order 11491. Three days later, PATCO filed a new petition, and after consideration of the petition, the DOL granted PATCO status as a union.

On March 17, 1973, negotiators signed the first labor contract between the FAA and PATCO. Effective April 4, the one-year agreement contained fifty-six articles that included provisions on various issues, including payroll deduction of union dues and familiarization flights by controllers in airline cockpits. The FAA and PATCO agreed to a two-year contract on May 7, 1975, effective July 8. The contract's seventy-four articles covered a range of items, such as an expansion of familiarization flight privileges, working conditions, and career enhancement.

The new contract, however, did not prevent disruptive PATCO-initiated actions. In July and August 1976, after the CSC refused to reclassify controllers to higher salary grades, PATCO staged a five-day slowdown at the nation's busiest airports just before the Republican National Convention in Kansas City. The union also protested a CSC proposal to downgrade controllers at certain low-activity facilities. The slowdown ended when the CSC agreed to reconsider its position and expedite its review. FAA Administrator John McLucas publicly confirmed his support of upgrading controllers at certain facilities. The FAA did not discipline PATCO.

On November 12, 1976, the CSC, reversing its earlier position, announced support for upgrading air traffic controller positions to higher pay grades at eight of the nation's busiest air traffic control facilities. The commission approved upgrading lower pay-graded controllers at approximately twenty-three other installations but insisted on downgradings at a few facilities. PATCO continued to demand better terms, backing its position with the threat of renewed slowdowns.

On January 13, 1977, the CSC dropped its insistence on downgradings and approved promotions at forty-five facilities. As FAA Administrator Langhorne Bond later explained, "I

haven't had access to all the internal goings-on at the Civil Service Commission, and I don't know how much of an internal debate was generated. But something happened there to turn them around from having what I'd call massive downgradings to considerable upgradings. . . . The controllers were flexing their muscles a bit . . . we ended up avoiding any major confrontation with the union. We got the Civil Service to do what we asked them to do.<sup>21</sup>

## **Upgraded**

Discontent among controllers remained high despite the new pay standards, which went into effect on February 13 and March 13 and promoted approximately 2,200 journeyman controllers at thirteen of the nation's busiest ATC facilities to the federal general schedule (GS)-14 pay level. It also upgraded 420 controllers at nine facilities to the GS-13 level, raised about 180 journeyman controllers at eleven facilities to GS-12, and promoted another 145 at twenty-four facilities to GS-11.<sup>22</sup> John Leyden accepted the new classification standards as the best that could be accomplished at the time, stating the standards represented "the most that could be possibly attained out of all of the adverse conditions, political climate and the anti-public employee sentiment now existing in this nation."<sup>23</sup> He encouraged the controller workforce to seek even greater political influence and benefits, vowing to continue the battle for removing controllers from the CSC pay scales, shorter work weeks, even higher pay scales, privatization of the controller workforce, and even the right to strike.<sup>24</sup>

In early March 1977, just two months into the Carter administration, FAA Administrator John McLucas said the FAA was not in "any crisis atmosphere," especially concerning PATCO. He noted that he and PATCO President John Leyden respected one another and maintained a good working relationship. The calm did not remain for long.

## **Contract Negotiations**

On March 17, 1977, PATCO sent the FAA ninety-four proposals for a new agreement. The proposals covered all of the subject matter in the 1975 contract plus twenty new items.<sup>25</sup> After submitting PATCO's proposals, Leyden sent identical letters to the chief operating officers of the major airlines and other aviation industry leaders, notifying them that the FAA and PATCO would begin contract negotiations on or about March 28. Leyden believed those receiving the letters would be interested in the progress of the talks, especially one particular article, familiarization, or FAM flights. As Leyden wrote,

Enclosed for your information is a proposed article which the controllers of this country feel is of the utmost importance: specifically, the right to fully partake in a program which will benefit the controllers and their families, and ultimately, this benefit will be evidenced by a better understanding in the day-to-day working relationship by those parties who make this the best air traffic control system in the world. I look forward to a lengthy period of harmony and labor peace in the aviation industry, and I am firmly convinced that support and, more importantly, implementation of this proposal by the major carriers would go a long way toward ensuring a sustained period of tranquility in the industry.<sup>26</sup>

On May 4, 1977, Langhorne M. Bond became the seventh FAA administrator, succeeding John L. McLucas. The FAA and PATCO began contract negotiations twelve days after he took office. In a new precedent for federal negotiations, a mediator from the Federal Mediation and Conciliation Service (FMCS), Ed McMahon, sat in on the meetings. The two parties held meetings at FAA headquarters, PATCO's national office, and the FMCS office. The FAA negotiating team consisted of Edward Curran and Joseph Noonan from the labor relations office; Glen Tigner, Lawrence Kotzker, and Donald Rock from the Air Traffic Organization; Ted Burtness, Eastern Region; John Sullivan, Washington Air Route Traffic Control Center (ARTCC); Dolph Sand, chief counsel's office; John Mattson, Southwest Region; Donald

Latimer, Minneapolis ARTCC; Loren Kirkeeng, Phoenix Terminal Radar Control Facility (TRACON); and Walker Coker, Jr., Tampa Air Traffic Control Tower (ATCT). The PATCO team consisted of: John Leyden, president; Robert Poli, executive vice president; Michael Rock, director of labor management relations; William Peer, general counsel; Michael Payne, Santa Monica ATCT; Carl Vaughn, Pittsburgh ATCT; Freddy Whitt, Memphis ARTCC; Robert McCutchen, Honolulu ATCT; Larry Courtroul, Denver ATCT; Larry Whisenhunt, Amarillo ATCT; and Terry Anderson, Chicago ARTCC.<sup>27</sup> The meetings recessed after one week by mutual agreement so PATCO's negotiators could attend the union's national convention.

During the break, Bond issued a message to all employees affirming his support of the agency's federal labor-management relations program and Executive Order 11491. Generally, all new administrators sent similar messages after their confirmation, but the timing of Bond's statement came at a critical moment in negotiations with PATCO. In his statement, he asked, "All members of the FAA management team carry out their responsibilities in the labor-management relations program with good faith and in a mature and reasonable manner." He said, "I am confident that union representatives will respond in kind."<sup>28</sup>

### **National Convention**

At the convention, Leyden noted the contract negotiations would "be the most difficult and trying negotiations in our short history." He said PATCO's negotiating team had translated the collective views of the membership into the ninety-four bargaining proposals. Intimating the FAA's lack of support for PATCO's demands, Leyden warned the membership "may ultimately be forced to negotiate for us."<sup>29</sup> Guest speakers at the convention included National

Transportation Safety Board (NTSB) Chair Webster Todd; Wayne Horvitz, FMCS director; Senator James Sasser (D-TN); and FAA Deputy Administrator Quentin Taylor.<sup>30</sup>

Sasser, chair of the newly formed Senate Governmental Affairs Subcommittee, supported increased controller rights. He told the congregation, “It is high time you were treated like first-class citizens,” and said federal employees should have input “about their working conditions instead of living by executive decree.” He urged PATCO to create a strong “political action arm” with sufficient funding to ensure the “election of candidates who are sympathetic to your highly specialized and intensely demanding profession.” He further pointed out that Congress needed PATCO’s help shaping public opinion, “If the people of this country know the facts, we can accomplish a great deal.”<sup>31</sup>

With tensions increasing between management and labor and contract negotiations underway, Quentin Taylor promoted cooperation and professionalism in his speech. He reminded the gathering, “Professionals argue and debate productively.” He lamented the fact that:

I am sure that you have noticed too that our visible society, the most obvious of our society, seems to be dominated by virtually hundreds of thousands of all-knowing, all-confident appearing advocates of one proposition or another. Advocates today shout and scream at one another, often irrationally. Posturing of one kind or another seems to be the name of the game in our present society, and I might ask where has thoughtful and timely analysis gone?<sup>32</sup>

Taylor promised the agency would improve its relationship with its unions and assured the gathering, “PATCO’s voice will always be heard.” He said, “No one inside and outside of government expects that labor relations will ever be without certain conflicts.” He expressed confidence, however, that both parties could minimize conflicts if everyone acted responsibly.<sup>33</sup>

During the convention, the PATCO leadership worked to solidify support among members. Delegates proposed a new dues arrangement, which the membership voted in favor of.

The new structure raised the dues from 1 percent to 1.5 percent of the step one base for grade levels GS-8 through GS-14. Seventy-five percent of the dues went to the cost of running the union, 10 percent went to support the needs of the local organizations, and 15 percent went into a controller benefit fund, an account the FAA referred to as a strike fund. At the national level, PATCO planned to use a portion of the dues to hire a full-time staff member specializing in all aspects of the workers' compensation and second career training programs.<sup>34</sup>

### **Negotiations Resume**

A second round of FAA/PATCO contract negotiations began on June 14, 1977. The negotiations recessed by mutual agreement on June 29 after what Edward Curran called “the most bizarre event I have ever seen in my lifetime of dealing with labor unions.” During a break in the negotiations, the PATCO team left the conference room to discuss some issues privately.

As Curran recalled:

A minute or two after the union team left the room, my colleague Sandra Dominick reached for a water carafe on the table in front of me. Don Rock took the carafe and offered to pour the water. He tipped the carafe, but nothing happened. At this point, Joe Noonan removed the lid and someone remarked, “It looks like a tennis ball in the pitcher.” Noonan poked at the gray object with a pencil, and we all recoiled when the “tennis ball” rolled over and displayed tiny reddish feet. It was a dead rat. Yes, a dead rat. Just imagine the reaction of the management team, including me, as they examined the carafe. It was an entire array of emotions—disbelief, revulsion, disgust, and violent anger.<sup>35</sup>

During the June meetings, the negotiating teams had only resolved eleven of the ninety-four proposals.<sup>36</sup> With little accomplished during June, Leyden cautioned PATCO members that he expected the FAA “to create dissension” among the controllers to give it the upper hand during upcoming negotiations.<sup>37</sup> The contract expired July 7, 1977, but remained in effect during negotiations under an extended duration clause.

In September, with contract negotiations stalled, the FAA kicked off Project Professionalism to get management and labor working together to improve safety. Raymond Belanger, FAA's air traffic services director, initiated the program to reduce the number of system errors in the air traffic control system. Belanger sponsored a two-day meeting to explain the program. More than eighty-five air traffic control managers and supervisors attended the meeting. Participants heard about the critical importance of a professional attitude and a commitment to teamwork and discipline in minimizing system errors.<sup>38</sup> David Trick, PATCO's operations director, disparagingly called the new program "a package of enlightened human relations."<sup>39</sup>

The program's cornerstone, a requirement that all first-line supervisors get recertified to control traffic and become operational members of their teams, would become critical if a strike occurred. The FAA would remove any supervisor who failed to pass the test. As Trick explained, tongue-in-cheek, "It seems the old-line, hard-nosed program of management by intimidation is now banished by official Washington edict." Although the agency asked PATCO to endorse the program, the union offered only "conceptual support" because it questioned certain aspects of the initiative. Trick remarked, "The program is worthy of our support, [but] it remains to be seen if the FAA is really serious or whether the program will be destroyed by local management."<sup>40</sup>

Six months after the program's start, John Leyden reported the union unequivocally opposed the program's continuation. He said field reports "indicate our worst fears have become reality." According to Leyden, the plan suffered from improper implementation methods and a general distortion of its original intent. In particular, he remarked, supervisory personnel did not maintain operational proficiency but were passed through with "midnight sign-offs."<sup>41</sup>

After a long pause, contract negotiations resumed on September 15, 1977. Leyden asked the FAA team to present the agency's best offer on all issues to expedite the discussions. The FAA proposed its package the following day. Leyden reported a day later that, based upon a quick review, the union believed the proposal was unacceptable. The FAA withdrew its offer.

FAA negotiators then suggested the parties consider the open issues in smaller units. PATCO agreed. The agency representatives then presented suggestions to resolve ten of the open issues. After review, PATCO negotiators said five proposals would be acceptable with significant changes, and they could not accept the other five.<sup>42</sup>

On September 23, the FAA recessed negotiations because PATCO President John Leyden and Vice President Robert Poli had been missing the previous three days. Michael Rock served as PATCO spokesman in their absence. Agency leaders knew that without Leyden and Poli, the union could not make any decisions. Leyden subsequently informed the PATCO membership the FAA had unilaterally withdrawn from the bargaining table. He wrote, "The attitude of FAA and the climate they bring to the negotiating table reflect the anti-federal employee sentiment prevailing throughout the country. Despite the archaic process for bargaining in the federal sector, FAA seems to have adopted a 'heels-dug-in' posture to deny us even those minimal rights that should be obtainable."<sup>43</sup>

The two teams began a new series of meetings in mid-October. Bond and Leyden met twice during this time but to no avail.<sup>44</sup> By November, the FAA reported eighty-one outstanding issues remained, although they had come close to a resolution on:

- familiarization flights
- holiday schedules
- immunity program
- office time for union representatives
- on-the-job training
- reduced airfares for controllers and their families



- seniority
- watch schedules<sup>45</sup>

Seniority proved to be a complicated issue. Under federal regulations, agencies based promotions on merit, not seniority. PATCO, on the other hand, argued that only promotions based on seniority could eliminate what it termed as rampant favoritism to certain people under the guise of merit principles. Curran explained, “The arguments over the seniority issue chewed up a lot of time, and the patience on both sides of the table often reached the breaking point.”<sup>46</sup> Discussions reached a stalemate by early November, and negotiations again recessed. The teams did not immediately schedule additional negotiating sessions.

With negotiations at an impasse, on November 4, Bond sent a very positive memo to the DOT asking Secretary Adams to inform the White House:

Negotiations between the Federal Aviation Administration and the Professional Air Traffic Controllers Organization (PATCO) are coming to a conclusion. I expect that a satisfactory contract can be signed by December, and I do not now anticipate an organized delay of air carrier movements. However, I do expect informational picketing at airports and FAA facilities, as well as full-page ads in national newspapers.<sup>47</sup>

Despite his optimistic note, the FAA, concerned about a job action because of the stalled negotiations, prepared a fact sheet on air traffic controllers to provide information on things such as controller benefits, salary, and work schedules to bolster its cause with the media, Congress, and the public.<sup>48</sup>

Regarding the union’s slowdown tactic of working by the book, the agency explained that when a departing aircraft is three miles out from an airport, professional controllers will have the second aircraft in position and ready to roll because they know by the time the second aircraft builds up enough speed and covers three-fourths of a mile of runway before liftoff, the first plane will be five miles out. On the other hand, a controller “going by the book” will hold the second aircraft in place until the first aircraft is five miles out. As a result, by the time the second aircraft

lifts off, the lead plane will be eight or ten miles away.<sup>49</sup> Such actions, the agency explained, resulted in system delays, increased airline costs and fuel burn, and frustrated passengers.

As FAA leaders tried to predict PATCO's next move regarding the negotiations, an unexpected wildcat action at Washington National Airport, unrelated to the contract negotiations, shocked the agency and the union. The January 1977 CSC reclassification of controller pay grades adopted a system that enabled the FAA to reclassify controllers at busy airport towers and en route centers to a higher grade and salary. The commission based reclassification on a formula involving the number of daily operations the facility handled. The FAA had earlier imposed a quota to limit the flights coming into and out of National. The allocation prevented the operational count from reaching the point where controllers would get promoted.<sup>50</sup>

From November 9-11, 1977, controllers at the airport staged a traffic slowdown in protest after the CSC rejected their petition to upgrade the facility. Although the FAA reported some aircraft faced delays between twenty and ninety minutes, media reports cited passengers complaining of two-hour delays or more at the airport, with ripple effects affecting other East Coast airports. The agency publicly denied reports of a slowdown. For example, Henry Hubbard, chief of the FAA's Washington Air Route Traffic Control Center, told reporters, "I can substantially say we are not having a slowdown, but I'd have to say some of the guys are not extending the second effort."<sup>51</sup> John Thornton, president of the PATCO local at the airport, also denied a slowdown, telling the *Washington Post*, "The guys were just kind of down in the dumps" because the FAA had not promoted them to a higher pay grade. While expressing sympathy for the controllers, John Leyden said PATCO did not condone the slowdown. Leyden warned, however, the airport would "have a problem on the 21st (of November) if we don't have a contract."<sup>52</sup>

The slowdown received national attention. Senator Richard Schweiker (R-PA), who served on the powerful Senate Appropriations Committee, wrote to Administrator Bond complaining controllers forced his flight from Pittsburgh to Washington to circle National Airport for two hours in a thunderstorm. He reported, “The aircraft was subjected to a direct lightning strike and severe buffeting from high winds.” He said the flight “landed safely, but I believe we came close to tragedy” because of the controllers’ actions.<sup>53</sup> Other members of Congress wrote similar letters of complaint. Leyden later reported, as a result of the action at National, “We got a lot of publicity like we had been getting in those days, but this time it was mostly bad, and we got a lot of influential people, particularly inconvenienced congressmen, mad at us.”<sup>54</sup>

Walter Cronkite, who had taken a flight from Washington to New York on November 10, complained his flight suffered a twenty-five-minute delay. A CBS reporter said a furious Cronkite wanted to put the story on his nightly broadcast. The FAA’s public affairs office worked quickly to provide the reporter a statement, which helped convince Cronkite the slowdown was a local, not a national, story. As FAA public affairs officer Dick Stafford reported to his boss, John G. Leyden (no relation to PATCO President John F. Leyden), assistant administrator for public affairs, “We (the FAA) are now (thank God) back in in the good graces of the ‘most trusted man in America.’”<sup>55</sup>

The slowdown ended when the FAA agreed to work with the CSC to provide the Washington National controllers with an exemption and grant them promotions. Leyden later observed, “Even though I was happy that the National controllers got more money, I was concerned that they had used a wildcat slowdown to get it. I knew that throughout the system, we had a lot of strength in our unity, but I also knew that if individual locals went off on their own

on purely local issues, the FAA would jump on us with both feet. And there was no way in hell the national union could defend these local actions.”<sup>56</sup>

With the National Airport issue resolved, the FAA and PATCO returned to the stalled contract negotiations. John Leyden met with the PATCO regional vice presidents in Washington, DC, on November 13 to discuss the ongoing contract negotiations. He revealed the FAA had not budged on any issues still on the bargaining table. According to reporter Stan Bernard on NBC’s *Today Show*, the vice presidents reported their angry members had a strong feeling the FAA planned to do nothing more than try to break the union.<sup>57</sup>

The following day, Leyden sent Bond a letter advising PATCO intended to conduct informational picketing at all major airports beginning November 21, just in time for Thanksgiving travel. The union also planned to picket the FAA and the DOT headquarters in Washington, DC.<sup>58</sup> Leyden hoped the informational picketing would garner public support for PATCO’s demands at the bargaining table, particularly the use of seniority and the guarantee of immunity from disciplinary action for reporting system errors.

In a brochure handed out at the airports, controllers explained the union wanted to solve the contract dispute professionally and would continue to exercise “restraint and patience in the face of severe provocation by the FAA.” The union accused the FAA of refusing to bargain in good faith, saying, “The FAA abruptly walked out of bargaining sessions in mid-September, refusing to return. Controllers are now working under a contract that expired nearly five months ago.”<sup>59</sup>

*Aviation Daily* interviewed Leyden and reported on it in a November 22 article with the headline “PATCO Admits Air Controller Strike Possible:”

John Leyden, president of the Professional Air Traffic Controllers Organization, last week accused the FAA of continued obstinacy over negotiating a new controllers’

contract. It said that work actions—including the possibility of a strike—could follow this week’s scheduled informational picketing at about 150 airports across the nation. . . . If the informational picketing fails to expedite contract talks, Leyden said PATCO would consider three possible options: another round of informational picketing, work-to-rules (which would slow air traffic), and ultimately, a strike. He said one or more of those actions could conceivably occur around Christmas, another peak air travel period. . . . Leyden conceded the difficulties and dangers in a strike since executive order prohibits strikes by civil service employees. ‘A strike would be legal only if we won it,’ he said.”<sup>60</sup>

For some frontline controllers who participated in the picketing and previous slowdowns, radicalization began as they started to demand more from their union and thought only a strike could resolve their issues with the FAA. Indicative of this growing mindset, Bill Taylor wrote to Leyden expressing his and other members’ views on recent union activities. Taylor claimed the picketing successfully obtained public support for the union’s grievances. “After 10 years of hard work, and sometimes very frustrating work on our part, they [the public] finally know us, and more importantly, they respect us.” He believed PATCO should capitalize on growing public support. “Our advice to you, John, is to resist too long a delay before the next call to action. We’re up, and we’re as ready as we’ll ever be” to act.<sup>61</sup>

Leyden, for his part, used this newfound publicity to try to pressure the FAA into conceding to PATCO’s contract demands. For example, *Business Week* reported, “Not even PATCO President John F. Leyden . . . is able to define what working by the rules involves. ‘It depends on the degree of enthusiasm I take to the workplace,’ he says. Maybe you work at 100 percent instead of 120 percent.” Leyden threatened a “more disruptive demonstration of their discontent for the Christmas holidays.”<sup>62</sup>

The FAA, fearing an imminent strike, prepared talking points to respond to the media, in which officials countered PATCO’s claim that the agency had unilaterally ended the contract discussions. The agency explained the negotiating parties recessed on November 18 “with the approval of the Federal Mediation and Conciliation Service when the union rebuffed various

bargaining initiatives, and [because] the absence of key union officials at bargaining sessions made it apparent the union was not prepared at that time to bargain seriously about the issues.” Agency leaders announced they were “prepared to continue negotiations attended by key PATCO representatives in an effort to reduce the significant number of outstanding issues. Additionally, management officials are willing to submit the unresolved issues to fact-finding through impasse resolution procedures designed to resolve bargaining disputes under the Federal Labor-Management Program.”<sup>63</sup> The agency reported that out of ninety-four PATCO proposals, they had agreed to thirteen. Its initiatives to resolve issues “were not met with any spirit of compromise by PATCO.”<sup>64</sup>

Administrator Bond claimed negotiations had become “increasingly acrimonious.”<sup>65</sup> He explained the agency based its objections to PATCO proposals on factors such as the high cost of implementation. Agency leaders believed some of the union’s proposals usurped management prerogatives, and others were contrary to civil service regulations or executive orders. For example, PATCO wanted the agency to grant controllers two hours daily for rest and recovery, giving controllers a six-hour workday. Other issues included guaranteed free parking, FAA endorsement of free or reduced commercial airfares for PATCO members and their families, union approval of all duty schedules, and the right of controllers to refuse on-the-job training duties. PATCO also proposed controllers be allowed to work on all federal holidays whether the agency needed their services. Federal employees who worked on holidays received double-time pay.<sup>66</sup> Bond reported that Leyden insisted the FAA make additional concessions, describing, “When I talk to John, I feel like I’m being nibbled to death by a duck.”<sup>67</sup>

On December 10, the FAA submitted its final contract offer to PATCO. Union negotiators rejected it and informed the agency they planned to call a national meeting of

PATCO facility representatives in Washington, DC, on December 15 to decide upon a course of action.<sup>68</sup> In particular, PATCO threatened to use slowdown tactics during the Christmas holiday.<sup>69</sup>

In a well-publicized move, and as promised, Leyden called approximately three hundred union representatives to Washington on December 15 for a strategy meeting. He scheduled a press conference for 8 a.m. on December 17 to explain PATCO's position on negotiations and discuss possible union action. With PATCO working to marshal union and public opinion, Bond met with his management team on December 14. He was in contact with Leyden and wanted to settle the contract issues.<sup>70</sup> Bond told his negotiating team to "Get back together with the union folks immediately and work this thing out if you can." He reminded them that whatever they worked out, the agreement would have to be for at least three years. Bond knew another two-year contract would have the FAA back in negotiations during the next presidential election.<sup>71</sup>

When the meeting with Bond ended, Edward Curran called Leyden and suggested they meet at 4:30 p.m. that day. Leyden asked how long the FAA team would be willing to meet, and Curran responded as long as the negotiators made progress. Both sides agreed to meet with limited negotiating teams. The FAA's team consisted of Curran, Joseph Noonan, and Glen Tigner. PATCO's team comprised Leyden, Bill Peer, Robert Poli, and Carl Vaughn. The smaller groups met in the operations center on the 10th floor of the FAA headquarters building. The remaining team members gathered in a conference room next door to be available for caucuses. As Curran reported, "No one on the management side knew or could tell what the final result would be, but it quickly became apparent that all of us were in for a long, hard night."<sup>72</sup>

Curran described the all-night, eighteen-hour bargaining session as "classic private-sector-type negotiations. Both sides went back and forth over the open issues, and if FAA made a

new or different proposal on an issue, PATCO very slowly but surely would reciprocate on the same or another issue. At the same time, both sides were keeping their options open. It was to be a total agreement or a total disagreement, nothing in between.”<sup>73</sup>

With a PATCO news conference scheduled for 8 a.m. the following morning, both teams remained critically aware of the time. They resolved the issues individually, but Curran explained “a bit of real drama” occurred at dawn when the subject of familiarization, or FAM, flights came up. The FAM flights had plagued the FAA-PATCO relationship since its inception in 1968. Officially called the SF-160 program, the FAA allowed FAM flights to help controllers understand cockpit procedures. The individual airlines approved such flights and controlled the number and frequency of the flights. The airlines always provided domestic familiarization flights for eligible controllers and international flights only for those controllers who handled international airspace. PATCO wanted a guarantee that all members would qualify for international flights. Many in the FAA and airlines viewed the flights as a perk, although controllers touted its educational benefits.

When they could not solve the FAM issue immediately, the teams moved on to seniority. After a lengthy discussion, the FAA convinced PATCO it could not legally agree to use seniority to select employees for promotion. PATCO decided to drop the issue after the agency agreed to use seniority as one method to determine employees who desired to transfer to other locations. Leyden indicated PATCO’s membership would consent to the seniority compromise if the agency conceded something regarding FAM trips.<sup>74</sup>

Leyden believed the FAA’s reluctance over overseas FAM trips revolved around concerns the “Air Transport Association and the air carriers would raise hell about the idea.” He recalled, “Curran and the other management representatives always used the Airline Transport



Association as a shield on FAM trip program changes, saying they could not commit ATA on these matters.” Despite the FAA’s argument that FAM trips had no place on the bargaining table, the PATCO membership considered the issue important and negotiable.

Leyden explained, “I think even the ATA knew that FAM trips, or the absence thereof, could make a big difference in the attitude of working controllers. PATCO didn't want the program abused by controllers, but neither did we want it as a matter of privilege that could be arbitrarily canceled at the whim of some disgruntled airline executive.” He later stated the FAM trip issue “was, in my opinion, the personal pique of some key airline executives that led to the last of the slowdowns that I would personally be involved in,” before resigning from the union.<sup>75</sup>

After a lengthy discussion, the FAA agreed to expand overseas FAM trips to all bargaining unit members. However, approval of the trips would be at the airlines' discretion. Curran explained, “We realized that ATA and some of its member airlines would be unhappy but decided that if the Christmas/New Year holiday travel was seriously disrupted, they would be even more unhappy. There was no time to consult with anybody, so we just did it.”<sup>76</sup> Under contract Article 16, Section 3:

The Parties recognize that certain aspects of the cockpit familiarization travel in scheduled air carriers (SF-160 Program) are governed by Economic Regulation 223 of the Civil Aeronautics Board and the internal regulations and procedures of individual air carriers. . . . The Parties recognized that any air carrier may suspend or abridge their participation in the SF-160 Program at any time and that the Employer has no authority to direct the conduct of the program by individual carriers.<sup>77</sup>

When the FAA team presented its final position on all contractual issues, the PATCO representatives asked for time to caucus. “After what seemed like a lifetime,” according to Curran, “Leyden came out of the room and asked to talk with me alone. He extended his hand and said, ‘We've got a deal.’”<sup>78</sup>



John Leyden and Langhorne Bond signing the 1978 contract  
Courtesy: Georgia State University Labor Archives

The agreement came at 7 a.m. on December 15. Administrator Bond remained in his office throughout the night to be available if negotiations failed. Pleased to hear of the agreement, he later explained, it was “a good contract, not damaging from the government’s point of view . . . and not damaging from the union’s point of

view.”<sup>79</sup>

Later that morning, Bond publicly announced the tentative agreement with PATCO.<sup>80</sup> The contract had to be approved by Secretary of Transportation Brock Adams and ratified by the more than fifteen thousand PATCO members before going into effect. In his announcement, Bond expressed relief that the contract ran for three years instead of the previous two years. “I think the increased duration will provide greater stability in our relations with PATCO and facilitate the development of sound labor-management policies and programs.”<sup>81</sup> He later acknowledged the “three-year term of the contract was a very high item of importance because it would carry the contract past the presidential election. It was my view that any president, including President Carter, would be more vulnerable if this issue came to a head just before the election, and the pressures to collapse and give in on unreasonable terms would be higher.”<sup>82</sup>

With the agreement, John Leyden told the *Washington Post*, “The American flying public can look forward to safe and expeditious trips over the Christmas holidays. . . . I was prepared to call for a job action the week prior to Christmas. . . . I believe that threat had sufficient impact to

give us some language that was reasonable.”<sup>83</sup> In a letter to PATCO’s membership on January 13, 1978, Leyden strongly encouraged union members to ratify the contract. He stressed the union’s threat to slow down holiday traffic resulted in gains for PATCO. He wrote, “I believe the threat of a job action, as was the case this last time, oft times obtains more than could have been reached had we carried out the threat. That threat was instrumental in moving FAA/DOT, so we were able to obtain a majority of the necessary improvements and modifications that the negotiating committee sought for you.”<sup>84</sup>

In late February 1978, PATCO members, voting almost two to one, ratified their new contract,<sup>85</sup> which went into effect on March 15.<sup>86</sup> With the dawn of 1978, the FAA hoped and expected a respite from labor relations issues. In an interview published in the FAA’s monthly magazine, *World*, in May 1978, Bond thought “relationship with PATCO has been a very stormy one over the years, fueled, I think, in the beginning by the FAA’s—or the government’s—not providing good facilities for our people and letting the problem get ahead of the solution. But we’re catching up with it on all fronts. I think what we’ve done is kind of a model for other federal employee unions.” With the new contract, he remarked, “We have demonstrated that the collective-bargaining process will work and will arrive in a peaceful way at a solution that everybody can be reasonably content with.”<sup>87</sup>

PATCO President John Leyden, on the other hand, told union members, “Considering the limitations imposed on the Negotiating Committee by forcing us to operate within the restrictive parameters of the Executive Order, I firmly believe we still have the finest contract in the Federal sector. This does not imply that I am happy with the current system of ‘collective begging,’ but I am optimistic that we will expand our rights even further when meaningful legislation replaces the outdated Executive Order.”<sup>88</sup>

With the contract, the FAA hoped 1978 would see less strife between the union and the agency. That hope, however, was quickly dashed as several controversies with PATCO continued to frustrate agency leaders. The year became pivotal as the FAA and union hardened their views, and both began planning for an eventual strike.

## **Public Reaction**

Controllers quickly began applying to the airlines for overseas FAM trips once they ratified the contract. Richard Hubbard and Edgar Clark of the Cleveland ARTCC became the first controllers approved for overseas FAM flights under the new agreement. On April 8, 1978, Hubbard flew to Panama via Braniff Airways, and on April 19, Clark flew to Tokyo on the Flying Tiger Line.<sup>89</sup> Not all carriers, however, wanted to participate in the program, especially concerning international flights.

The principal overseas air carriers—Northwest Airlines, Pan American World Airways (Pan Am), and Trans World Airlines (TWA)—balked at the prospect of providing significantly more international FAM flights and began denying requests. *Airline Executive* magazine interviewed crew members who recounted, “Travel habits of controllers, in general, are not geared to the orientation mission.” According to those interviewed, most domestic requests were for cities considered vacation destinations. According to the article’s author, “unusual requests for international jump seat authority from tower controllers” included trips from Aspen, Colorado, to Hong Kong, from Alton, Illinois, to Tokyo, from Charlottesville, Virginia, to New Zealand, and from Klamath Falls, Oregon, to Paris.<sup>90</sup>

Even before contract ratification, the union worried the airlines would not agree to unlimited requests for international flights. Leyden sent telegrams, followed by phone calls, to

the presidents of the major carriers, asking them for their position on such flights. For the most part, the ATA and airline officials largely ignored his requests to discuss the issue.<sup>91</sup> After contract ratification, the number of denied requests led Leyden on April 26 to send registered letters to all major airlines asking for cooperation in honoring controllers' requests. He hoped for fast and positive responses so that he could report to members at the annual PATCO convention on May 9.<sup>92</sup> Rather than respond to Leyden individually, the airlines decided to work through ATA. The ATA operations committee planned to discuss the issue at their May 10 meeting.

Many in the FAA closely watched the situation. Bond and FAA Chief Counsel Clark Onstad received daily briefings based on limited information gleaned from conversations with PATCO officials, media reports, and controller discussions at facilities. Although concerned about a PATCO slowdown if the airlines refused to participate in the program, the FAA took some comfort that a federal judge in 1970 had permanently enjoined PATCO from engaging in job actions. Curran explained, "We were confident that any violation of this injunction would bring swift action to correct the violation. However, we weren't at all sure that PATCO's view of the legal picture was the same as ours."<sup>93</sup>

When the PATCO convention began on May 9, Leyden told the attendees if ATA did not support international FAM flights, PATCO would "not walk away from the challenge." He later explained:

At the convention, I received the first official notification from ATA, who was representing and speaking for the three major [international] carriers, that they weren't going to participate. It was a shock to me and a surprise to me. I called for a slowdown action. Major facilities on the floor of the convention, with ATA people present and FAA representatives present, got up and said they wouldn't support it, wouldn't support a job action. They wanted to go for money, the FAM trip issue wasn't big enough. . . . They wanted to place more emphasis on obtaining more dollars, reopening negotiations in a different way and try to obtain money, somehow, and get off the FAM trip issue. So the observers who were present obviously calculated and made an assessment that

the organization wasn't unified, that the major facilities were not going to support it if I made a call for a job action as a result of what I considered a breeching of the contract. Again, it was not on the FAM trip issue, but I felt that if they would renege on this, then other things that were in there could be opened up, and so on.<sup>94</sup>

Hoping to find a legal justification for denying overseas flights, the ATA wrote to the Civil Aeronautics Board (CAB) on May 24. CAB regulations governed any form of free transportation provided by airlines. The ATA questioned the propriety of controllers requesting trips, for example, from Alton, Illinois, to Auckland, New Zealand. The CAB general counsel answered on June 8, writing overseas FAM trips did not violate CAB regulations as long as controllers took the flights for the educational purposes outlined in the FAA regulations.<sup>95</sup> Angered by the ATA's attempt to stop the program through CAB intervention and by the airlines' continued reluctance to approve overseas FAM flights, PATCO began sending strong signals that the union intended to protest. Leyden held a press conference on May 23, 1978, and outlined PATCO's position and tried to enlist public support.<sup>96</sup> Some of the union's statements reported by the media increased the apprehension of many in the FAA. Edward Curran recalled the situation received his undivided attention after reading a *Washington Post* account of a PATCO press conference. The article reported, "The head of the air traffic controllers union warned three 'noncooperating' airlines yesterday that they might trigger nationwide air traffic slowdowns unless they allow controllers to the free, unconditional 'familiarization' flights to Europe and the Far East." According to the newspaper, Leyden said PATCO members were "fed up" with the lack of cooperation by the three major international carriers and predicted a "spontaneous slowdown."<sup>97</sup>

On May 25-26, 1978, PATCO staged intermittent slowdowns to protest Northwest Airlines, Pan Am, and TWA and their refusal to provide international FAM flights. The FAA

estimated 137 delays of thirty minutes or more, with an additional 245 between fifteen and twenty-nine minutes at John F. Kennedy International Airport on May 25.<sup>98</sup> Administrator Bond later explained that PATCO “caused a hell of a tie-up throughout the country.”<sup>99</sup>

However, the FAA initially refused to blame PATCO for the delays. Curran pointed out, “There was no clear answer as to what was causing the sudden spurt of delays.” The FAA remained cautious, not wanting to cause an overt confrontation with the union. According to Curran, “When it came to absolutely proving that the controllers were deliberately slowing traffic down, we had to rely heavily on circumstantial evidence.”<sup>100</sup> Internally, FAA managers expressed concern about the slowdowns but publicly gave the agency line—“The FAA believes that the FAM flight program proves a valuable training tool for controllers (and pilots) but recognizes, as the agreement does, that it is up to the carriers to work things out.”<sup>101</sup>

Hoping to prevent continued slowdowns during the heavily traveled Memorial Day weekend, the ATA initiated action in federal court on May 26. Judge Thomas C. Platt, U.S. District Court, Eastern District Court of New York, issued an order directing PATCO to show cause why he should not hold the union in contempt for possible violations of the 1970 injunction banning slowdowns.<sup>102</sup> PATCO responded that the 1970 injunction did not apply because it had concerned “understaffing of facilities and the resulting impact on controllers, whereas the 1978 dispute involves the issue of ‘free rides’ to Europe to obtain familiarity with in-flight procedures.”<sup>103</sup>

As the case worked its way through the judicial process, PATCO began another series of slowdowns on June 5-7. On June 7, Washington National incurred 254 delays of thirty minutes or more and 114 delays between fifteen and twenty-nine minutes. On June 8, JFK reported sixty-five delays because of the slowdown.<sup>104</sup> Overall, from May 25 through June 30, the FAA

counted 793 delays of thirty minutes or more. The agency attributed another 1,301 delays due to other causes hard to categorize, and 3,850 delays resulted from bad weather, runway/taxiway closures, and other operational issues.<sup>105</sup> System delays were especially severe because of the increased air travel resulting from new low transatlantic and domestic fares due to the Bermuda II Agreement and deregulation.

Immediate public reaction ensued. An editorial in the *Miami Herald* claimed, “The threat of a nationwide slowdown of airport landings and takeoffs by air traffic controllers is an outrageous example of government employees engaged in what amounts to extortion.”<sup>106</sup> In a column in the *Oklahoma Journal*, Paul Harvey warned controllers, “Perhaps there was a time when you guys had to dramatize yourselves to get public recognition and respect, which you did: Don’t undo all that with unbecoming schoolboy petulance.”<sup>107</sup>

An editorial in the *Washington Post* lamented slowdowns were “a sad but typical example of much of what is disgracefully wrong in our society today. A more pampered pressure group within the federal bureaucracy is hard to imagine. They are overpaid, overpraised, and as a result, accorded by the general public and uniformed rank and file of officialdom with a status wholly incommensurate with their responsibilities or genuine duties.”<sup>108</sup>

Another *Washington Post* editorial asked, “How is it that such a group as air traffic controllers, so normally prudent and precise on the job, can be so arrogantly irresponsible and hold the public, in effect, for ransom over freebies from the aviation industry?”<sup>109</sup> In his *Chicago Sun-Times* column on July 3, Bill Mauldin commented, “The semi-strike, or ‘slowdown,’ by air traffic controllers is an interesting study of federal employees gone ape. . . . The issue wasn’t salary, security, or salubrious working conditions. It concerned what the controllers considered their right to freeload.”<sup>110</sup>



In addition to scores of newspaper articles, the slowdown resulted in many letters to the president, Congress, and the FAA expressing outrage for up to five-hour delays and inquiring why the government allowed controllers to strike over “free international travel.” As one passenger pointed out, “A slowdown for improved safety or working conditions, I could perhaps understand. A slowdown for free trips abroad angers and totally frustrates me.”<sup>111</sup> Another traveler wrote his representative urging him “to remind the FAA that its employees are public servants, not tyrants!”<sup>112</sup> Yet another complained, “Since when do thousands and thousands of people have to sit on airplanes on runways, waiting for the controllers to decide whether or not they can leave?”<sup>113</sup> Passengers on a plane stranded on a shuttle flight from Washington to New York City sent a petition to Senator Jacob Javits (R-NY) to “protest the unnecessary delays and discomfort caused us,” saying, “the unconscionable action of the flight controllers is inexcusable.”<sup>114</sup>

Representative Charles Vanik (D-OH), upset because the slowdown delayed his travel for over an hour on a forty-five-minute flight from Ohio to Washington National Airport, not only sent a letter of complaint to FAA Administrator Bond but also read a statement into the congressional record deploring “the actions of the air controllers who delayed aircraft flights and jeopardized thousands of lives while they haggle over the issue of free orientation trips to Europe as an employment frill.”<sup>115</sup> An incensed Representative John Martin (R-NC) proposed an amendment to HR 12933, the DOT fiscal year 1979 appropriations bill, which would have prohibited the use of FAA funds for liaison or familiarization travel by air traffic control specialists if the trip occurred during annual leave, compensatory leave, or national holidays.<sup>116</sup>

The FAA response to angry passengers and others tried to downplay controller issues. For example, a standard response letter generally included:

We are aware of these delays and deeply regret the inconvenience and the drain on our vital resources which they have caused. . . . During this period, there was an unusually heavy volume of air traffic and a number of runway closures at major airports and widespread inclement weather. Under these circumstances, it is not an easy task to pinpoint specific details to prove that any delays resulted from a calculated job action.<sup>117</sup>

Few seemed to believe the agency's explanation. One irate pilot responded to the FAA, saying,

I have suffered through controllers' slowdowns in foreign countries as well as those in the United States, and I do not buy your explanation of heavy volumes of air traffic, runway closings, and inclement weather as being the reasons for absolute, inexcusable delays in takeoffs and landings. . . . I think it is criminal to allow the absolute, unrealistic wishes of a few to result in the waste of millions of pounds of fuel and thousands of hours of businessmen's time. There must be something the Federal Aviation Administration can do about it.<sup>118</sup>

Perhaps the most damning observation came from FAA's first administrator, Elwood

Quesada. In a commentary printed in the *Washington Star*, Quesada wrote:

I am appalled by the sorry spectacle of a few government employees willfully imposing on the public at large and our airlines, in particular, a burden that totals millions of dollars to the airlines and unmeasured inconvenience and hardship to the public. . . . Air traffic controllers, who claim to be professional, are far from abused or underprivileged. Their wage scale is among the highest paid to federal employees. The taxpayer even provides them early retirement after 20 years of service plus second-career training if needed. . . . Intimidation, extortion, and blackmail . . . are tools of the Mafia. When those tools are blatantly used by a few selfish bureaucrats seeking a selfish purpose at public expense and with apparent immunity, public indignation is the taxpayers' last resort. It is my great hope that the public is aroused as I am.<sup>119</sup>

Throughout the controversy, John Leyden staunchly defended PATCO's actions and issued a statement:

Since the Memorial Day weekend, there have been allegations raised of air traffic delays being attributed to air traffic controllers "working by the rules" . . . from the apparent misunderstanding of some air carriers of PATCO's position concerning the overseas familiarization program. I would like to take this opportunity to set the record straight. . . . PATCO does not demand or expect, and never has, that there would be any sort of guarantee of space for a controller on familiarization trips either domestic or international, nor are we demanding

free transportation for the families of controllers. . . . PATCO and its members have always understood that familiarization trips would be made only on a space-available basis in a non-revenue seat in the cockpit. . . . Our good faith attempts to resolve this matter have been met by the filing of a contempt of court citation against this organization, its officers, agents, and members. Nothing could inflame the situation more.<sup>120</sup>

When asked by a reporter if it bothered him to “delay traffic, inconvenience passengers, hurt those who have been your friends and waste fuel” to settle a contract dispute, Leyden responded:

I don't take any pleasure in inconveniencing the public or the pilots. What happens in the system is unfortunate. We don't have third-party binding arbitration to work out disputes. . . . I know of no labor controversy where the public is not inconvenienced. There has to be some other method. It's unfortunate that we have to deal with a huge bureaucracy. It's also unfortunate that an all-out strike may eventually come down the road.<sup>121</sup>

On June 9, ATA notified the federal court that PATCO had staged further slowdowns on June 6 and 7, and Judge Platt scheduled a hearing on June 26. PATCO, nervous about a public trial, opted for a stipulation agreement. On June 22, although not admitting it had sanctioned the slowdowns, PATCO agreed that if Platt determined it had violated the 1970 injunction, it would pay ATA \$25,000 per each day of air traffic disruptions, or \$100,000.<sup>122</sup>

Leyden explained this decision by saying:

Judge [Orrin G.] Judd who handled the previous 1970 job action was rather liberal but had passed on, and now we were faced with a tough son-of-a-bitch in New York, Judge Platt. They had more information, ATA did, in their corporate headquarters in New York, than FAA did about the activities throughout the country. . . . Anyhow, we sat with our Board, and I decided that I'd better get off the dime here because we are not going to win this one, and if we go to trial, they've got videotapes and everything else, and a lot of people are going to get hurt. So we stipulated in an agreement without admitting that we were participating, for \$100,000, and actually that was a slap on the wrist.<sup>123</sup>

Some PATCO locals, unhappy with the outcome of the legal battle with ATA, tried to rally support among controllers. For example, one facility bulletin board notice stated, “The time

has come for all members to face reality. Whether or not you care to admit it, PATCO has made your job a helluva lot better than it ever has been. It is now time to assert yourselves and become involved.” The notice continued:

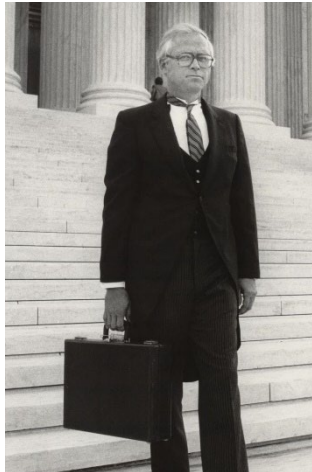
ATA is attempting to bust our union. Put yourselves in the plus column and let’s unify. Together there is no one that can divide or harm us. Unified, PATCO’s 14,500 plus members are undefeatable. That’s right. We hold all the hammers, but you must involve yourselves before those hammers can be loaded. Don’t let apathy be our epitaph. Get off the fence. Now is the time for you to do something for PATCO. The chits are being called in, and those of us who have been involved from the start expect payment.<sup>124</sup>

On July 17, Platt ruled, saying PATCO had violated the permanent injunction enjoining the controllers union from engaging in strikes, slowdowns, or other job actions. Per the stipulation agreement, he ordered PATCO to pay ATA \$100,000.<sup>125</sup> In his opinion, Platt noted, “In addition to the essential public services which the defendants provide . . . they are, I am sure, mindful of the fact that they have the lives of many thousands of people in their hands on each and every one of their working days. The Court does not even wish to entertain the notion at this time that one would willfully trifle with such awesome responsibility in such a way as might possibly jeopardize the lives of one or more of the traveling public.”<sup>126</sup>

Platt had advised the union, “If defendants are dissatisfied with the conditions of this undertaking, the solution, failing negotiations or persuasion, is to seek other employment, not to engage in or encourage conduct which violates the law and their sworn oaths at the expense of and possible endangerment to the lives of innocent people and the nation as a whole.” He also expressed dismay that the Department of Justice had not investigated the slowdown, saying, “It is . . . the sworn duty of the attorney general to enforce these laws but for reasons not fathomable to this Court, they have apparently yet to initiate any investigative or enforcement proceedings.”<sup>127</sup>

PATCO filed an appeal on August 11. In an opinion dated December 13, the Court of Appeals affirmed the lower court's decision. A subsequent appeal to the U.S. Supreme Court on March 12, 1979, resulted in no relief for the union. The Supreme Court declined to review the case, which ended the matter legally.<sup>128</sup>

### FAA Offensive



Benjamin Civiletti  
Courtesy: University of  
Maryland Francis King  
Carey School of Law

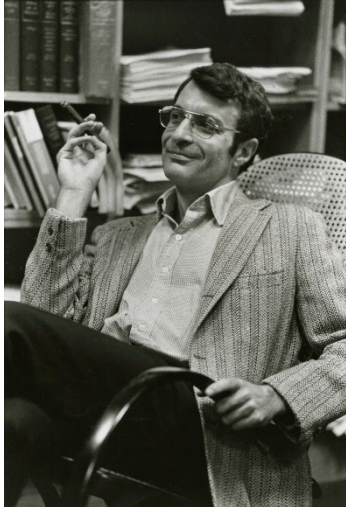
Two days After Platt's ruling, Philip Heymann, an attorney with the Department of Justice Criminal and Civil Division, met with FAA Chief Counsel Clark Onstad to discuss the controller slowdown and possible judicial actions. On July 26, 1978, Administrator Bond followed with a letter to Deputy Attorney General Benjamin Civiletti expressing his opinion that "the United States Government must respond to these incidents in a manner which demonstrates that this job action, a slowdown of the United States air traffic system, constitutes criminal conduct." He wrote:

Since becoming FAA Administrator, I have discovered a pattern of job actions participated in by certain individual controllers which has occurred since 1970. Efforts by the FAA and the Department of Labor have not been effective in preventing the continuation of these job actions. . . . Without determined action by the Justice Department to impose sanctions, the American public will continue to be held at the mercy of those air traffic controllers who choose to violate the law.<sup>129</sup>

Heymann responded to Bond on September 22, 1978, "While the information presented by the FAA indicates that sufficient evidence may exist to support criminal prosecution under the anti-strike statute 18 U.S.C. 1918, at this time, we have decided to decline criminal prosecution." He continued, "any attempt to impose criminal penalties may be less than satisfactory if the

alternative of instituting criminal action should be suddenly introduced into a labor dispute situation.” Heymann recollected that in the statute’s twenty-three-year history, the Department of Justice had never brought a criminal prosecution in response to strikes by government employees. He noted, however, “You may be assured that the Department of Justice is acutely aware of the serious impact that a deliberate air traffic slowdown can have on civil aviation safety, as well as the inconvenience to members of the traveling public.” Heymann recommended the FAA try alternative means of resolution before initiating criminal prosecution. He stated, however, “In view of these observations concerning our policy which could result in the invoking of criminal sanctions, we suggest that the organizations and individuals affected by this policy should be so advised.”<sup>130</sup>

As Bond later explained, he asked the Justice Department “to prosecute as a result of the 1978 slowdown, and they . . . said that, in fact, no federal employee had ever had criminal action brought against him or her for a violation of this law. It had always been treated as an administrative labor-management matter.” He continued, “So they were reluctant to bring the first action. But they wrote us a letter and said, in effect, ‘Here is fair warning; We won’t do it in this case, because we have never done it before, but by this letter we want everyone to know now that if it happens again, we will take criminal action.’”<sup>131</sup>



Phillip Heymann  
Courtesy: Harvard Law School

As a result of the Department of Justice’s advice, Bond sent a note to all FAA employees along with Heymann’s letter saying, “While the actions which resulted in the Department of Justice letter were limited to a small segment of the workforce, the conclusions expressed relate to unlawful activities by any segment of the workforce.”<sup>132</sup> To ensure wide dissemination of the information, the FAA sent copies to every employee's work and home addresses. The administrator also encouraged the region and center directors to post the information in newsletters, press releases, and bulletin boards.<sup>133</sup>

The same day the FAA mailed the letters to employees, Bond met with select reporters to give them copies of the Heymann letter.<sup>134</sup> He explained the agency had been reluctant to punish PATCO during slowdowns because “they are so hard to pin down. There are a lot of subtle ways a controller can slow down traffic.” Now, the FAA would be “less reluctant in the future” to take action.<sup>135</sup>

On December 12, Bond sent letters to the senators and representatives who had contacted him about the slowdowns to tell them about the Department of Justice letter. He informed them, “I believe it is significant that we now have a clearly enunciated policy from Justice respecting criminal prosecutions under the anti-strike statute (18 U.S.C.) that will form the basis for future Executive action should the need arise.”<sup>136</sup>

Bond said the 1978 slowdown was “a real eye-opener” for him. “It was the first slowdown of any significance that I had experienced as Administrator, and I was really taken aback.” He recalled:

I found that there was no policy for a comprehensive response. Most of all, it was ingrained in the attitudes of the FAA management all the way

from the facility level to the highest level among the air traffic career people in Washington that the FAA could not fight and win against an illegal strike. The attitude was that the best way to handle it was to go along with it, and sooner or later it would die out, and go away.<sup>137</sup>

Bond believed he could have handled the situation differently. “I should have intervened more strongly and more quickly to stop it. But I did not, and I guess I did not because I had a lot of meetings with senior management of the FAA, the career people here, and I did what they said ought to be done. I think there was a fair amount of covert sympathy for the controllers in some of the air traffic folk . . . and a reluctance on their part to intervene on behalf of management against their fellow controllers.” Bond also acknowledged the “FAA was afraid of the union.” Because the union wielded significant political power, FAA managers feared that if they “took strong action, the White House or the Secretary’s office would overrule them.”<sup>138</sup>

Bond called the slowdown “an enormous blunder on the part of the union tactically. All of the public sympathy that had been built up over the years was dissipated by this one act.” Public reaction “was overwhelmingly negative and critical. There was no sympathy,” he said. He explained that it “was not an issue caused by bad radars or bad staffing. People were not working six days a week. They were not being underpaid. It was over an overseas trip to Paris.”<sup>139</sup> As a result, “public opinion built up against the controllers and built up against the FAA for not stopping it. That was an unexpected consequence. The net result was that it was probably the smart thing for me to do—not to intervene earlier—for I gained a public mandate to end slowdowns.” This mandate helped prepare for future job actions and helped the FAA create “the tools—legal, administrative, procedural—to stop illegal activity that is union inspired,” Bond declared.<sup>140</sup>

John Leyden also admitted the slowdown was a disaster for the union and his presidency. After contract ratification, the PATCO board “assessed whether we had enough strength,” to



conduct a job action. “I made a miscalculation, an error in judgment, there’s no question about it. My decision was based on the reports given me by the VPs that it would be successful.” Leyden accepted responsibility for what he called a “blunder.” Afterward, he visited facilities across the country. “I went to 30 or 40 facilities and got my brains beat in, and I acknowledged that I made the mistake as President. It was a miscalculation, and I was culpable for the job action [that] was not successful. . . . I think that was the beginning of some break from my Vice President’s, and also [of my feeling] that if in fact there was going to be a job action in the future, it was going to be a strike out and out, no games played. We received a lot of bad publicity.”<sup>141</sup>

The slowdowns ended under court injunction as a result of the ATA suit. Facing criticism for how the agency handled the situation, Bond began to examine how best to manage such cases in the future. During the summer of 1978, the FAA started the agency’s first strategic planning for future slowdowns. Bond also embarked on a series of trips around the country, visiting over three hundred air traffic control facilities. He talked to controllers, facility chiefs, and maintenance personnel to obtain their opinion on slowdowns. “These visits,” according to Bond, “confirmed my view that there was a defeatist attitude [in the FAA] and no procedure to deal with the problem.”

Bond decided that instead of ignoring or downplaying union slowdowns in the future, he would take a more active and direct approach. “I was constantly appalled by the fact that PATCO would launch a series of attacks upon the safety of the air traffic control system and the competence and reliability” of the FAA. PATCO’s safety chairman in every FAA facility “would go to the local TV stations and tell them how death was just around the corner as a result of equipment, or procedures, or training difficulties in the FAA.” Bond determined to refute PATCO's claims. “In addition to the simple purpose implied by that policy of rebutting the

charges, there was a significant message in it for the FAA career people as well. It was designed to demonstrate to them that the FAA, through its Administrator, could respond to a very powerful group, namely PATCO, and get away with it without harm.”<sup>142</sup>

Bond established a team led by Vince Mellone, Oakland Bay TRACON, and Jack Ryan, Cleveland ARTCC, to review the FAA processes for dealing with illegal conduct. Their research found that during the 1978 slowdown, facility managers did not record the unlawful acts of individual employees. They created no paper trail, no record upon which to take any civil service action.<sup>143</sup> As a result, Mellone and Ryan, Joseph Noonan, Harry McIntyre, and Dolph Sand wrote and circulated “A Job Action Contingency Plan” in December 1978. They established a process, outlining in detail the escalating steps the FAA would take in case of future slowdowns or strikes. Any employee engaged in illegal activity would receive an oral warning, which would escalate to short suspensions and, finally, dismissal. Managers would carefully record each step of the process.<sup>144</sup> Bond mentioned, “If an oral warning was given, there was a form to write it down on and file it away for future use. If a suspension was given, that would be written and filed, as would a termination letter. In each case, a detailed file would be prepared that could be subject to later examination.”<sup>145</sup>

### **Union Response**

PATCO, for its part, strongly encouraged members to get involved in their local communities to counteract the bad publicity from the slowdown. As the union’s regional public relations coordinators, members could monitor aviation events and activities, create lists of regional media contacts, and organize and maintain speaker’s bureaus in their regions.

Expanding on such grassroots efforts, during the fall of 1978, PATCO began a public relations effort to take “PATCO to the Public.” PATCO hired the Maurer, Fleisher, Zon and Anderson public relations firm based in Washington, DC, to help with the effort.

In the union’s first ad, a full-page ad in the American Airlines inflight magazine titled “Someone Down There is Watching You,” PATCO informed readers about the critical safety work controllers did. The media blitz included a twelve-minute film, "No Margin for Error: Air Traffic Controller." Leyden intended the film to educate viewers about the nature of the air traffic controller’s job.<sup>146</sup>

In addition to efforts toward better publicity for the union, Leyden also began organizing PATCO for a possible strike in 1981 when its contract with the FAA expired. In an October 11, 1978, memo for the files, he outlined how he had instructed his three top lieutenants to prepare for future actions. Robert Poli became the national coordinator for the project, also referred to as a strike, operation, or both in the memo. Jack Maher became the field director and coordinator for the project, and Dennis Reardon served as the assistant field coordinator.

In mid-October 1978, PATCO began surveying bargaining unit members to gather information on their needs and opinions and “to assess your priorities and goals for PATCO, and to what lengths you are prepared to go to achieve them.” Leyden explained: “We have reached a critical turning point in our history where, no longer, can just a few select activists control our future destiny.”<sup>147</sup>

By early January 1979, Leyden wanted every air traffic control facility to have a representative participate in strike planning—a group later called the Choirboys. He asked his three advisors to reach out to union members to:

- get 51 percent of the active members to affirm their willingness to strike

- stress the need for discipline, i.e., no wildcat or premature strikes, and clearly explain the union's objectives and explain the possible consequences

Leyden emphasized that a January 1981 vote of all members would decide whether or not to strike.<sup>148</sup>

At the May 1978 PATCO convention, the membership agreed to create a national controller subsistence fund “to provide financial support of members whose participation in a nationally sanctioned job action has resulted in suspension and/or dismissal.”<sup>149</sup> The FAA called it a war chest or strike fund, and on November 9, 1978, Edward Curran wrote John Leyden saying the fund violated federal labor laws. He requested PATCO “take immediate action to rescind” the resolution to avoid unfair labor practice procedures. PATCO’s general counsel, William Peer, bluntly informed Curran, “PATCO will not accede to your request . . . [and] considers your letter and the threats contained therein to be an unwarranted and improper intrusion by the agency into the internal affairs of the union.”<sup>150</sup>

Curran considered the fund the “first definite step toward the 1981 strike.” The fund, financed by controller contributions, would compensate any controller disciplined or discharged by the FAA for engaging in any nationally sanctioned job action. The fund was similar to those created by unions in the private sector. Curran believed “the existence of this fund probably gave the controllers some comfort” but doubted “many of them paused to figure how much they would have to contribute to meet the FAA's \$2 million daily payroll.”<sup>151</sup>

After discussing the matter with the administrator and other senior FAA officials, Curran filed an unfair labor practice charge (ULP) against PATCO with the newly created Federal Labor Relations Authority (FLRA).<sup>152</sup> In the complaint, he argued that PATCO had a record of engaging in illegal actions and planned to use the subsistence fund to help finance an unlawful strike in the future.<sup>153</sup> The regional director of the Washington, DC, FLRA office ruled on May

4, 1979. He explained although federal statute prohibited strikes or other overt job actions by federal employees, it did not forbid strike funds. The FAA appealed the decision, and a FLRA panel upheld the ruling in December 1980.<sup>154</sup>

The agency also expressed concerns about PATCO's Facility Representatives School, which opened in 1977. The school allowed controllers from different sections of the country to get to know one another and bond over shared experiences. It also taught controllers how best to air their grievances to the media and the public.

PATCO's John Lapine and Jack Maher established the school, and Marvin "Bud" Long later took over the program's responsibility. Long worked with the George Meany Labor Studies Center in Silver Spring, Maryland, to shape its curricula to create a broad base of highly knowledgeable and politically active members.<sup>155</sup> PATCO held its first facility representative class September 26-30, 1977, enrolling sixteen facility presidents from five of the seven regions. The program curriculum included aviation and PATCO history, the background and concepts of labor law, collective bargaining, the formulation of executive orders and safety laws, political action, and responsible militancy.<sup>156</sup> By the end of 1978, PATCO held twenty-six classes with over 350 union members.<sup>157</sup>

## **Disability Claims**

As both sides began planning for an anticipated strike, the agency's relationship with the union further deteriorated over internal and external allegations of fraudulent controller disability claims and potential misuse of the continuation of pay provisions (COP) established by the Federal Employees Compensation Act (FECA). FECA provided workers compensation coverage for employment-related injuries and occupational diseases. Benefits included wage replacement,

payment for medical care, and, where necessary, medical and vocational rehabilitation assistance in returning to work and survivor benefits.<sup>158</sup>

Congress amended FECA in 1974 to authorize an employing agency to continue an employee's pay for a period not exceeding forty-five days, pending the Office of Workers Compensation Programs (OWCP) adjudication of a claim for disability compensation. The COP amendment applied to traumatic injuries occurring on or after November 6, 1974, and reported on an OWCP claim form within thirty days of the injury. The COP provision eliminated interruption in the employee's income for the period immediately following a job-related traumatic injury. It also allowed, for the first time, employees to select their own physicians—previously, OWCP did not authorize the testimony of private physicians. The change permitted employees greater freedom in finding a doctor who might be sympathetic to or help them establish a workers compensation claim.<sup>159</sup>

As some critics argued, “In attempting to formalize the criteria for adjudicating controller psychological claims, the OWCP created an incentive for controllers to demonstrate deteriorating performance.” They argued that measured air traffic controller work “efficiency deteriorated following the FECA amendments, but not because of traffic increases or equipment failures.” It resulted from “making compensation and retirement less costly to obtain.”<sup>160</sup>

In March 1978, House Committee on Appropriations investigators released a scathing report on air traffic controller abuse of COP and OWCP. The team chronicled widespread abuse of COP by some controllers who claimed compensation for injuries occurring off the job and trivial injuries. They claimed some treated COP as a “vacation of sorts.” The investigators pointed out that although “Air traffic control work is a relatively sedentary occupation . . . the record shows a high incidence of strains, pains, cuts, bruises, upset stomachs, and similar minor

ailments” being reported by controllers.”<sup>161</sup> To prove their point, they excerpted some of the injury claims in their report. The investigators said their examples “are illustrative but hardly complete. The full range of aches and pains reported is much more extensive and imaginative.”<sup>162</sup>

**Table 11-1: Examples of Controller Injury Claims**

Cause of Injury	Injury	Hours of COP
Reaction to supervisor discussion	Chest Pain	40
Computer failure	Hot, flushed skin, sweaty, increased respiratory rate and heartbeat, nausea	72
Near miss	Anxiety	255
Swinging arm hit a light protector	Cut finger	32
Searching for a headset part	Bumped head	224
Picking up purse	Slipped disc	165
Crouched down, stood up	Knee gave out	32
Hit back on cabinet	Spine hurt	48
Salt shaker slipped and hit table	Cut hand	10

Concerning OWCP, they reported, “Evidence of widespread abuse of the compensation program by air traffic controllers has been well documented and publicized by the news media.”<sup>163</sup> They recounted that the FAA recently experienced “a disproportionately high share of air traffic controller disability claims” in the Southern region. According to some, the proliferation of claims resulted from “the availability of loss of license insurance, sometimes referred to as “punch-out policies.”

Loss of license insurance gave controllers a set amount of money if they could no longer control traffic. While most insurance companies discontinued writing such policies in the early 1970s, the North American Company for Life and Health Insurance, for a time, continued issuing the policies in the Southern region. The insurance company representative selling the policies was allegedly a former air traffic controller who had separated from the FAA in the

aftermath of the 1970 sick-out. According to the House investigators, some controllers had purchased as many as nine policies.<sup>164</sup>

A private psychiatrist in the FAA Southern Region validated so many controller claims that he came under federal investigation for fraud after an Atlanta newspaper and the television news show *60 Minutes* ran stories on the number of FAA OWCP claims he signed. Merton Berger practiced in the Atlanta area from 1968 through 1977. As a psychiatric consultant to the FAA, he diagnosed 154 air traffic controllers as totally disabled. He often based the diagnoses on job-related anxiety and depressive neurosis.

Some of those Merton examined held disability income insurance policies issued by North American. Berger certified his findings to North American on the appellant's claim forms after the initial determination and periodically afterward. Because of the large number of claims, however, North American investigated Berger and concluded he had falsified some of his total disability diagnoses. It unsuccessfully sued Berger to recover \$562,000 in disability benefits paid to the air traffic controllers because of his allegedly fraudulent or negligent diagnoses.<sup>165</sup>

## **Second Career**

President Nixon signed the Air Traffic Controllers Career Program Act on May 16, 1972, authorizing controllers to retire after twenty-five years of active duty or at age fifty if they had twenty years of active service. It established a mandatory age for retirement at fifty-six, with exemptions at the discretion of the Secretary of Transportation up to age sixty-one. (Normal voluntary retirement for federal employees came at age fifty-five after thirty years of service or sixty after twenty years; mandatory retirement came at age seventy.) The legislation provided for a second career program, at government expense, for air traffic controllers with at least five years



of service and terminated for medical reasons, loss of technical proficiency, or the preservation of their physical or mental health.<sup>166</sup>

The FAA began implementing the program on September 8, 1972.<sup>167</sup> The agency and the DOT initially fully supported the program. In early 1977, for example, Secretary of Transportation William Coleman discussed the program's benefits before Carter took office. “When employees other than controllers are separated for medical reasons before the completion of what would be considered a ‘full career,’ they generally have acquired qualifications related to other lines of work.” Air traffic control, however, he said, “is a highly specialized and unique occupation for which no counterpart exists in the private sector.” Therefore, if a controller separates mid-career, their job training would not provide the experience necessary to move into another career.<sup>168</sup>

The legislation required the Secretary of Transportation to assess the program and report to Congress five years after the law’s enactment. In his October 31, 1977, report, Secretary Drew Lewis commented positively on the program's intent but recommended two changes. He thought the agency should exclude controllers eligible for retirement from the program and prohibit controllers reinstated to active duty from repeating second career training.

FAA and congressional concern over the program peaked in 1978 when program evaluations showed controllers dropped out at a high rate. Two studies, one by the General Accounting Office (GAO) and the other by House Appropriations Committee staff, recommended canceling the program. The GAO report revealed that 49 percent of the 2,580 controllers eligible to participate in the program since 1972 either declined or withdrew from training, and only 7 percent of those who had completed training entered the new careers they

had prepared for. The cost for each successful participant averaged \$370,000, and the program's total cost since fiscal year 1973 had been \$104 million.<sup>169</sup>

According to the GAO, three factors contributed to the program's limited use:

- Approximately 98 percent of the controllers removed from duty had mental and physical impairments; many were also advancing in age.
- Rather than begin a second career, most controllers used the income security and training benefits available under other federal programs, such as federal workers' disability compensation from the Department of Labor or civil service disability retirement.
- The FAA did not adequately counsel controllers about their options, and the FAA made no appreciable effort to find employment for the controllers within the federal government.<sup>170</sup>

FAA officials agreed to discontinue the program and concluded, "Second career training has proven to be an extremely costly means of providing only a small number of controllers with the necessary tools to enter new careers. As a general rule, controllers have either elected benefits from other federal programs or have withdrawn from training before completion. Even those who have completed a full training program, minimal success has been achieved in job placements in the field for which trained . . . there does not appear to be a plausible way to bolster the success of the program in terms of meeting its intended purpose—that is, to enable controllers to reenter the workforce in new careers."<sup>171</sup>

According to Gene Weithoner, FAA's associate administrator for administration, the program often "served as nothing more than a bridge for a controller to receive a full salary" until the OWCP approved their disability claim.<sup>172</sup> The OWCP often took six to eighteen months to process claims. Some enrolled in the second career program because they needed an income stream while waiting for benefits. They withdrew from the program once the compensation benefits became available.<sup>173</sup> As a result, growing concerns about potential abuse of OCWP and second career program benefits became inextricably linked.

The training program became a growing point of contention between the agency and PATCO. For example, when the FAA denied a controller's request to attend an agricultural college in Ireland, PATCO filed a ULP complaint. An arbitrator upheld the agency's decision, explaining that training in a foreign country would be nearly impossible to monitor and that Congress had not contemplated overseas training when it passed the law.<sup>174</sup> According to the House report, some controllers received approval "for training in such esoteric fields as a croupier/card dealer and sail boating instructor (with on-the-job training conducted in the West Indies)."<sup>175</sup>

On August 4, 1978, the Department of Transportation Appropriation Act signed by President Carter discontinued funding for the program.<sup>176</sup> The controllers expected the FAA to plead with Congress for continued appropriations but quickly realized they did not have the agency's support. As John Leyden wrote in the PATCO newsletter, "FAA so far has shown no interest in working with PATCO to save the program. They are apparently prepared to just let it die."<sup>177</sup> In a subsequent newsletter issue, PATCO's legislative affairs director, Vincent Ferri, detailed PATCO's efforts to convince legislators to fund the program. Leyden and Ferri made repeated trips to Congress to plead their case, and as Ferri wrote, "Considerable legislative 'chits' are being used in an attempt to obtain reimplementation of the program."<sup>178</sup>

The FAA conducted its own study, which it completed in March 1979. In its report, the agency agreed the program had not succeeded and did not contest the conclusions of either previous report. An attempt to restore the program failed in the House in December 1979.

## Health Care

Controller health had long been an issue between management and labor and had led in part to the establishment of the second career program. To understand better the health issues controllers faced, in 1973, the FAA contracted for a five-year study on controllers' health problems. A team of Boston University investigators, led by Robert Rose (later at the University of Texas), conducted the research. The study team issued its final report, the Air Traffic Controller Health Change Study, commonly known as the Rose Report, on August 10, 1978.

The study's authors challenged the generally held view that controllers suffered from unusually high incidences of ulcers, psychiatric problems, and other serious stress-related diseases. The researchers found higher-than-normal hypertension, social drinking, and minor psychological issues. They concluded, however, that those ailments did not lead to incapacitating conditions. They discovered that "impulse control difficulties," such as dealing with sudden emotions like anger, proved to be the most common psychological problem among controllers. The researchers believed the more serious mental problem of burnout affected those controllers who expected it to occur. Despite the abnormal rates of social drinking, controllers had lower rates of alcoholism than the national average. As for hypertension, researchers cautioned against assuming a direct relationship to controlling air traffic. The findings of the Rose Report confirmed similar results reported in studies conducted by FAA researchers at the Civil Aeromedical Institute.<sup>179</sup>

The Rose report's authors noted, "We believe that dissatisfaction with FAA management policies are a significant problem and represent part of the negative set associated with an increased risk for health change." They continued, "Despite controllers' perceptions of many positive benefits derived from the growing strength of PATCO, some of the alienation and

divisiveness controllers often experience may be an unexpected and unwanted side effect of the adversary relationship between union and management.”

The investigators recommended improved communications between the union and individual controllers. Such communication, they argued, would limit the adversary nature of the labor-management relationship. “It is our view that this could be accomplished by a cooperative effort between the FAA and union management and that individual controllers would significantly benefit from such a reduction of controversy in their work environment.”<sup>180</sup> While applauding this recommendation, PATCO largely dismissed the report as agency propaganda and continued complaining to Congress and the media that the FAA refused to acknowledge and deal with controller health concerns.

## **Pay Plan**

Despite the Civil Service Commission upgrading controller grades and salaries at high-activity towers, terminal radar approach control facilities, and en route centers, PATCO wanted more benefits. In 1977, the union set its sights on its next big goal—separating controller salary scales from the civil service grade structure. “This step will require the most extensive educational campaign yet attempted by the organization,” said Leyden. He warned, however, that efforts to get such legislation through Congress would be complicated.<sup>181</sup> According to Leyden, the union had two significant problems accomplishing that goal. “One is the strong present trend of anti-federal-employee sentiment in Washington, DC, [and] the other problem is the extensive array of other major crises facing the nation today, coupled with a new Congress, and new members of crucial committees. We must put all our efforts into providing that the present

inequity in controller salaries is a major national problem in air travel, one that Congress must give high priority to in this session.”<sup>182</sup>

PATCO had some congressional support for its plan. Representative Morris “Mo” Udall (D-AZ) and Senator James Sasser (D-TN) introduced identical bills in Congress in 1978 to raise controller salaries. With no co-sponsors, Sasser introduced the Air Traffic Controllers Pay Reform Act on March 21, 1978 (S. 2772). If passed, Sasser’s bill would:

- establish a unique classification and pay system geared explicitly to controllers' duties and functions
- separate controllers from the constraints of the general schedule
- improve controller work hours and reassignment options at the busiest facilities
- recognize the difficulty connected with giving on-the-job training to controller trainees using live traffic
- correct deficiencies and provide a sound, workable, and equitable classification system and pay structure that recognizes the unique, stressful, and highly complex nature of the job<sup>183</sup>

In the April 30, 1978, issue of the PATCO newsletter, Vincent Ferri suggested that once hearings began in both houses of Congress, “it will be most critical and necessary that each PATCO member begin an active and diligent campaign contacting his or her Congress representatives and senators . . . grassroots political activity is the key to political success.”<sup>184</sup> Union lobbying, however, did not produce the desired results. The bills never made it to the floor for a vote.

Art Kohler pointed out in the *Federal Times*, “PATCO’s most effective tactic, the air traffic slowdown, could not be used against Congress. . . . PATCO has some of the most politically astute leaders in Washington and also has amassed the largest political action fund of any federal union, even those with many times its membership.”<sup>185</sup>

As 1978 drew to a close, the FAA became convinced PATCO planned to strike in 1981 when the contract expired. As a result, the agency began preparing to keep the national airspace

system open during a strike. Contingency planning and developing a flow control process would be crucial to success. Between 1978 and the strike, the FAA modernized its central flow control facility to improve communication networks. Air traffic managers met with center, tower, regional office, and central flow control facility controllers to explain the facility's capabilities. They briefed air carrier operations officers on flow control procedures. Administrator Bond explained, "A whole lot of engineering, capital investment, and procedural development was put into the perfection of the Flow Control System."<sup>186</sup>

David Siegal, PATCO's Southern Region vice president, reflected on 1978 events. He noted, "The year 1978 has been turbulent, frustrating, and at one time pulled our union apart as far as the rubber band would stretch." He continued, "We profited from the 'Debacle of 1978' by coming out of it a little scarred, wiser, and with a more direct concern by the individual members, representatives, and officers of PATCO—and with a hope for the future." Siegal claimed that a lesson learned from the year, "was that we needed a strong, viable public relations program." He explained, "One of the foremost items of expressed concern still remains—SAFETY. I am presently setting up a regional safety program which will get each facility involved. ASAP, Aviation Safety Advisory Program, will be finalized and ready for implementation after the first of the year."<sup>187</sup> Perhaps increased safety rhetoric would convince Congress and the public to support the union in its battle with the FAA.

*Unlike workers in some other federal agencies, FAA's controllers can make the public sit up and take notice when they work-to-rule or suffer widespread attacks of the flu. –Mike Causey<sup>1</sup>*

## **Chapter 10: Union Strikes**

Tensions between the FAA and the controller union increased exponentially during the last two years of the Carter administration. By early 1979, a new onslaught of accusations and counteraccusations regarding aviation safety, air traffic control equipment, and controller staffing and training kept the agency's labor-management issues in the news, resulting in many congressional hearings. For the Professional Air Traffic Controllers Organization (PATCO), the 1978 familiarization (FAM) flight issues and work slowdowns eroded public support. The union had to develop new tactics to regain public and congressional sympathy. With an apparent loss of congressional and public support for the union, the FAA became more willing to take its case to the public, believing it now had the upper hand. As a result, the FAA and PATCO used every possible occasion to wage a public war of words in the press and prepare for what both sides saw as an inevitable strike in 1981.

### **Safety Reporting**

The first salvo in the renewed battle between the FAA and PATCO came in January 1979 when the agency changed the immunity provisions of its aviation safety reporting program (ASRP). That program provided immunity for controllers and airline crew members who reported safety issues. Under contract to the FAA, NASA collected the reports and removed the names of those who reported incident information.



### *Anonymous Submissions*

On April 8, 1975, FAA Acting Administrator James E. Dow announced the establishment of the ASRP, designed to provide the agency with information on potentially unsafe conditions in the national airspace system. To encourage the reporting of violations, the program granted immunity from disciplinary action to pilots or controllers who filed timely reports. Dow believed, "To ensure the safest possible aviation system, FAA must have an unrestricted flow of information from people who use the system on a daily basis, and we think that waiving certain civil penalty actions will accomplish this purpose. Initially, we will apply the program to the airspace system which includes the pilot, the controller, en route, approach, and landing procedures, and the aircraft movement area of the airport." He emphasized, however, the FAA would not grant immunity in the case of "reckless operations, criminal offenses, gross negligence, willful misconduct, and accidents."<sup>2</sup> The program became effective on April 30, 1975. Although the agency had instituted an immunity program in the past, the FAA had limited the program only to reports of near mid-air collisions.

On May 6, the Air Line Pilots Association (ALPA) expressed concerns about the reporting system. Many pilots worried the immunity promised by the FAA was so restrictive it would be meaningless. In a talk before the 1975 Aviation/Space Writers Association's national convention, Rod Gilstrap, ALPA's first vice president, argued that only under full immunity would airspace system users report problems. At the meeting, National Transportation Safety Board (NTSB) director Marion Roscoe commented the FAA's safety reporting system was a "big step in the right direction." He acknowledged, however, "I anticipated that the FAA was going to come out with a little better system than it seems to be at the moment."<sup>3</sup>

FAA Notice No. 00-46, dated May 9, 1975, and printed in the *Federal Register* on June 26, established the ASRP. The announcement lacked programmatic details but noted the agency would soon explain how pilots, controllers, and other airspace system users could report discrepancies or deficiencies in the reporting system to the FAA.<sup>4</sup> Pilots and air traffic controllers quickly voiced concern that ASRP would not provide anonymity if the FAA received the reports. They feared loopholes in the program would allow the agency to use the information for disciplinary purposes.

To ease such concerns, on August 15, 1975, the FAA and NASA signed a memorandum of agreement (MOA) under which NASA would operate the aviation safety reporting system (ASRS) under the ASRP. Under the MOA, NASA would receive and process the reports, delete information revealing the informants' identity, analyze and interpret the data, and provide the results to the FAA and the aviation community. NASA, however, would refer information concerning criminal offenses directly to the FAA and the Department of Justice. The FAA believed the third-party arrangement would satisfy critics and stimulate the unrestricted flow of information.<sup>5</sup>

In preparation for developing the reporting system, NASA established an aviation safety reporting working group under its Research and Technology Advisory Council on November 4, 1975, to evaluate and review the program once it began and to ensure the anonymity of those submitting reports. The working group included representatives from aviation and consumer groups, PATCO, and others involved in operational aspects of the national airspace system. The FAA described the agreement with NASA as modifying the existing ASRP rather than beginning a new parallel program.<sup>6</sup> NASA's subcommittee met for the first time on December 4-5, 1975.

On March 31, 1976, the FAA updated its notice, explaining the changes to the reporting system that would take effect on April 15, the same day NASA's reporting system became operational.<sup>7</sup> Under the revised ASRP, any person who observed or was involved in any incident that posed a threat to aviation safety could file with NASA, within five days, a complete written report on the incident. If individuals properly filed the incident report, they would not face disciplinary action applicable to the particular occurrence. All persons involved in a reported incident or event (not just the person making the report) received the appropriate waiver of disciplinary action. NASA retained a separate record of each report received for forty-five days following the incident. If the FAA queried NASA about a reported incident within forty-five days, the waiver provisions continued to apply to all reports except reckless operation, gross negligence, or willful misconduct.<sup>8</sup>

To clarify the meaning of reckless operations, gross negligence, and willful misconduct, the FAA provided the following examples:

- deliberate unauthorized descent below published decision height or minimum descent altitudes while conducting an actual instrument approach
- intentional buzzing dangerously close to persons or property
- intentional operation of an aircraft in instrument flight rules weather conditions without proper air traffic control clearances or authorization
- intentional operation of an aircraft substantially overweight
- intentionally performing aerobatic flight within a control zone or a federal airway
- knowingly executing an unauthorized instrument approach in controlled airspace<sup>9</sup>

NASA's ASRS began receiving safety information and reports as scheduled on April 15, 1976; the trial period would end on June 30, 1980. NASA planned to publish reports summarizing ASRS operations at three-month intervals and issued the first report in mid-July.<sup>10</sup> During its initial three-month operating period, ASRS received nearly 1,500 reports. Information in the reports prompted NASA to send 130 alert bulletins to the FAA warning of potential hazards.<sup>11</sup>

In its first report, NASA revealed that pilots and aircrew members submitted 62 percent of the reports. In comparison, air traffic control personnel submitted 34 percent, indicating broad support for the program within the aviation community. In approximately 99 percent of the reports, the participants identified themselves, allowing NASA to follow up on the data if necessary. NASA followed up on more than 150 cases. Twelve concerned aircraft accidents, so NASA forwarded them to the NTSB and the FAA as required. None of the reports contained information relating to a criminal offense. All other reports had submitters' names removed before NASA forwarded the information to the FAA. A data review revealed equipment malfunction, communications breakdowns, and personnel workloads.<sup>12</sup>

### *Program Evaluation*

Despite the many reports, FAA management was skeptical of the program. For example, in February 1977, Richard Skully, FAA director of flight standards, expressed concern with what he called "serious deficiencies in the program" in a memo to Administrator John McLucas. Acknowledging ASRP had benefits, he said he did not "believe that immunity is appropriate when incidents are observed by agency personnel or made known to the agency using information from sources other than a report made under the ASRP." He continued, "In my judgment, granting immunity from enforcement action under such circumstances is improper for a government regulatory agency, and I do not believe that such action would be viewed by the public as morally or ethically proper." He also stressed, "Waiving corrective or remedial action could be considered contrary to the responsibilities charged to the agency by Section 609 of the Federal Aviation Act of 1958."<sup>13</sup>

In June 1977, in conjunction with its advisory subcommittee, NASA issued a mid-term analysis and evaluation of the program to determine if it needed to change the ASRS design and operation. All parties, including the FAA, indicated support for the program, although FAA officials again questioned whether the agency should continue the immunity provisions of the program.

In preparation for the required 1979 final review, the ASRS subcommittee asked the FAA for its evaluation of the program. On October 17, 1978, the FAA assistant administrator for aviation safety, Marion Roscoe, requested information from the agency's regional directors. The regional directors responded almost unanimously in the negative. Their criticisms of the program included:

- Eastern Region: "It is our recommendation that the program be terminated at the earliest possible date."
- Great Lakes Region: "Our experience in the Great Lakes Region has shown that actions to improve safety conditions were normally identified by other means within the FAA, and corrective action initiated before the NASA reports became available."
- New England Region: "In our view, the Aviation Safety Reporting System should be amended to exclude immunity. . . . It is our judgment that the scope of the current program is entirely too broad. Immunity should not cover acts or omissions which constitute violations of safety regulations."
- Northwest Region: "We do not believe the [ASRP] should be continued as presently structured. . . . If we are constrained from taking immediate corrective action to eliminate or correct identified problems, then the program derogates rather than enhances our ability to promote aviation safety."
- Rocky Mountain Region: "We have found the [ASRS] feedback has usually been of an inconsequential nature or duplicates information already made available to us from other sources. We have no suggested changes to offer to NASA's reporting system but, from the experience of this region, we question whether the aviation safety reporting system is cost-effective."
- Southern Region: "Regarding the effect on this region, since the inception of the ASRS program, flight crews now realize that, except where they are involved in an accident, they no longer have to respect the FAA's enforcement program. . . . Every effort should be made to revise the immunity provisions in order to bring them in line with the agency's responsibilities."
- Southwest Region: "In summary, there have been very limited benefits accruing to the agency from the NASA/ASRS program insofar as this region is concerned."

- Western Region: “Based on our experience with the ASRS Program to date, and as we have repeatedly recommended in the past, we strongly urge that the ASRS Program be revised to exclude immunity, for any reason, to an individual involved in an incident which becomes known to the agency by means of normal job performance, such as personal experience, observation, inspections, surveillance, etc. In our judgment, this recommended change will not derogate the effectiveness of the ASRS Program but will allow the agency to carry out its mandate as set forth in the Federal Aviation Act of 1958.”<sup>14</sup>

As the FAA assessed the regional responses to determine the next steps regarding the ASRP, the head of the ASRS subcommittee, John Winant, wrote FAA Deputy Administrator Quentin Taylor on December 15, 1978, updating him on the subcommittee’s ongoing program evaluation. He reported that the subcommittee recommended the FAA and NASA provide designated FAA personnel training and computer hardware so they could access the system.<sup>15</sup> Winant said the subcommittee’s final evaluation would be submitted in June 1979 as required.

Winant also reported that the subcommittee “devoted a great deal of time and thought to the evident attitude of many FAA personnel that the existing waiver of disciplinary action provision is a deterrent to the orderly enforcement of Federal Aviation Regulations.” The subcommittee reached no conclusions regarding FAA concerns but would “continue to explore it as a matter of highest priority.” He noted most of the FAA responses to questions took “the position that the system has produced no significant changes in the national aviation system.”<sup>16</sup>

In response, on January 26, 1979, Taylor wrote the “waiver of enforcement action provision is perceived by many FAA personnel as a deterrent to the orderly enforcement of federal aviation regulations (FARs).” He continued, “We are definitely considering a program modification to allow enforcement proceedings against any person who has allegedly violated a FAR [Federal Aviation Regulation] by FAA through its normal surveillance procedures,” whether or not the violator submitted an ASRS report. Taylor said that before the agency made any changes, it would discuss its proposal with NASA and the subcommittee members.<sup>17</sup>



John Winant  
Courtesy: NBAA

Winant reached out to FAA officials on February 1 to confirm the agency planned unilaterally to change the program. Jonathan Howe, deputy chief counsel, responded the following day. Howe said the agency would “proceed forthwith to curtail the limited immunity provision, and that it planned to inform

NASA of that action the next week, negotiate the change to the memorandum of agreement, and issue a new advisory circular explaining the change within a couple of months.” Winant met with FAA and NASA officials on February 8. At that meeting, the FAA representatives confirmed the agency planned to institute changes to the ASRP.<sup>18</sup>

The reaction was swift as ASRS subcommittee members learned about the changes. The subcommittee had PATCO representation, and on February 22, PATCO President John Leyden informed the union’s regional vice presidents about the FAA’s plan to discontinue the immunity provisions of ASRS. On March 2, Leyden wrote Secretary of Transportation Brock Adams, stating emphatically, “PATCO, as well as the organizational representatives from all of the various aviation groups, most vigorously object to Administrator Bond’s action.”<sup>19</sup> He noted PATCO’s work with other aviation groups “to exert industry pressure, and, if need be, congressional pressure to retain the immunity protection.”<sup>20</sup> PATCO issued a press release on March 5, critical of the FAA’s change to the ASRS.<sup>21</sup>

On the same day of the union’s press release, subcommittee representatives from PATCO, ALPA, National Business Aircraft Association (NBAA), Aircraft Owners and Pilots Association (AOPA), and Air Transport Association (ATA) met in California. They agreed on the urgency of reversing Bond’s decision. They met with Bond on March 7. Leyden said, “There

was a lengthy and frank exchange of views but not the slightest indication that FAA was considering any other course other than removal of immunity.”<sup>22</sup> NASA representatives joined a third meeting held on March 13. At that meeting, FAA’s Walter Luffsey provided additional details on the proposed changes.

That information further infuriated the subcommittee, which responded to Bond on March 15. The subcommittee members argued a “change in the waiver provision will generate mistrust in the aviation community.” That, in turn, would “result in atrophy in submission of reports dealing with safety deficiencies and discrepancies. Individuals will hesitate to identify others involved in incidents unless they are certain that immunity extends to all involved.”<sup>23</sup>

Despite the subcommittee protests, Bond publicly announced plans to eliminate the immunity provisions of the ASRS while continuing to provide anonymity to those using the program. In a speech before the Aero Club of Washington, Bond said the FAA had drifted “into a position where penalties are sometimes inadequate to deter potential offenders and unevenly applied. With the best of intentions, we have created a system that lets many offenders escape any punishment at all.”<sup>24</sup>

To help remedy that situation, the administrator publicized plans to tighten the agency’s enforcement program. Regarding ASRS, he said enforcement would close “the loophole that makes it possible for a violator to escape punishment even if the offense is committed in full public view.”<sup>25</sup> That loophole centered on guaranteeing immunity for offenders who filed a report with the ASRS. Bond argued the current immunity system had been “easily corrupted into a license to endanger hundreds of lives with no fear of punishment.”<sup>26</sup>

Under the modified immunity program, airmen could no longer claim immunity for violations of safety regulations witnessed by others. Controllers, for example, would no longer



be able to shield themselves behind a claim of immunity if they directed an aircraft into another's airspace, runway, or taxiway or gave or accepted an inaccurate briefing when changing control positions. Bond claimed the changes would “end misuse of the safety reporting program while leaving its valuable and useful elements intact.”<sup>27</sup>

Bond published a notice in the *Federal Register* on March 26 announcing the changes to the ASRP, which would take effect on April 30, 1979. The modification provided that when a violation of the FARs came to the attention of the FAA from a source other than a report filed with NASA, the agency would take appropriate action whether or not the perpetrator filed a report in ASRS. Information filed with NASA by persons involved in incidents still would not be made available to the FAA, and the agency could not use those reports as the basis for enforcement or disciplinary action against the reporter or other persons named in the report.<sup>28</sup>

Bond explained the changes in the notice:

Direct immunity to the persons reporting the incidents and to the persons named in the reports will continue to be provided by the anonymity or confidentiality feature of the NASA reporting system. In order to ensure this immunity, the FAA will cease to query NASA prior to taking enforcement action, and the Federal Aviation Regulations are being amended to include a prohibition on the use of reports filed with NASA similar to the prohibition in §121.359 against the use in enforcement cases of information obtained from cockpit voice recorders. In addition, where a timely report is filed, if the FAA has not initiated its investigation within 90 days after the incident, the Administrator will waive the taking of disciplinary action against the person filing the report, provided the incident does not involve reckless operations, gross negligence, willful misconduct, a criminal offense, or an accident.<sup>29</sup>

Adverse reactions to the changes from the aviation community, the controllers union, and the media resulted in congressional hearings. On April 3, 1979, the Government Activities and Transportation Subcommittee of the House Committee on Government Operations, chaired by John Burton (D-CA), held hearings where ASRS subcommittee members protested the FAA changes. Those attending the hearing included representatives from PATCO, ALPA, GAMA,

ATA, and Aviation Consumer Action Project, as well as NASA officials who oversaw the ASRS program. All witnesses condemned Bond for his unilateral decision to end the immunity provisions. Dedicated to improving aviation's safety record after some high-profile accidents, Bond tried to explain why he believed the change was necessary. He also noted that by the time the FAA received ASRS quarterly reports, which NASA sometimes published up to a year late, the agency already had information on the incidents.<sup>30</sup>

In addition to immunity, questions about anonymity came up at the hearing. Bond had difficulty getting the representatives and the ASRS subcommittee members to understand he planned to strengthen the anonymity provisions of the program. The reports would still be de-identified, and the reporter's anonymity would be retained. Bond also received criticism for changing the program without consulting with NASA's ASRS subcommittee per the MOA with NASA. Members of Congress raised concerns that Bond had failed to follow the rulemaking provisions of the Administrative Procedure Act.<sup>31</sup> The act required federal agencies to provide notice of and allow for public comments on all proposed rules. Bond argued that ASRP was not a rule but a voluntary program and did not require public notification.<sup>32</sup>

After the hearing, Burton sent a letter to Bond on April 9 saying, "We remain concerned that your decision almost certainly will destroy a unique information system flexible and independent enough to allow those inside and outside the FAA to understand and thereby eliminate the inevitable human errors which will continue in the evolving U.S. air transportation system." Burton claimed, "From the very beginning, we have been keenly aware that a trade-off between enforcement and information may be inherent in this decision. This is a serious trade-off that should be made only as a last resort." Burton requested Bond and the FAA chief counsel appear before his subcommittee on April 25, 1979.<sup>33</sup>

On April 23, Bond met with the staff director of Burton's subcommittee and proposed the subcommittee cancel its April 25 hearing. Bond agreed to delay withdrawing the immunity provision of the ASRS until July 1 so he could work with the ASRS subcommittee to craft mutually agreed revisions to the program. The delay would also give FAA officials time to review the committee's June evaluation report and negotiate modifications to the MOA. As a result of the meeting, Burton canceled the April 25 hearing.

On April 24, the FAA and NASA signed a modification to the original program. It incorporated the FAA's changes and included a clause stating that when a violation of the federal aviation regulations came to the attention of the FAA from a source other than a report filed in ASRS, appropriate action would be taken against the perpetrator. The agreement also eliminated all references to the immunity program. However, the immunity provisions would remain until July 1, giving the FAA time to issue a new advisory circular and new reporting forms.<sup>34</sup>

In the meantime, the ASRS subcommittee established a task force on revocation of immunity. Task force members sent the FAA a discussion draft of an alternative plan for revocation of immunity.<sup>35</sup> The FAA rejected their plan but worked with subcommittee members to approve the agency's changes. After the subcommittee concurred, on June 15, the FAA issued Advisory Circular 00-46B, which spelled out modified immunity provisions of the ASRP, which would go into effect on July 1. Under the new requirements, the FAA would not subject pilots to civil penalty or certificate suspension if the:

- pilot did not have a history of a violation since the commencement of ASRP
- those filing reports were still protected against self-incrimination. If, however, the FAA learned of a violation of safety regulations from another source, it would take appropriate action.
- violation did not involve an accident or a criminal offense or did not disclose a lack of qualifications or competency
- violation was inadvertent and not deliberate<sup>36</sup>

Concurrent with the advisory circular, the agency issued a final rule prohibiting the FAA from using reports submitted to NASA under the ASRP or information derived from any report in a FAA enforcement action.<sup>37</sup> The rule specified:

The FAA does not seek, and NASA will not release or make available to the FAA any report filed with NASA under the safety reporting program or other information that might reveal the identity of any party involved in the occurrence or incident reported to NASA. The Administrator of the FAA further believes that the inclusion in the Federal Aviation Regulations of his policy that the reports filed with NASA (or information derived therefrom) cannot be used by the FAA for enforcement purposes would further encourage users of the aviation system to file reports.<sup>38</sup>

Since the amendment related to an enforcement policy, the agency discerned the notice and public procedures required under the Administrative Procedures Act were unnecessary.

To clarify the agency's enforcement policy regarding ASRP, on July 17, James Vines, acting director of the FAA flight standards service, sent instructions to FAA field offices:

- The alleged violator will be informed by the regional council, in connection with a civil penalty letter or notice of proposed certificate action, of his opportunity to elect specific alternatives toward satisfaction of the civil penalty or proposed certificate action. A statement of the timely filing under the ASRP will be listed as one alternative.
- When an alleged violation of the FAR that occurred after July 1, 1979, comes to the attention of an inspector from a source other than a report filed, the ASRS-appropriate action will be taken in accordance with the current enforcement handbook.
- When a timely report had been filed, and an inspector makes a finding of a violation, neither a civil penalty nor certificate suspension will be imposed if:
  1. The offense was accidental and not deliberate.
  2. The violation did not involve an accident or a criminal offense or did not disclose a lack of qualifications or competency.
  3. The person has not been found in any prior FAA enforcement action to have violated the Federal Aviation Act or any regulation promulgated under the Act since the initiation of the ASRP.
  4. The person proves that, within ten days after the violation, he or she completed and delivered or mailed a written report of the incident or occurrence to NASA under ASRS.<sup>39</sup>

On August 6, Carl Schellenberg, FAA assistant chief counsel for regulations and enforcement, provided legal guidance on the new policy:

- Flight Standards will thoroughly investigate all cases and forward them to the appropriate FAA regional counsel without regard for the ASRP. The regional counsel will initiate civil penalty action or notice of pending certificate action (NOPCA) as applicable.
- The information sheet accompanying the civil penalty letter or NOPCA will contain the following statements. “If you have filed an Aviation Safety Report with NASA concerning the incident outlined in the attached NOPCA or civil penalty letter, you may be entitled to waiver of any penalty. If you claim entitlement to this waiver, you must present evidence satisfactory to the Administrator that you filed a report with NASA within ten days of the incident concerning the incident. If you fail to provide this evidence to the Administrator within two weeks of receipt of this letter, you will not be entitled to the penalty waiver.” The FAA would issue a waiver if it found:
  - The alleged violation was accidental and not deliberate.
  - The violation did not involve a criminal offense or accident or disclose a lack of competence or qualification to a certificate holder.
  - The accused had not paid a civil penalty under Section 901 of the Federal Aviation Act or been found in any prior FAA enforcement action to have violated the Federal Aviation Act or any regulations of the Federal Aviation Act since April 30, 1976.”
- If the offender proved his or her entitlement to this waiver of penalty, an order would be issued finding him or her in violation but imposing no civil penalty or certificate suspension. The claim of entitlement to waiver of penalty shall constitute an agreement that the order may be issued without further notice. The offender had the right to appeal the ruling to the National Transportation Safety Board according to Section 609 of the Federal Aviation Act.<sup>40</sup>

Even with the two clarifying memos, FAA employees and external organizations wanted to know how the agency defined inadvertent. Deputy Chief Counsel Jonathan Howe’s clarification further confused those inquiring. “The word was never intended to have definitional precision,” he wrote in a memo. The agency decided to use the word after congressional criticism the agency had no definition for terms such as reckless operation and gross negligence. Howe acknowledged, “I am aware that there is a dictionary definition of ‘inadvertent’ as ‘not deliberate.’ That is meaningless. It is nothing more than an exercise of syllogistic sophistry to define something in terms of what it is not.” Howe said the agency used the word “to establish that an act of simple oversight or inattention on the part of the violator, if not repeated or aggravated by additional ‘oversights,’ deserves consideration” for a waiver. Perhaps further

perplexing his audience, he concluded, “In the final analysis, we are relying on the judgment of all persons administering the enforcement program. It is expected they will apply that judgment on a case-by-case basis guided by the discussion herein.”<sup>41</sup>

Despite the aviation community's initial reservations, the ASRP revisions did not affect the program. Almost a month after the changes took effect, John Winant reported, “Neither the quantity or quality of ASRS reports has been adversely affected during the first three-and-a-half weeks of operations under modified system rules.”<sup>42</sup> Only the controllers' union continued to fight the changes.

PATCO's 1975 contract with the agency guaranteed controller inclusion in the ASRP. After Bond announced his intention to drop the immunity provisions in April, PATCO wrote the agency requesting formal arbitration. The agency did not respond, and PATCO let the matter drop.<sup>43</sup> However, during the ASRS subcommittee meeting on June 5-6, PATCO representatives said the new policy did not apply to controllers who reported incidents to the ASRS because of existing contractual obligations. The controllers argued they should be treated the same as pilots regarding immunity. Winant subsequently discussed the controller concerns with Jonathon Howe. Howe agreed that “parity between controllers and pilots to the extent practicable was desirable, and PATCO's concern would be taken to the appropriate FAA officials.”<sup>44</sup>

On June 28, Taylor sent a letter to John Leyden. The letter spelled out how the ASRP changes would affect air traffic controllers. Taylor explained that if an incident is reported in the ASRS, the FAA will take no disciplinary action if the controller meets the following conditions:

- The offense was unintentional.
- The person was not the subject of evidence concerning a violation of the Federal Aviation Act, the FAR's, or FAA's policies, procedures, or orders on matters involving the control of aircraft since July 1979.

- The person provided, within ten days after the violation, that he or she completed and delivered or mailed a written report of the incident or occurrence to NASA under the ASRS.
- The violation did not involve a criminal offense, accident, or action under Section 609 of the Act, which disclosed a lack of qualification or competency, which were wholly excluded from the policy.<sup>45</sup>

On the same day they received the letter, PATCO's executive board voted to seek an injunction against the FAA in federal court to stop the ASRP change, claiming it violated its contract.<sup>46</sup>

The two parties appeared before the court since PATCO requested a temporary restraining prohibiting the FAA from applying the new ASRS policy to controllers. The FAA agreed not to implement the modifications until after the court heard and ruled on the motion for a preliminary injunction. On August 31, 1979, the court dismissed the case. Judge John Garrett Penn ruled that PATCO failed to make its case that controllers would be irreparably harmed if he did not grant the injunction or that issuing an injunction would serve the public interest.<sup>47</sup>

Despite protests, lawsuits, and language confusion, the ASRP changes during the Carter administration did not diminish the quality or quantity of reports. During the fiscal year 1980, NASA received approximately one hundred reports weekly, and aviation community participation increased in the next fiscal year, with the agency receiving about 110 per week. NASA reported in 1981 that, to date, it had received over 25,000 reports, issued 672 alert bulletins, and performed 181 special studies based on ASRS input.<sup>48</sup>

### **Safety Campaign**

Members of the PATCO safety committee, at a meeting July 26-27, 1978, determined the union needed some positive publicity in its war of words with the FAA. They believed they could gain public and congressional sympathy by highlighting what they deemed the FAA's lack of response to their safety concerns. One committee member pointed out, "Public relations for

safety issues could be a very effective avenue to help rebuild our image.”<sup>49</sup> Another member reported, “The union is in an awkward position at contract time. They are government employees and cannot strike. Compared with people in comparable jobs, they are paid fairly well, so they have to use the issue of safety to sell their demands to the public.”<sup>50</sup> Committee members agreed to adopt a safety program that originated in PATCO’s Southern Region called the Aviation Safety Advisory Program (ASAP). The PATCO executive board endorsed ASAP at their January 1979 meeting.<sup>51</sup>

On June 6, 1979, PATCO issued a press release announcing the nationwide deployment of the ASAP. The union explained, “The purpose of the Aviation Safety Advisory Program is to expose the general public to local and national air safety hazards identified by Air Traffic Controllers and not being acted upon by the Federal Aviation Administration.”<sup>52</sup> As PATCO Local 219 President Daniel Rice affirmed: “Nobody likes to think about dangers to aviation safety,” however, controllers cannot “sit idly by while identifiable hazards remain unsolved.”<sup>53</sup>

In a message to controllers, safety committee member Gene McGaughey discussed the need for ASAP. “The FAA sometimes seems to ignore your reports of safety problems through bureaucratic glue or just plain management laziness.” He continued, “The fact is you may complain so long that apathy and embarrassment sets in, and the problem still remains.” ASAP, he said, “will put pressure on the FAA through public awareness . . . by utilizing this program, the public will become partners with air traffic controllers in overcoming FAA’s excuses in not correcting safety problems.”<sup>54</sup>





IBM 9020 computer system at the FAA's Jacksonville air route traffic control center  
Courtesy: FAA

As part of its more vigorous safety campaign, PATCO sent a safety package to each union local outlining formats and giving examples of how to conduct safety-related press conferences.<sup>55</sup> Many press briefings, letters to Congress, and media interviews centered on computer failures. In a November 20, 1979, PATCO news release, President John Leyden

expressed “grave concern for air traffic computer outages” and called for immediate FAA actions to upgrade computer systems. Leyden indicated that the air traffic control computers, the IBM 360, Series 9020 D and E, were obsolete and had exceeded their average anticipated life span. He alleged the manufacturer was no longer making replacement parts for some of the most critical components of the computer. “Air traffic controllers are increasingly concerned about accepting responsibility for air traffic separation using equipment that may be overloaded or fail during critical situations. With the increasing frequency of breakdowns in the system, controllers are more apprehensive than ever that they will be party to their gravest concern, namely, involvement in an actual mid-air collision.”<sup>56</sup>

Safety rhetoric between the agency and the union escalated after a near miss over North Carolina on October 31, 1979, which the union blamed on a six-minute computer failure at the Washington en route center in Leesburg, Virginia. PATCO used the incident to accuse the FAA of covering up flaws in the air traffic control system and putting passengers at risk. PATCO's Robert Sturgill told the press shortly after the incident, “The primary cause of this near-mid-air collision must be placed squarely at the failure of the computer to perform its normal

functions.”<sup>57</sup> John Leyden agreed, telling a congressional committee, “With the increasing frequency of computerized radar failures, controllers are subjected to an ever-increasing degree of stress, fueled by their fear of involvement in a mid-air collision. They realize that if a computer fails when they are controlling aircraft, they must be able to transition immediately from a computerized radar environment to an antiquated, non-computerized radar system in which they have had little actual experience and even less training.”<sup>58</sup>

Some members of Congress agreed with PATCO’s concerns and held several hearings focused on safety and computer outages.<sup>59</sup> The FAA admitted computers failed occasionally but said air safety was rarely compromised because the computer interruptions were too brief to cause problems. Agency officials pointed out the controllers could switch to a backup, non-computer radar system if a computer failed. They described the two types of system failures. An unscheduled start over, the more prevalent and less disruptive failure, lasted less than one minute. The computer remained off only long enough for a standby unit to take over automatically. In those situations, the radar screens did not go blank; they merely froze until the computer came back on and updated the display. Such disruptions occurred approximately seven times per week per en route center.

The second type of disruption occurred about once a week at the centers and averaged seven minutes. When that happened, controllers switched to a broadband radar backup system. The broadband system was safe, merely less efficient because the radar presentation needed to include data tags that identified each aircraft and gave its altitude. As a result, the controller had to radio the pilot to get information. The FAA explained it planned to replace the broadband radar with a newer technology called the Data Access Radar Channel (DARC). DARC would

take over when the primary computer system failed and provide controllers with the same information in data block form.<sup>60</sup>

Quentin Taylor responded to PATCO's media onslaught: "Recently, there have been blanket charges made that system interruptions pose a hazard to aviation safety. It is the exception when such interruptions pose any significant threat to safety. While it is understandable that interruptions might raise concerns about safety, the reality is that the system itself, as well as air traffic procedures, is designed to accommodate interruptions without creating safety problems."<sup>61</sup>

In response to congressional inquiries regarding computer outages, Bond explained: "A great many charges and countercharges have flown back and forth during the heat of this battle, and this is one of them. We try to deal with all of these heated allegations in the fairest way that we can, and so far, we do not believe that we have been able to substantiate, in terms of a national problem, any of those allegations" regarding the air traffic computer system.<sup>62</sup>

In congressional testimony on December 11, 1979, the FAA changed tactics, and rather than accuse PATCO of hyperbole as it had been doing, Bond attempted to describe the computers' complexity. "The computers which drive our automated system are comprised of a large number of complex elements, each center's automated system containing more the 50,000 printed circuit boards with over 1,000 different types of circuits. The software programs contain literally hundreds of thousands of words. The largest program . . . entails over a half million words; it has been suggested that the software developed and used for this integrated system comprises the most complicated 'real-time' system in the world." He continued, "There are literally tens of thousands of solid-state electronic devices as well as tens of thousands of physical connectors, and a large software program which is in a constant evolution of

improvement and functional changes or additions. Though the reliability of the electronic devices is very high, they can and do fail. . . . I think it's also significant to note that the computers in a typical center receive and analyze 180 million bits of data each hour from the radars alone.”<sup>63</sup>

PATCO also expanded its tactics and began emphasizing various safety concerns. Robert Poli told a congressional committee that Americans should be “aware of the potential dangers” resulting from the FAA’s failure to acknowledge and correct air traffic control system defects. He cited four significant improvements to abate system dangers: hiring more controllers for the grossly understaffed air traffic facilities, deploying modern computer equipment, revamping the controller training program, and reinstating the second career program.<sup>64</sup>

Providing credibility to PATCO’s claims, an October 1980 report by the Senate Committee on Appropriations investigative staff criticized the FAA over its computer system and modernization plans. “FAA’s En Route Air Traffic Control System” was commonly known as the Bayh report since Senator Birch Bayh (D-IN) requested the study. After nine months of research, the investigators concluded the following:

FAA has not done an effective job of managing the current en route computerized air traffic control system. Because of weaknesses in reporting equipment outages, lack of planning, and the absence of a well-defined approach to managing system operations and software changes, the FAA cannot be certain that the current system will operate at a level that will assure the air safety of the traveling public until the proposed replacement system is operational.<sup>65</sup>

An ecstatic PATCO issued a press release praising the report. In response to the report’s publication, Robert Poli proclaimed: “This independent report underscores the fact that PATCO’s concerns are real and that the FAA has tried to avoid responsibility for its own inadequacies. We hope that Congress will now give this problem the serious attention it merits.”<sup>66</sup>

For its part, the FAA claimed the investigators overlooked some critical points in the FAA's management of the modernization program and showed a general lack of knowledge about how the system worked. According to agency officials, they neglected to describe how the agency recorded and responded to system outages. They complained the recommendations and observations of the investigators "indicate either a lack of integrity or a lack of understanding" and the report "contains erroneous conclusions" of the FAA's policies and procedures.<sup>67</sup>

The news media, except for a spurt of adverse reporting in the days following the release of the Bayh report, largely reacted with skepticism. For example, a reporter for the *Tampa Times* believed the computer controversy "may simply be another ploy by PATCO to gain publicity for its organizational interests. The union's reputation precedes it, and that reputation does not inspire a lot of confidence."<sup>68</sup> In *Flying* magazine, Richard Collins commented on the "sensational reports of aviation safety." He wrote about the ongoing conflicts between the FAA and the union and pointed out the computer issues "seems to be the cornerstone of PATCO's attack on the FAA."<sup>69</sup> Perhaps Neil Monroe, writing for *ATL*, the Atlanta airport newspaper, best summed up the controversy:

Much of the complaints about the system, and many of the claims that it is inadequate, have come from the controllers themselves through their union, the Professional Air Traffic Controllers Organization. PATCO says it is motivated by concern for the public's safety, and no doubt that statement is correct—to a degree. What PATCO won't say publicly is that it sees the safety issue as a way to increase its own strength, and the strength of its controllers. The relationship between PATCO and FAA administrators is not a rosy one, and the safety question appears to be an outgrowth of that conflict.<sup>70</sup>

### **Probing Questions**

As the battle for public support intensified, PATCO laid the groundwork to coalesce controller support for a possible strike in 1981. John Leyden told the union's members, "There's no prohibition against talking about strikes." He reported, "Controllers are using less

controversial resources to improve their working conditions this year. Billboards will soon appear in airports informing the public that controllers can negotiate neither for shorter hours nor higher pay because they are federal employees covered by civil service rules. And PATCO hopes to have legislation reducing its 40-hour workweek introduced early in this session of Congress.” He concluded, “We are spending a lot of time, energy, and money to try and legally obtain the things that we think are necessary.”<sup>71</sup>

In October 1978, PATCO officials mailed the first of several questionnaires to its members to obtain their views on working conditions and what they hoped to achieve in the next contract.<sup>72</sup> The union sent 14,000 surveys, and 7,000 bargaining unit employees completed and returned them.<sup>73</sup> It posted a second questionnaire in mid-March 1979.<sup>74</sup> As PATCO President John Leyden explained in a letter to membership: “A series of questionnaires, designed to assess your priorities and goals for PATCO, and to what lengths you are prepared to go to achieve them, is ready for your response.” He posited that the union had reached a critical turning point in its history and needed to work to take charge and control its destiny.<sup>75</sup>

The introduction to the second survey stated: “While the [first] questionnaire provided much useful information, it was only the first step. Now that the members have set their priorities and goals, we must determine what they are willing to do to achieve those goals.” According to the first survey, the membership’s highest goals included increased salaries, shorter workweeks, and expanded benefits. The second survey asked in particular: “If PATCO were unsuccessful in negotiating these member-desired goals,” would the members be prepared to strike?<sup>76</sup>

On April 18, Edward Curran and Joseph Noonan, from the FAA’s labor and employee relations office, met with PATCO’s John Leyden, Robert Poli, and David Trick for a three-hour lunch. Described as a “friendly, amicable, and relaxed meeting,” Leyden asked the FAA

representatives if they thought the membership would support a strike. “We thought the majority of those responding would favor a strike,” said Curran, “but many of those would change their mind if a strike became a reality.”

According to Curran’s meeting notes, “Leyden stated that his position in the organization is stronger than ever. Although the May/June slowdown may have been a mistake, it had some beneficial aspects. He has no more pressure from the militants, and the dissidents have resigned from PATCO.”<sup>77</sup> Although Curran did not raise concerns about the first questionnaire, he did so for the second questionnaire.

In late April 1979, Curran called Leyden and expressed FAA issues with the survey. According to Curran, Leyden responded quickly, “Mind your own business.” Curran followed up with a letter on April 30 and had it hand-delivered to Leyden’s office. Leyden answered the letter the following day, writing:

This is in response to your letter of April 30, 1979, where you pose certain questions pertaining to a recently distributed questionnaire. The purpose of the questionnaire is quite simply to gather data to assess our members' attributes in a variety of areas, including striking. I assure you that PATCO is fully aware of its current obligations under 5 U.S.C. 71. I personally, believe that Federal employees should have the right to strike and hopeful that some future legislation will change the existing law and grant us this long overdue privilege. We obviously have the right to petition Congress and would possibly exercise such an option should a majority of our members so desire. The questionnaire also contains approximately twenty-five other questions requesting membership's reaction toward the political action program of PAC and certain other benefit programs. I hope this prompt response satisfies your inquiry.<sup>78</sup>

The union mailed a third questionnaire in mid-November 1979<sup>79</sup> and a fourth in July 1980. That survey included more strike-related questions. For example:

- Has your opinion changed on this matter during the past six months?
- If a strike is authorized, will you serve on one of the strike committees?
- If you vote not to strike, but the majority votes otherwise, will you join the strike?
- What would your spouse’s reaction be if you decided to join a PATCO strike?<sup>80</sup>

## Annual Convention

While PATCO calculated the results of the surveys, the FAA became even more convinced PATCO intended to strike after the union's annual convention in Miami, Florida, May 16-19, 1979. Representative William Clay, Sr. (D-MO) gave the keynote address at the convention, discussing the "politics of survival." He noted that federal employees have no great American dream, "just a series of annually unfulfilled priorities which add up to one gigantic nightmare." Clay prescribed four priorities to enable federal employees to employ the politics of survival.

- Reward your friends and destroy your enemies.
- Take from whomever you can, however you can.
- Take what you can, give up only what you must.
- What is good for federal employees must be interpreted as good for the nation.

Clay concluded his remarks by saying, "In short, your success as federal employees depends on your determination to throw off the yoke of bondage."<sup>81</sup> PATCO's members saw Clay's address as a call to action. Delegates at the convention voted to begin planning for 1981 contract bargaining and instructed the PATCO leadership to take steps to broaden the scope of its collective bargaining negotiations.<sup>82</sup> They also agreed to strengthen the union's safety committee.<sup>83</sup>

The convention also resulted in a renewed commitment to get controller spouses involved in the public relations campaign. PATCO's legislative director met with the spouses to discuss the importance of their involvement in grassroots political action. In June 1979, PATCO announced it would add a new column to its newsletter to assist PATCO families in grassroots political action. "The political restrictions placed on PATCO members by the Hatch Act do not apply to spouses. It is therefore essential that member spouses be made aware of the legislative issues important to air traffic controllers."<sup>84</sup> Lee Carrigan, the newsletter editor, wrote,



“Ultimately, it is the people on Capitol Hill that we must reach with our message, but it is the people you serve every day who determine which Mr. Smiths come to Washington!”<sup>85</sup> In the spring of 1979, PATCO leadership and spouse groups began an intensive letter-writing campaign to air grievances with Congress.

PATCO also began a renewed campaign to convince Congress to separate air traffic control from the federal government and create an independent air traffic services corporation to offer its services to the government. Leyden acknowledged that increasing controller workload, along with a feeling of mistreatment by the FAA and a loss of pay and benefits relative to controllers of other nations, have caused “complete dissatisfaction with the way we are being treated as federal employees.” He hinted at a possible strike, saying, “I think people can appreciate the basic principle that no contract, no work may be coming for us in 1981.”<sup>86</sup>

## **Choirboys**

Momentum for the 1981 strike began to build in October 1978 when John Leyden selected seven union members to draft a strike plan. Originally known as the 1981 Committee, this group of activist members quickly adopted the name Choirboys. Leyden charged them with designing a public relations campaign and developing a political and legislative agenda for the union. During discussions, the committee concluded that only a strike could provide the best source of leverage for bargaining with the FAA over the next contract.

As Leyden recalled: “During the period leading up to the strike, I was concentrating on the legislative end of our program for recognition since this was the most effective way to gain benefits for our members. . . . I let Bob Poli take care of the things that concerned the regional vice presidents, and he did a good job.” He explained, “Poli and Dennis Reardon spent a great

deal of time developing the internal apparatus that we believed essential if a strike were to occur.” This apparatus—the Choirboys—worked with Dennis Reardon to develop a strike plan based on one used by school teachers in St. Louis.”<sup>87</sup> On January 8, 1979, the Choirboys submitted their strike plan to John Leyden.<sup>88</sup> The executive board approved the program shortly after that.

The Choirboys developed briefing packages to explain their role and what union members could expect if a strike happened. They described the plan as “a relatively long-range one.” They believed that because of the amount of education and work necessary to prepare for a strike, the earliest time the membership would be ready would be in March 1981, when the then-current contract expired.<sup>89</sup> They pointed out, “Neither the Choirboys nor the plan itself attempts to define strike issues. Instead, the plan addresses itself to methods by which you will determine issues and how you will conduct yourselves after you and the vast majority have determined that a strike is necessary. The plan also contains safeguards which preclude any one area or segment of the population from precipitating in a strike as well as authenticators at all levels (spies, if you prefer) to ensure that all information is totally accurate up and down the chain.”<sup>90</sup>

“The issues and relative importance of issues will be decided solely by the collective membership,” the plan’s authors stated. “Once defined in contract form, each member will have access to, in its entirety, contract proposals prior to negotiations. The membership can anticipate receipt of proposals in late 1980 (November/December). After the membership has had an opportunity to examine and discuss the matter, a strike call authorization vote will be taken prior to negotiations.” They cautioned, “Because of recent strike trends in the public sectors and because of the anticipated magnitude (in cost and ramifications) of the issues, a figure of 80 percent participation would be required throughout the nation. And at this point, the figure must

be 80 percent of the entire workforce in order to drastically restrict the flow of air traffic. (80 percent of the workforce equates currently to 93 percent of the PATCO membership.)”<sup>91</sup>

The Choirboys informed the membership, “Once a strike commences, there is no turning back until an agreement is reached under which all parties can live with dignity. The FAA will most likely roll the dice and try to run the system in spite of the strike. As they have done before, new employees, military controllers, medically disqualified, and retirees will receive instant facility certification.”<sup>92</sup>

After coordination, select facilities will be closed, and personnel will be directed to report to those facilities remaining open. All of this is an all-out effort to hoodwink the public, and the aviation community, as well as the strikers, that all is normal. Further, the Agency will create an image of controllers as prima donnas with salaries and benefits far beyond the average, which far outweigh our contributions to the ATC system. Demands in the face of high unemployment and economic state of the country will be labeled outrageous and inflationary. No one can say how long a strike will last. The best attitude to develop is—to go into a strike for as long as necessary to win. (Note: length of French Controllers’ strike posture—70+ days. Cleveland teachers—57 days as of 1/3/80.) If, and only if, support of the strike is firm, despite opposition actions, then victory is at hand.<sup>93</sup>

The Choirboys network grew throughout 1980 as the union worked to consolidate support for a strike. Each regional vice president designated three members as Choirboys from their respective regions. The Choirboys operated outside of the jurisdiction of the local presidents. They agreed not to accept promotions to management positions. Leyden recounted PATCO gave them “out-of-pocket funds to avoid tracking, and they were not to travel on credit cards.”<sup>94</sup> Over time, PATCO headquarters began referring to the group officially as the Benefits Committee.<sup>95</sup> The Choirboys took the strike plan to the membership and worked to convince the members they had much to gain and little to lose by participating in a strike.

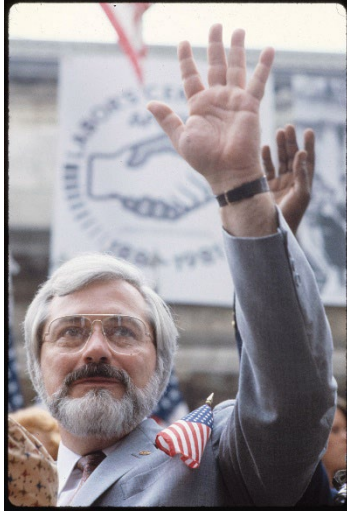
Throughout 1979 and 1980, Leyden worked to keep PATCO’s activist and non-activist members united. Although hoping a strike could be averted, his public remarks indicated he would support a strike. For example, in an August 1979 message in the PATCO newsletter,

Leyden wrote: “Under current law, it is presently illegal for PATCO to advocate or support a strike, but it is not illegal for me to believe in the inalienable right of any employee to withhold his services and strike. . . . The actions of this administration and the FAA Administrator’s lack of support and understanding for the needs of our profession are creating such a feeling of utter frustration that a case could be made for finding them guilty of promoting a strike.”<sup>96</sup> Leyden soon discovered that keeping the activists in check was a losing battle.

### **Leadership Shake-up**

As John Leyden worked with sympathetic members of Congress to address controller concerns through legislative efforts, he turned over management of the Choirboys to his vice president, Robert Poli. More aggressive and radical than Leyden, Poli’s positive relationship with the rank and file quickly surpassed Leyden’s. The union activists saw Poli as a leader willing to take chances, someone who understood the membership's concerns, someone willing to stand up to management, and someone ready to take action.

In January 1980, in a surprise move, Poli announced plans to run against John Leyden for PATCO president. Leyden believed he had the membership behind him. Poli, however, convinced the majority of the executive board he would best serve the union. Leyden recalled, “The last act of this rather sordid drama between Poli and myself, as it played out, was the palace coup during an all-night meeting in Chicago.” Leyden called for a special meeting of PATCO’s board of directors in Chicago on January 7-8, 1980. As word spread throughout the union about the rift between the two leaders, officers from most major air traffic control facilities flew into Chicago.<sup>97</sup>



Robert Poli  
Courtesy: Library of Congress

According to Leyden, “Many of them [members] asked us to attempt to resolve our differences in the interest of PATCO unity.”<sup>98</sup> At the January 7 meeting, Leyden explained, “It soon became apparent that the animosity between Poli and myself was irreconcilable. Bob loudly and emotionally stated that he could no longer work under these conditions. Then he angrily announced his resignation from PATCO and his office and stomped out of the room.” Leyden then informed the board, “The best interests of the membership would be served by having new leadership take over the organization. I felt that public knowledge of the division on the Board and the split between the two of us would seriously erode the solid support that I had previously enjoyed in leading the union.”<sup>99</sup>

Leyden submitted his resignation and wanted the meeting minutes to include a statement from him laying out all the facts leading up to his decision. Leyden left the meeting and returned to his hotel room. He said PATCO’s “Eastern Region Vice President George Kerr and General Counsel Bill Peer came and advised me of a shift in Poli's announced position.” He recounted, “Apparently, after resigning and leaving the meeting room, he [Poli] met with some of his palace coup advisors, and together they developed a strategy to have his supporters on the Board accept my resignation and decline to accept his, thus automatically enabling him to become president.” Leyden recounted, “Both Kerr and Peer pleaded with me to reconsider my decision to resign and go back and advise the Board. I said my word was my bond and my decision irreversible. The utter sense of being undercut by my ‘brothers’ left me shattered, and I left Chicago as a disillusioned, very troubled individual.”<sup>100</sup>

On January 9, 1980, Leyden sent a Mailgram to all PATCO facility representatives explaining the coup. “On Monday, January 7, 1980, during the meeting of the Board, the executive vice president submitted his resignation after questions were raised concerning the present internal situation. Thereafter, I submitted my resignation because I did not feel that I could, in good conscience, continue to serve.” He concluded, “I cannot continue to work with a Board which consists of certain persons who are disloyal, and I can no longer trust, and who do not serve the membership with honesty or integrity.” Leyden said: “I do not believe Mr. Poli is competent to lead PATCO, or that he possesses any characteristic, personal or professional, which is needed to head the organization. I regret that the organization and the membership will suffer irreparably because of this internal split. In submitting my resignation, I hope that the interests of the members will be advanced in some way.” Leyden’s resignation became effective on February 1, 1980, to allow for an orderly transition.<sup>101</sup>

PATCO issued a press release the same day Leyden sent the Mailgram. The release included a statement by Poli, “We intend to build PATCO in the future as we have in the past, by effective leadership and strong representation of the needs of air traffic controllers. Let our members be reassured that PATCO remains dedicated to productive collective bargaining and to skillful legislation and political education programs.”<sup>102</sup> On February 4, 1980, PATCO issued another press release announcing Poli as interim president and Robert Meyer as interim executive vice president, effective February 1. Both sought and won permanent elections during the April PATCO convention in Las Vegas.<sup>103</sup> The membership elected both to three-year terms on April 24, 1980.<sup>104</sup>

A bitter John Leyden later wrote that Poli’s presidency resulted in a “Pyrrhic victory because he had to give away the right to lead in order to win. He owed that to the people who

had arranged the palace coup. He became a pawn to what I call the strike-bound crazies.” But worse than that, Leyden recalled, “he was a hollow man without integrity. And, perhaps as importantly, he forfeited his ability to balance all of the competing factions within the organization.”<sup>105</sup>

Under Poli’s leadership, the more radical elements of the union became more vocal and pushed harder to get their colleagues to sanction a strike. Facility newsletters reflected the growing demands for the union to take aggressive action to force the agency to meet its demands. In late 1980, for example, PATCO’s Southern Region vice president wrote an article for the Jacksonville, Florida, terminal radar control facility (TRACON) newsletter:

There will be many reasons given by scabs as to why they attempt to break a strike. They disagree with the Union leadership; they are worried about how the strike will affect an innocent third party; they are angry with what someone in the Union said, wrote, or did. With careful analysis the excuses all come to the same focal point: Scabs have the same amount of backbone God gave worms. There will be many scabs who are with us in ’81 . . . should we fail to get the numbers in ’81 and we have to be at work because there were too many faint-of-hearts, PATCO will still be here to represent all controllers involved in any deal. SCABS REMEMBER THIS. Have a deal, the man you knifed in the back will be your representative at your dismissal hearing. Should we get the numbers in ’81 and have our backs broken by those we went back to the boards and by those who never left, PATCO will be destroyed. SCABS REMEMBER THIS. Have a deal. The FAA will be your representative (just as in pre-PATCO days) at your dismissal hearing. Should we get the numbers and stay out, we will win.”<sup>106</sup>

In an October 1980 article in the *Shark Strike*, the newsletter of PATCO Corpus Christi, Local No. 413, Ron Lund asked, “Who’s the enemy? It could be YOU! All the supervisors, chiefs, and Langhorne Bonds in world cannot keep us from achieving our goals if we are marching toward them in unison. But let just one person get out of step, and you can rest assured that those left behind him will trip and fall flat on their face. Even the strongest cannot drag a group of fallen down brothers forever. . . . It isn’t enough to just pay your dues. You must become part of the UNION. Let Bob Poli call the cadence, and you KEEP IN STEP.”<sup>107</sup>

## **PATCO Plan**

As the more radical members of PATCO pushed their colleagues to join their ranks, Poli allowed the Choirboys to focus solely on strike preparation. On March 31, 1980, Robert Meyer sent a memo to PATCO's facility representatives titled "Strike Relief Background from the Management Side." The memo outlined various statutes, tactics, and techniques public employers use to break or dilute a union's strike effort. One of several documents sent to members, PATCO leadership wanted controllers to understand what they faced if they decided to strike. Meyer suggested union leaders read and reread the information so they could explain the information to the membership.<sup>108</sup>

Fifteen days later, on April 15, Robert Poli distributed an education package to union members, information the FAA called a strike plan. The materials provided details on how to establish communications networks and committees on security, welfare, and picketing; recommendations for a variety of financial preparations in case of the loss of wages during a job action; and advice to local PATCO organizations to make arrangements for bail bondsman and for other legal services. The plan's writers addressed what would constitute survival and success during a strike. "All successful group endeavors are characterized by a tiger-like togetherness of those people who have banded to accomplish a mission. Group members take care of one another to ensure the propping-up of weaker members, while defending the group and its mission from outside attack. Survival is not just nice—it is necessary. A well prepared rank-and-file union membership must have the numbers, the will and the wherewithal to win." They recognized "hardships are to be expected during a major conflict with an employer. The severity of those hardships can be minimized through proper planning and through acquiring detailed knowledge of what to expect." They reckoned, "The fear of the unknown future often chills the will to



chance. Financial, psychological, and physiological stresses must be expected and, if not defeated, at least minimized to assure survival and success.”<sup>109</sup>

The mobilization plan involved appointing one rank-and-file leader at each of the nation’s more than four hundred air traffic control facilities to serve as a Choirboy for his or her facility. Smaller facilities (typically at regional airports) were grouped into “clusters,” which created seventy-five separate units (in effect operating as PATCO’s locals), involved in preparations for 1981. The increasing network of pro-strikers worked locally with the rank-and-file to explain the need to strike: higher wages, lower work hours, better benefits, and separation from the FAA. Under the strike plan, each Choirboy organized local committees, with assignments ranging from picketing to family support to security.

As PATCO’s strike preparations and member indoctrination continued, the FAA counteracted, publicly warning of an impending strike in 1981. Agency executives identified union strike preparations in congressional testimony, press releases, and media interviews. On May 22, 1980, the agency filed a much-publicized unfair labor practice (ULP) complaint against PATCO, alleging the union had called, condoned, and advocated a strike to take place in 1981 based on statements made by PATCO in their local, regional, and national newsletters. The agency posited that if the Federal Labor Relations Authority (FLRA) dismissed the ULP, “the only alternative left to the agency would be to sit by and wait for a job action and then bring criminal sanctions against the responsible people.” FAA officials predicted, “PATCO and its constituent locals are not only recommending and obtaining support for a strike, they are well along in their preparations and have clearly crossed the line into the area of unprotected and unlawful activity.”<sup>110</sup>

By the summer, press reports began speculating about a potential strike. Tom Incantalupo wrote in the *Chicago Sun-Times*, “There are signs that this could be the bloodiest engagement yet. . . . The situation is complicated by bitterness and fundamental differences of opinion between the two sides. . . . FAA sees the controllers as malcontents . . . they [controllers] portray themselves as overworked victims of an insensitive and slow-moving bureaucracy.”<sup>111</sup> FAA Administrator Langhorne Bond helped fuel the fire with his public statements. For example, he told the *Wall Street Journal*, “We face a very, very serious situation.” The newspaper called PATCO’s tactics “a sort of guerrilla warfare.”<sup>112</sup>

In an August 29, 1980, interview with Senator George McGovern (D-SD), reporter Ken Alvord asked about his view on a possible PATCO strike. McGovern replied, “I think we’ve all read accounts over the years that there is a shortage of air controllers. There are too many close calls at major airports. There’s too much tension, too much pressure on those people, and I think they were justified in threatening a strike to make their point. . . . The fact that nothing, very little has been done to address some of these problems they’ve been warning about in recent years underscores the point that Congress may be negligent.” Sympathetic to the controller issues, McGovern said, “I don’t think that anybody who works for any government at any level should be allowed to strike. But, there has to be ways to settle the grievances, and I have to tell you that I think these controllers have grievances.”<sup>113</sup>

## **O’Hare Slowdown**

Emboldened by the more aggressive stance of the new PATCO leadership and what seemed like congressional sympathy to PATCO’s issues, on July 30, 1980, Richard Scholz, president of PATCO Local 316, which represented Chicago O’Hare International Airport’s air

traffic control tower (ATCT) and terminal radar approach control facility (TRACON) controllers, sent FAA Great Lakes Regional Administrator Wayne Barlow a letter that began: “The air traffic controllers at O’Hare Airport have had it! We’re tired of unkept promises. We’re tired of staff studies. We’re tired of rhetoric.” Scholz demanded the O’Hare tower be certified as a Level V facility and every journeyman controller at O’Hare tower and TRACON be given a yearly lump sum tax-free bonus of no less than \$7,500.<sup>114</sup>

Scholz articulated, “These two demands are not negotiable. . . . These two demands must be met or proven to be in the implementation stage within 10 days. Failure to meet these two demands will result in the controllers at O’Hare ATCT withdrawing their enthusiasm. That’s correct—withdrawing enthusiasm.” He concluded, “No more overextending. No more six-day workweeks. No more corner-cutting. If the FAA is not prepared to compensate the controllers at the world’s busiest airport for our many problems and shortcomings, then we are no longer prepared to produce 150 percent for you.”<sup>115</sup>

On August 5, Barlow met with Scholz and PATCO Great Lakes Region Vice President John Paolino to discuss the demands. Barlow said he would respond to the union’s requests by August 19. After the meeting, he followed up with a letter to both, saying, “Because of the complexity of the issues, I have concluded that it is important that they be carefully analyzed by the appropriate FAA offices. Therefore, I plan to respond to PATCO within two weeks, clearly setting forth the FAA position.” He communicated, “I view PATCO’s statements regarding withdrawal of ‘controller enthusiasm’ with great concern, for they constitute a direct threat of a job action.”<sup>116</sup>

Scholz replied on August 8, “It is not our intent to threaten a job action. Withdrawal of support can be expressed in various ways that would not constitute a job action.”<sup>117</sup> In a letter dated August 12, Paolino said he was “well aware of the wrath of the Federal Aviation Administration and the Justice Department which will descend upon the controllers at O’Hare, where past exemplary performance is well documented, for speaking out in the only way they know. Therefore, I do not need to be threatened with reprisals and appropriate action.”<sup>118</sup>

While the two sides exchanged letters, controllers at O’Hare began a slowdown on August 6, which culminated on August 15, 1980. On August 16, the FAA filed a ULP against the union, claiming a slowdown by O’Hare Local 316 and PATCO. In an August 17 letter to Scholz, Barlow said the illegal slowdown resulted in 616 delays of thirty minutes or more for arriving and departing aircraft. The maximum delay exceeded three hours. The collection of the

### **PATCO Slowdowns**

July 19, 1968: Air traffic congestion reached critical proportions when 1,927 aircraft in the vicinity of New York City incurred delays taking off or landing, some for as long as three hours. PATCO’s decision to conduct a slowdown exacerbated the delays, which spread to other major airports.

March 25-April 10, 1970: Approximately 3,000 PATCO-affiliated en route air traffic controllers engaged in a sick-out after the FAA involuntarily transferred three controllers from the Baton Rouge combined station-tower. The FAA suspended nearly 1,000 controllers and fired fifty-two for their role in the affair. On February 7, 1972, the FAA announced that air traffic controllers fired for their activist roles in the 1970 strike could apply for re-employment. Of the fifty-two controllers dismissed, the agency rehired forty-six.

August 14, 1974: ATA announced, effective September 1, its member airlines would withdraw from the familiarization flight program. PATCO-affiliated controllers reacted by conducting work slowdowns that continued until ATA reversed its decision on October 16.

July 28-31, 1976: A PATCO-affiliated air traffic controller slowdown disrupted traffic across the country. PATCO’s president ordered the slowdown to protest the Civil Service Commission’s (CSC) delay in completing a pay reclassification study for controllers. The slowdown ended when the CSC agreed to reconsider its position and expedite the review.

November 9-11, 1977: Controllers at Washington National Airport staged a traffic slowdown in protest after the CSC rejected their petition to upgrade the facility. Although the FAA reported some aircraft had faced delays between twenty and ninety minutes, news reports cited passengers complaining of two-hour delays.

May 25, 1978: PATCO began intermittent slowdowns to protest the refusal of some U.S. flag carriers to provide controllers with overseas familiarization flights. The slowdowns lasted until May 26 and then resumed again between June 6 and 7.

August 15, 1980: PATCO-affiliated controllers at O’Hare International Airport conducted a one-day slowdown that caused 616 delays of thirty minutes or more and cost air carriers more than one million dollars in wasted fuel. The slowdown followed FAA’s refusal to give O’Hare controllers an annual tax-free bonus of \$7,500.

statistical information stopped at 9 p.m. when personnel evacuated the tower because of a bomb threat. Barlow calculated, "If we conservatively estimate the average delay to be one hour . . . these delays resulted in a waste of fuel in excess of one million dollars. In addition, such delays inconvenienced thousands of passengers. This is particularly true since 11 flights were required to land at other airports rather than as scheduled." Barlow stressed the FAA would file a ULP with the FLRA and seek the U.S. Attorney's aid for the Northern District of Illinois to enjoin any further illegal slowdown activity.<sup>119</sup>

On August 18, the Justice Department, acting on behalf of the FAA, obtained a temporary restraining order from Judge Nicholas J. Bua to halt the slowdown. That same day, Administrator Bond held a press conference in Chicago outlining concerns about the possibility of more serious illegal job actions during the forthcoming national contract negotiations with PATCO. Bond sent a videotape of that press conference to all regional and center directors because he wanted all key managers and supervisors "to understand how we are dealing with the O'Hare situation and how we intend to deal with any other illegal job actions in the future. They should also be advised that there is no change in FAA's longstanding policy of recognizing the legitimate goals of unions and working with union representatives on a day-to-day basis to establish and maintain mutually cooperative relationships within the framework of the law."<sup>120</sup>

During the late afternoon on August 18, Poli met with PATCO's executive board, which unanimously voted to direct Scholz to withdraw his July 30 letter to Barlow. Scholz withdrew the letter the following morning.<sup>121</sup> Scholz explained he took action at the direction of the PATCO executive board and because of the "continuing misinterpretation of that letter."<sup>122</sup> A worried Poli commented, "This is an extraordinary situation. If an illegal wildcat strike did occur in Chicago, it was exclusively the product of O'Hare and not in any way associated with the

Organization as a whole.” He warned, “Should the FAA’s allegations concerning O’Hare prove correct, their actions may have posed a threat to the entire Organization.”<sup>123</sup>

Paul Ignatius, ATA president, wrote DOT Secretary Neil Goldschmidt on September 12, expressing the airlines’ “deep concern about the possibility of illegal strikes, slowdowns, and other job actions by air traffic controllers in connection with the expiration of the labor contract.” He commended the DOT and the FAA “for the firm stand you have taken against illegal strikes and other job actions by FAA’s air traffic controllers. . . . While negotiation of the labor contract is the responsibility of the FAA and PATCO, the airlines and the public they serve are the innocent victims of any illegal job actions that might ensue.”<sup>124</sup>

On October 20, 1980, PATCO filed a motion to dismiss the FAA’s ULP for lack of subject matter jurisdiction. On December 15, the district court judge granted the motion, basing dismissal on three grounds:

- Injunctive relief could not be granted against the commission of a crime.
- The 5 U.S.C. § 7311 did not authorize injunctive relief.
- Title VII of the Civil Service Reform Act of 1978 vested exclusive jurisdiction over strike activities by federal employees in the FLRA.

The judge explained, “Dismissing or indicting the air traffic controllers involved in the slowdown would not be a viable remedy for the government.” He argued, “Terminating a substantial number of controllers would seriously impair the FAA’s ability to provide the public with this essential service; this is precisely the sort of result that the statutory provisions were intended to prevent.” In addition, “Indicting or terminating the controllers after a strike does nothing to prevent the strike and the serious consequences that would surely follow. Thus, the only remedy available to the government that can prevent a strike is an injunction.”<sup>125</sup>

As John Leyden later recalled: “The Chicago O’Hare controllers have always been a tough bunch to deal with, and Bob Poli must have shuddered when the O’Hare local decided to

present its own demands for additional compensation. . . . They characterized the demands as ‘non-negotiable’” and either didn't know or didn't care that FAA could not grant such demands no matter how justified they might have been.” Leyden said, “When the demands were not met, there was a sudden, but brief, slowdown at O'Hare. . . . FAA jumped on this occasion to reinforce its position that PATCO was definitely intending to strike, contending the O'Hare slowdown was nothing more than a dry run to test the FAA's reaction.” According to Leyden, “Poli vehemently denied that the slowdown was directed by the national office. . . . Bob made a lot of mistakes, but he wouldn't have jeopardized the whole organization for 60 or 70 members at O'Hare. . . . I regarded this wildcat job action as just another indication that the PATCO leadership was rapidly losing control and that Poli was having a lot of trouble with the super-militants around the country.”<sup>126</sup>

In late November 1980, Bond proclaimed the FAA would rely on the federal courts to stop any future job action by controllers or other employees and no longer would involve the FLRA. In keeping with this new policy, the agency withdrew, without prejudice, the ULP it filed with the FLRA after the controller job action at O'Hare. Bond declared he would concentrate on obtaining a permanent injunction against the union in federal court. He emphasized, “The agency will use the federal court as our remedy in cases where there is clear, willful, and repeated violations of law, and will urge the U.S. Attorney or the Department of Justice to seek the maximum penalty available.”<sup>127</sup> The U.S. attorney obtained a temporary restraining order against PATCO, later extended to January 19, 1981. The attorney planned to go to the federal district court in Chicago to argue for a permanent injunction against the union.<sup>128</sup>

The FAA and the ATA were not alone in concerns about a possible strike. Key members of Congress in December 1980 warned PATCO that illegal job actions would not be regarded

sympathetically on Capitol Hill. Expressing a high regard for controllers as professionals, Senator Howard Cannon (D-NV), chairman of the Senate Commerce Committee, cautioned that any controllers “who believe that their desires for unreasonable pay or benefit increases can be obtained by illegal methods are sorely mistaken and they will find determined opponents in all branches of government, myself included.”<sup>129</sup> Senator Nancy Kassebaum (R-KS) echoed, “An illegal strike would severely damage” the reputation of controllers and would “do nothing to enhance their cause.” She worried about the possibility of a strike in 1981, saying Robert Poli “strongly denied in his appearance on August 25 before the Senate Aviation Subcommittee that such a strike is planned or anticipated. Nevertheless, evidence to the contrary exists. It appears that PATCO has instituted a strike fund, formulated a strike plan, and briefed its employees about how to obtain food stamps and other assistance while on strike.” She estimated “a strike could result in a loss to the economy of some \$150 million a day with severe disruptions in business and tourist travel.”<sup>130</sup>

Senator James Exon (D-NE) endorsed his colleagues' remarks, reminding everyone that federal employee strikes were illegal. “It is even more disconcerting that PATCO,” he said, “knowing of the illegality of such an act, has drawn up a proposed plan to move forward with some type of strike action.” Furthermore, “I see a tremendous threat to our national defense, our commercial airline fleet, and the lives of millions of travelers” if a strike occurs.<sup>131</sup> Ted Stevens (R-AK) added a strike “would result in a backlash, not just against air traffic controllers, but against all federal employees, which would have long-lasting and adverse effects.”<sup>132</sup>



## **Alaska Sick-Out**

Despite such warnings, an incident in Alaska followed the Chicago slowdown. On September 16, 1980, seven of the eight controllers assigned to the midnight shift at the Anchorage en route center called in sick, as did six on the 8 a.m. shift. The “little show of force,” as one controller described it, protested working conditions and the lack of reliable equipment at the facility. A controller who participated in the sick-out called the action “an awareness program to show that the controllers are disgruntled.” According to Alexander Kulikowski, the agency’s facility chief, the sick-out did not affect air traffic in the region.<sup>133</sup> The national and local PATCO leadership denied knowledge of the sick-out. As one local leader explained: “The only way anybody with any sense is going to walk out is with national PATCO sanctioning, and that’s not coming off.”<sup>134</sup>

Edward Curran wrote Robert Poli on September 29, chastising the union for the Alaska and Chicago job actions. Curran requested PATCO “immediately inform all members and locals of your bargaining unit that PATCO will not condone job actions of any type against the FAA, including slowdowns and sick-outs.” Poli replied on October 3, “All members of our bargaining unit are fully aware that PATCO does not condone illegal job actions of any type.” An angry Poli snapped, “Our patience is being worn thin by FAA allegations in the form of conclusions, whether it be FAA releases to the press . . . or letters to me stating that an illegal job action has taken place (which, we are sure, a court will find did not take place).” Poli requested, “In the future, we would appreciate your bringing matters of mutual concern conducive to good labor-management relations. Continued reliance on provocative adversarial tactics and presumptive statements of legal conclusions are not, in our opinion, professional or in the public interest.”<sup>135</sup>

## **More Incidents**

On January 15, 1980, the PATCO Local 160 board of directors “decided to take a public stand against all . . . Russian aircraft landing in the New York area.” According to a notice sent to all controllers in New York, the local intended “to show the world that the air traffic controllers in the United States are a power to contend with and have a dedication to the American way of life.” In the announcement, the board of directors proclaimed, “We are not to be thought of as a group of sheep that will remain passive forever. The Board of Directors of this local intend to gain the respect of the American people for what we are doing. Let’s show the world who we are!”<sup>136</sup>

In a show of solidarity the following day, Local 160 controllers voted to join baggage handlers at the airport to deny services to the Soviet airline Aeroflot in protest of the Soviet invasion of Afghanistan. Paul Jan, secretary of the local, explained, “When we get a call saying ‘This is Aeroflot,’ we’re just not going to handle them.” If ordered by the FAA to handle Aeroflot flights, Jan agreed controllers will do so, “just very slowly.”<sup>137</sup> On January 17, the deputy chief of the facility ordered employees to work Aeroflot aircraft.<sup>138</sup> Two days later, two air traffic controllers allegedly erased flight data information on a Soviet Aeroflot jet's final approach to New York Kennedy Airport with Soviet Ambassador Anatoly Dobrynin and other dignitaries aboard. Unaware of the missing data, the controller handling the flight misidentified the Soviet aircraft and ordered it to make an early descent through unprotected airspace. The plane landed safely.<sup>139</sup>

According to the media, the FAA received a tip regarding possible sabotage and notified the FBI on January 29. The FBI’s and a grand jury’s investigation into the incident resulted in no charges. PATCO contended that a computer malfunction erased the data. The FAA, after its

investigation, on January 16, 1981, almost a year after the incident, suspended one employee for sixty days and reprimanded another.<sup>140</sup>

On April 10, 1980, a Florida controller, Ron Palmer, allegedly vectored a Braniff Airways flight into a thunderstorm in retaliation for the airline's cancellation of its familiarization flights. The FAA fired Palmer. PATCO contested the firing, and the case went to arbitration. During the three-day arbitration hearing in August, even the pilot of the Braniff aircraft in question supported Palmer. On November 12, 1980, arbitrator Alfred Goodman overturned the FAA's dismissal of Palmer and ordered the FAA to rehire him with back pay but approved a ten-day suspension. Goodman ruled Palmer had not endangered the plane, and the negative public and press reaction to the incident stemmed partly from the FAA's release of a "presumptive conclusion" about Palmer's guilt before all of the facts were known.<sup>141</sup>

On November 4, 1980, PATCO issued a presidential update declaring, "On the serious charge of vectoring," Goodman said, "I do not conclude, nor do I believe, that the vectoring of Braniff 343 was motivated by malice or bad intent." PATCO issued a press release admonishing the press. "We hope that after all the damage that was done to Ron's personal and professional life by the misleading coverage the story originally received, the media will have the decency to announce his innocence with equal vigor."<sup>142</sup> Poli responded to the decision, noting, "It confirms the FAA's allegations were exaggerated and unjust."<sup>143</sup>

The decisions in the New York and Florida cases gave hope to PATCO that public perception of the union was finally turning in their favor. Adding to that optimism, the Republican presidential candidate, Ronald Reagan, seemed to understand controller concerns and agreed to work with the union to address its issues if elected president.

## Reagan Endorsement

Knowing the FAA had the support of the Carter administration in dealing with the union, the PATCO leadership worked to get some guarantees from Republican presidential candidate Ronald Reagan that he would support the union's demands if elected. For its part, Reagan's election committee hoped to get support from several unions, which generally voted for the Democratic candidate. On October 7, 1980, Robert Poli met with the Reagan campaign team to discuss a possible Reagan endorsement. The reelection staff asked Poli what Reagan needed to do to get the union's support. Poli replied:

- improved air traffic control equipment
- increased staffing levels
- input on the selection of the next FAA administrator
- replacement of Langhorne Bond
- right to strike
- same negotiating rights as the private sector
- shorter workweeks with more pay<sup>144</sup>

On October 19, Reagan's staff responded that the candidate would be willing to replace Bond and allow PATCO input on his replacement, endorse a shorter week, increase staffing, purchase new equipment, and support the right to negotiate. Reagan, however, disapproved of the right to strike.<sup>145</sup> The following day, Richard Leighton, PATCO's general counsel, sent a letter to Michael Balzano, who brokered the deal with PATCO for the Reagan-Bush campaign. "This is the letter of understanding I read to you relating to the endorsement of Governor Ronald Reagan. . . . PATCO, through its President, Robert E. Poli, has agreed that it will endorse Governor Reagan for President of the United States. This will be done because PATCO believes that the Governor, more than any other candidate, has a better understanding of the needs of the flying public and air traffic controllers who provide service to that public."<sup>146</sup>

The letter identified seven items that “Governor Reagan, through you, Bob Garrick [Reagan staff] and other agents, has agreed . . . will take place after the Governor is elected to the Presidency.” Those items were:

- A competent administrator will replace Langhorne Bond.
- PATCO will play a role in the process of replacing the administrator.
- PATCO will be able to provide its position concerning any proposed legislation affecting air traffic controllers.
- The administration will commit itself to fully staffing air traffic control positions at terminals and en route centers.
- The administration will recognize that air traffic controllers are unique among government workers. Because of the existing significant problems in the air traffic control system, the working conditions of air traffic controllers deserve priority review.
- The Reagan administration will commit to improving air traffic control by ensuring that outdated air traffic control equipment is replaced as soon as possible.
- The Reagan administration will support legislation designed to reduce the hours of work of air traffic controllers if PATCO can demonstrate that such a reduction is needed to assure the safety of the flying public and air traffic controllers.<sup>147</sup>

The PATCO executive board gave Poli unanimous approval to support Reagan.<sup>148</sup> With an agreement in place, on October 23, the union officially endorsed Reagan. The endorsement came in a press release in which Poli stated, “We have searched the record of the Carter administration for just one example of progressive leadership in aviation safety. We can find none. Instead, we see a Carter appointee, who is no more than a political opportunist concerned only with public image, allowing air traffic controller staffing and equipment to reach a deplorable state.” He continued, “Under a Reagan presidency, I am convinced the legitimate needs of the controller workforce will be addressed, and the ATC system will be given the priority it deserves.”<sup>149</sup>



Ronald Reagan campaigning in Florida  
Courtesy: [www.Picryl.com](http://www.Picryl.com)

On the day of the endorsement, Poli joined Reagan at a campaign rally in Clearwater, Florida. Reagan expressed willingness to work with PATCO to improve FAA operations and help alleviate the concerns of the controller workforce.<sup>150</sup> After the rally, Poli rode with Reagan to the airport. Poli reported Reagan told him the government “should not take away the best years of people’s lives and not give something back to them.” A union member provided notes from the meeting, saying, “Poli has not changed his ‘feelings’ on ‘81 in light of his discussion with Reagan.”<sup>151</sup> After their meeting, Reagan sent a letter to Poli agreeing to “take whatever steps necessary to provide our air traffic controllers with the most modern equipment available and to adjust staff working days so that they are commensurate with achieving a maximum degree of public safety.”<sup>152</sup>

When Ronald Reagan won the election on November 4, 1980, PATCO officials breathed a sigh of relief—their troubles were over—or so they thought.

## **FAA Preparation**

FAA officials began work on the agency’s strike plan in January 1980. Bond appointed a planning team comprising four air traffic control specialists, with Robert H. Throne, chief of the Air Traffic Service Automation Division, as the lead. The agency expected to have a draft plan completed by August 1980 and have a fully coordinated plan before the expiration of the PATCO contract in March 1981. The team’s first task centered on estimating the percentage of

the controller workforce that might participate in a strike. “We were certain that not all controllers would support the union in a strike,” Throne explained. “Sketchy estimates from our facilities ranged from 10 percent to 95 percent. Since a 95 percent loss at eight or ten key facilities could be almost as devastating as a similar loss nationwide, we decided to base the plan on the assumption of a worst-case condition.”<sup>153</sup>

The team next developed a strategy for handling as many aircraft as possible with a smaller workforce. “An air traffic controller's workload, or in another term, productivity, directly relates to the number of control instructions he or she must give each aircraft,” said Throne. “The overall strategy, therefore, had to be one which would minimize the number of control instructions required for each aircraft.” The planners made some basic assumptions during the planning process: U.S. airline flight schedules could be modified by regulation if necessary, foreign carriers’ schedules could not be changed without the risk of retaliatory action, and the strike would be short-lived, no more than two or three weeks.<sup>154</sup>

Throne briefed the administrator in April 1980 on the concepts, assumptions, and plan development approach. Bond approved it with minor modifications. With the administrator’s approval, the planners established a work schedule for each en route center and over one hundred of the busiest control towers. They then set an hourly traffic capacity level for each facility based on a minimum number of control positions being manned. Specific routes and altitudes between given city pairs would be mandatory except during severe weather conditions.<sup>155</sup> If a strike occurred, military and medical flights would have priority. The second priority would be scheduled passenger and cargo flights that exceeded five hundred miles.<sup>156</sup>

The planners required twenty miles of separation for scheduled aircraft flying along the same routes and at the exact altitudes. Such spacing eliminated the need for controllers to

provide radar vectors, allowing a relatively high volume of aircraft along each route. In the case of a radar failure, the aircraft crews could maintain this separation using distance measuring equipment on board the plane. Having determined the routes, altitudes, and separation criteria, the team programmed each long-range flight using past airline schedules.<sup>157</sup>

They gave each flight a departure time that ensured capacity would not be exceeded at any control position in any facility. Flights not airborne within fifteen minutes of their scheduled departure time would be canceled unless the airline received special approval. The FAA's Central Flow Control Facility in Washington, DC, had to approve late departures or significant route deviations when necessary to avoid severe weather. By the early summer of 1980, planners completed the long-range schedules.<sup>158</sup>

If a strike occurred, each facility would receive detailed security measures. "We were not sure whether or not sabotage by the strikers would be attempted but believed that we must carefully guard against the possibility. The automation system was of particular concern since the facility programmers were members of the bargaining unit," according to Throne. The proposed security measures included changing all locks before the plan's implementation, locking equipment areas, and limiting access to the equipment areas to only those accompanied by supervisors.<sup>159</sup>

In addition, Throne's group identified special flight plan filing times and methods to ensure facilities would not be affected adversely by excessive phony flight plan filing that could overload computers. The procedures covered internal facility procedures, criteria for approving scheduled flights, and approval notifications to the aircraft crews. Lack of approval by certain times indicated to the aircraft operator that the flight time had not been authorized, reducing the



communication workload. The planning team also decided to store all approved flights scheduled in en route center computers, thus eliminating the need for flight plan filing.<sup>160</sup>

“We knew that the ability to receive large amounts of status information and to disseminate management decisions and directions quickly would be imperative,” Throne recalled. The FAA’s contingency plan called for air traffic service command posts in each regional office and the central flow control facility. Facility information would be consolidated by the regional command posts and forwarded to the air traffic command post at FAA headquarters. Command posts would be staffed by attorneys, labor managers, and deputy directors or division chiefs from air traffic and airway facilities. The plan specified daily conference call times.<sup>161</sup>

The plan also included a range of other requirements, such as guidance on preparing letters of agreement delegating airspace to military control facilities, international flow control procedures, and tower closing and notification procedures. The plan primarily dealt with aircraft flying with instrument flight rules (IFR). The only impact on pilots flying on visual flight rules (VFR) would be prohibiting VFR arrivals into terminal control areas, or TCAs, surrounding many major airports. The agency would allow VFR departures so private or corporate aircraft located at airports would not be grounded for the duration of the strike.<sup>162</sup>

If needed, the FAA planned implementation in three phases. The first phase began with a management overview of the plan, followed by the initiation of early activities. The second phase included actions that needed to be accomplished by the time the administrator decided to implement the plan and when it went into effect. Phase two's efforts included establishing command posts, implementing security measures, relocating personnel, ensuring completion of

operational preparations, and implementing supervisory schedules. The third phase contained procedures to be followed once the administrator activated the plan.<sup>163</sup>

As the director of air traffic services, Raymond Van Vuren explained: “In the case of a nationwide strike, our plan calls for transporting as many people as possible, thus giving preference to air carrier and air taxi flights. Moreover, long-range flights will be prioritized as alternate travel methods are least acceptable and available for long distances.” The FAA would establish daily schedules to limit traffic and avoid overwhelming air traffic facilities. The planners predetermined point-to-point routes and assigned specific altitudes to each airway, “providing to the extent possible, built-in altitude separation, a smooth flow of traffic, and no airborne delays.” Overall, the FAA expected almost all flights longer than five hundred miles could be accommodated. Van Vuren warned, “Airlines will be required to accept routes and altitudes which are far less than desirable. In addition, predetermined schedules must be adhered to by the other airlines. All other types of air traffic will be impacted to the extent required to maintain essential air traffic services.”<sup>164</sup>

The FAA planning team completed its work in late September 1980. On October 15-16, the agency’s public affairs specialists met in Washington, DC, for in-depth briefings “on all aspects of the PATCO situation.” Discussions included, among other items, administrative and operational contingency plans.<sup>165</sup> Administrator Bond spoke at the meeting and told attendees that after the 1978 slowdown, he decided to go on the offensive and prosecute violations of the law. He noted that his recent appearance on the *MacNeil/Lehrer Report* television news program aligned with his offensive strategy. He wanted to get the point across to Congress, the public, and the rest of the federal power structure that PATCO intended for its members to call an illegal strike.

Bond also emphasized wars were not won but lost. He believed PATCO had overextended itself by whipping up member support for demands it could not achieve at the negotiating table. The administrator said the FAA could not engage in collective bargaining for wages, grant tax-free bonuses, lower the hours in the federal workweek, or raise the federal pay scale. He planned to go into contract negotiations with demands of his own, a departure, he claimed, from prior FAA practice. “It is time the agency made demands of the union and used them as bargaining points,” he said.<sup>166</sup>

The strike planning team briefed the FAA’s air traffic, labor relations, legal, and security staffs on the contingency plan on November 4. Those staffs subsequently informed all terminal and center chiefs.<sup>167</sup> On November 7, Bond briefed representatives from military and industry organizations, including the ATA, ALPA, NBAA, AOPA, Allied Pilots Association, Experimental Aircraft Association, Helicopter Association of America, National Air Carrier Association, Air Traffic Control Association, as well as the Army, Navy, and Air Force. Bond explained in the invitation letter, “While all of the necessary, minute details of the plan have not yet been completed, we believe that its practical development is adequate to brief you on its major aspects.”<sup>168</sup>

Between November 6-7, FAA representatives met with Transport Canada officials to discuss strike-related concerns. The Canadian Air Traffic Control Association (CATCA) sent its members, with a copy going to Poli, a letter forecasting a scenario for its upcoming contract negotiations, which included provisions for a strike. Raymond Thoman, acting chief of the FAA Union/Management Relations Division, reported, “Circumstantial evidence clearly supports a conclusion that PATCO and CATCA have adopted a joint strategy for negotiations, which includes provisions for both unions striking at the same time.” According to Thoman, “PATCO

has had a number of meetings in Ottawa. The former president of CATCA has indicated to the Canadian administrator that CATCA anticipates a joint PATCO/CATCA job action. The Canadian labor relations staff has also picked up rumors to this effect. CATCA, unlike past negotiations, is delaying the negotiation process well beyond its December 31 contract expiration.”<sup>169</sup>

On November 13, 1980, the FAA published the “Draft National Air Traffic Control Contingency Plan for Potential Strikes and Other Job Actions by Air Traffic Controllers” in the *Federal Register*. The agency explained that it prepared the plan “to ensure the FAA’s ability to provide a safe and orderly operation of the air traffic control system with available, qualified manpower. It will be implemented if a national strike occurs or if any job action is expected to become sufficiently widespread to reduce the system’s ability to sustain operations above those that can be achieved by implementing the contingency plan.” The planners estimated that approximately 2,500 air traffic control supervisors and five hundred other agency employees with air traffic control experience would be available to replace strikers. The contingency plan would accommodate 3,398 domestic flights, 866 international flights, and more than 13,000 airline operations daily.<sup>170</sup>

The plan prescribed rigid flight schedules, routes, altitudes, and the reduction or elimination of some services not directly affecting safety. The FAA would announce the plan's activation at least twelve hours before it became operational. The agency would issue specific implementation procedures at least four hours in advance. The agency estimated 85 percent of the controllers would walk off the job—PATCO had said it would not call for a strike unless 80 percent of controllers voted in favor. The remaining workforce would include operationally

qualified supervisors and non-bargaining unit employees. Air traffic services would be provided on a predetermined priority basis:

- air traffic movement required for national defense
- medical emergency flights
- long-range flights for which no reasonable alternative means of transportation existed
- shorter flights capable of serving the most people or national needs.<sup>171</sup>

By late November, all FAA regions had received an in-depth briefing on the plan and instructions on the work to be completed before a strike. The field facilities had to review the long-range flight schedules, routes, watch schedules, and the plan and determine how they would merge existing operational positions into the smaller number of posts they would use if the strike occurred. Once that was done, they had to develop manuals for each controller position.

The facilities completed all actions before the end of January 1981. Most airspace users condemned the plan in response to the call for comments. Their comments were generally oriented toward reducing the impact on the users they represented. However, they provided no alternative approaches, which would have allowed their priorities to be met. One exception was Federal Express. As Throne explained, “They spent a significant amount of time and effort in working with us to make the plan more equitable and usable for cargo aircraft.”<sup>172</sup> *Aviation Week and Space Technology* reported the airlines reacted cautiously to the plan. “Their chief concern lay with FAA’s assigning airlines to flights at unpopular times. The schedule distributes flights over a 16-18 hour operating day to assure a balance of workload.”<sup>173</sup>

Department of Defense (DoD) participation in the planning process began in July 1980, when the Air Force became the lead agency within a working group of the DoD Advisory Committee on Federal Aviation for strike planning efforts. Military planners worked with the FAA to ensure the identification and accommodation of national defense requirements. Initially,

the planners discussed the possible use of military controllers but did not seriously consider the option because of the anticipated short-term nature of a job action.

On June 2, 1981, however, J. Lynn Helms, President Reagan's FAA administrator, began considering the need for military augmentation. The Federal Aviation Act (49 USC 1343(i)) authorized DoD assistance. During early consultations, the military services took preliminary steps to identify sources of personnel to augment FAA controllers. Military units studied the level of support they could provide by deploying personnel to air traffic control locations and undertook advanced preparations to deploy personnel. The FAA tentatively identified a requirement for 475 personnel at twenty-two sites. A June 19, 1981, letter from the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics formalized the relationship and appointed the DoD as the lead agency for FAA strike matters.<sup>174</sup> The FAA paid for the military augmentation on a reimbursable basis. The reimbursable costs included travel, per diem, and extraneous administrative expenditures connected with the effort.<sup>175</sup>

Military flying continued when the strike began in August 1981 because of earlier planning efforts. Field commanders ensured restraint in scheduling military flights during the initial days of the strike. As planned, military organizations conducted missions, typically flown under IFR, under VFR. Military actions during the initial days of the strike significantly reduced the FAA workload and allowed a more significant number of commercial airline operations than initially anticipated.<sup>176</sup>

### **Contract Proposals**

On October 1, 1980, Robert Poli distributed PATCO's 1981 contract proposal to the membership for review. It included ninety-nine articles and would be effective for one year. The

articles included the right for each union local to negotiate supplemental agreements as long as those agreements did not conflict with, modify, or reduce provisions covered in the national agreement. The contract also called for the following:

- a 10 percent increase in annual salary for each controller on each anniversary of the signing of the contract
- a FAA guarantee to fund the second career retraining program
- a thirty-two-hour workweek consisting of four consecutive eight-hour days
- every five years, each bargaining unit employee possessing five years of service would be authorized to enroll and participate in a twenty-one-day rest and recuperation period, during which their spouses could accompany them. During these twenty-one days, the controllers would be in an official duty status and receive a salary, benefits, travel, and per diem. PATCO would choose the location and establish, implement, and administer the program.
- reinstated immunity for the aviation safety reporting program
- two hours consecutive rest, recuperation, and personal needs time each eight-hour day
- unlimited FAM flights<sup>177</sup>

In early December 1980, the FAA served PATCO with its proposals for the new labor agreement. The proposal included changes in fifteen of the articles in the 1978 contract. Those changes dealt with various matters such as dress code, FAM flights, parking, seniority, sick leave, and training. The two sides did not set a date to begin negotiations. The 1978 contract would expire on March 14, 1981, but per the terms of the contract would continue in full force until they reached a new agreement.<sup>178</sup>

Ronald Reagan took office on January 20, 1981. The FAA and PATCO began negotiations on February 17, 1981.<sup>179</sup> Negotiations, as expected, did not go well, and both sides had little optimism that a strike could be averted. On August 3, 1981, approximately 12,300 controllers walked off the job. The strike had begun.

The strike began at 7 a.m. EST and grounded approximately 35 percent of the nation's 14,200 daily commercial flights. Shortly before 11 a.m. on August 3, at an impromptu news conference, President Reagan issued the strikers a firm ultimatum: return to work within forty-

eight hours or face permanent dismissal. The government moved swiftly on three fronts—civil, criminal, and administrative—to bring the full force of the law to bear on the strikers. In a series of legal steps, federal officials:

- asked the FLRA to decertify PATCO as the bargaining agent for the controllers and controller staff members
- filed criminal complaints in federal courts in eleven cities against twenty-two PATCO officials
- moved to impound the union's \$3.5 million strike fund
- sought restraining orders against the strikers<sup>180</sup>

When the strike began, the FAA adopted Special Federal Aviation Regulation (SFAR) 44, establishing provisions for implementing an interim air traffic control operations plan. That plan allowed the FAA, among other things, to limit the number of aircraft in the national airspace system.<sup>181</sup> On August 5, the agency implemented "Flow Control 50," a program that required air carriers to cancel approximately 50 percent of their scheduled peak-hour flights at twenty-two major airports. FAA maintained an en route horizontal spacing between aircraft under instrument flight rules of up to thirty miles. Controllers kept aircraft on the ground, as necessary, to support this spacing. The agency prioritized medical emergency flights, presidential flights, flights transporting critical FAA employees, and flights dictated by military necessity. General aviation flights operated under the severest restrictions. The agency prohibited aircraft with a gross takeoff weight of 12,500 pounds or less from flying under instrument flight rules. It also banned aircraft flying under visual flight rules from entering terminal control areas. Controllers served other general aviation aircraft, as conditions permitted, on a first-come-first-served basis.<sup>182</sup>

Approximately three thousand air traffic control supervisory personnel worked to control traffic to keep the airways open. The FAA assigned assistants to support the controllers and accelerated the hiring and training of new air traffic personnel. Military controllers arrived at



FAA facilities soon after the strike began, and DoD ultimately assigned about eight hundred to the agency.<sup>183</sup>

Even before the strike began, a judge from the U.S. District Court for the District of Columbia signed an order directing the controllers to return to work. Late in the evening on August 3, another judge of the same court found the union in contempt for failing to obey the first order and imposed an accelerating schedule of fines totaling \$4.7 million if the controllers did not report to work. That judge also fined PATCO President Robert Poli \$1,000 each day the strike continued through Sunday, August 9. Approximately 875 controllers returned to work during the forty-eight-hour grace period granted. After the expiration of the grace period, about 11,400 controllers were dismissed. Most of those fired appealed the action, and the FAA eventually reinstated 440 due to their appeals.<sup>184</sup>



Courtesy: Professional Air Traffic Controllers (PATCO) Facebook

## **Epilogue**

Jimmy Carter arrived in Washington in 1977, determined to restore public confidence in government. When Richard Nixon resigned as president after the Watergate scandal, Gerald Ford assumed the presidency, although he had never been elected vice president. With the country combating inflation, facing energy shortages, confronting international instability, and fighting the Cold War, Carter campaigned as an outsider. He promised to restore faith in government and repair the economy.

For the FAA, the new president brought hope of stability. The previous administration saw three FAA administrators come and go. Because of the revolving door in the administrator's office, Senator Howard Cannon (D-NV) asked nominee Langhorne Bond at his confirmation hearing if he intended to stay for four years. Bond responded that he did, and he kept his promise and served from May 4, 1977, until January 20, 1981, when Ronald Reagan became president.

Upon taking office, the Carter administration quickly found itself embroiled in many aviation safety concerns, such as the horrific aircraft collision in the Canary Islands, followed the next year by the grounding of the DC-10, then the mid-air collision in San Diego, as well as several high-profile commuter airline accidents. It battled the aviation community over the Age 60 Rule, airline crew complement, and certification of new aircraft, and it faced a strike by Wien Air Alaska. In addition, security, labor relations, environmental issues, and the FAA's role in international aviation resulted in congressional and public calls for action.

The administration faced concerns about keeping the national airspace system safe, especially in the newly deregulated environment. When President Carter signed the Airline Deregulation Act of 1978, the FAA workload increased dramatically. Before deregulation, the Civil Aeronautics Board (CAB) regulated air carrier routes and airline fares. CAB restrictions

limited the number of interstate carriers to operate in the United States to 35. FAA workload further increased after the agency comprehensively revised Federal Aviation Regulations Part 135 governing air taxi and commuter airline operations. Those airlines had grown exponentially throughout the 1960s and 1970s. The agency faced a dilemma as it tried to maneuver between Carter's calls for a smaller federal workforce and lower agency budgets and the agency's need for more inspectors and controllers.

Faced with intermittent slowdowns alleged to have been directed by the air traffic controllers union, Bond predicted almost a year in advance that the Professional Air Traffic Controllers Organization would strike. He worked hand in hand with the Carter team to ensure the national airspace system would remain open if a strike occurred. In 1980, Bond published a contingency plan in the *Federal Register* to emphasize the government's determination to keep air traffic moving when controllers walked off the job.

The Bermuda II Agreement with the United Kingdom brought concerns that the Carter administration gave away some of its international rights. However, Administrator Bond proved that assumption wrong when he signed a new aviation agreement based on the principle of free competition with the Netherlands. That pact became the model for other liberal international aviation agreements.

Although Bond's tenure at the FAA proved somewhat controversial, he and the president focused on improving safety. Besides new safety rules, the FAA upgraded or installed new air traffic control systems, such as the automated radar terminal system, low level wind shear alert system, and air route surveillance radar. Bond reorganized and downsized the agency and tightened safety rules.

Facing one issue after another, it took all of Carter's and Bond's political prowess to keep the agency on an even keel. Bond, in particular, found himself continually under attack from Congress, consumer and aviation groups, and employee unions—especially PATCO. During his tenure, few in the aviation community fully supported him. However, with the president's continued support, Bond maneuvered through agency issues.

During Carter's tenure, the FAA experienced some successes and failures, but the achievements outweighed any criticism the administration faced, including calls for Carter to fire Bond. Bond's critics, such as ALPA president John J. O'Donnell, Representative John Burton (D-CA), members of the controllers union, and even the National Transportation Safety Board chair, James King, kept up an ongoing public tirade against Bond personally and the FAA in the media. Bond and Carter took the criticism in stride as they tried to balance politics with the FAA's safety mission. Their absolute emphasis on safety proved successful. Near the end of Carter's tenure, on December 31, 1980, the aviation community celebrated completing the first calendar year without a fatal accident for major U.S. airlines in scheduled service.



President Carter relaxing in the oval office.  
Courtesy: NARA

## Bibliographical Comment and Notes

I conducted archival research for this history in several public archives, such as the Federal Aviation Administration History Archives in Washington, DC, the Jimmy Carter Presidential Library in Atlanta, Georgia, and the National Archives and Records Administration in College Park, Maryland. University archival collections, such as those at Georgia State University Labor Archives in Atlanta, Georgia, and the University of Texas at Arlington, Texas Labor Archives in Arlington, Texas, contained extensive collections of PATCO documents, most of which have now been digitized and published online. Most congressional hearings, congressional investigative reports, comptroller general reports, public laws, court cases, and other federal documents cited in the endnotes are available online at [www.hathitrust.org](http://www.hathitrust.org) and [www.heinonline.org](http://www.heinonline.org). FAA research and development reports are also online at [https://www.faa.gov/data\\_research/research/med\\_humanfacs](https://www.faa.gov/data_research/research/med_humanfacs) and [https://www.faa.gov/data\\_research/library](https://www.faa.gov/data_research/library). Federal agency websites also contain pertinent historical information, such as the NTSB's aviation accident report repository.

Contemporary newspaper reports provide a valuable source of information and opinion. Most of the newspapers cited in the endnotes came from [www.newspapers.com](http://www.newspapers.com). Magazines and journals were essential sources of information, especially *Aviation Week & Space Technology*, which presented a wide range of articles on FAA activities. More partisan publications, such as the *PATCO Journal* and *PATCO Newsletter*, contained helpful information, as did FAA publications, such as *FAA Horizon*, *FAA World*, and *FAA Headquarters Intercom*.

Very few published books include information on the FAA during the Carter years. I found Edmund Preston's *Troubled Passage: The Federal Aviation Administration During the*

*Nixon-Ford Term, 1973-1977*, and his edited *FAA Historical Chronology, 1926-1996*, online at [https://www.faa.gov/about/history/chronolog\\_history](https://www.faa.gov/about/history/chronolog_history), provided excellent background information, as did Nick Komon's *The Third Man: A History of the Airline Crew Complement Controversy, 1947-1981*. Various books provided information about the 1981 controller strike. Jimmy Carter's *White House Diary* and other works on his tenure as president also gave insight into his administration.

I have included more specific references to the sources used in the endnotes. These notes should enable readers to pursue their interests in greater detail.

## Chapter 9

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<sup>17</sup> “Jet Hijacker Flees After Rome Landing,” *Baltimore Sun*, November 1, 1969.

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<sup>21</sup> Fred Farrar, “New Command Center, Ready for Any Emergency,” *FAA World*, August 1979, 12-13. See also Kenneth E. Nelson and Philip L. Burgert, “Hijack! A Plan Unfolds into Clockwork Drama,” *Kansas City Times*, December 22, 1978; John M. Wylie, II, “Tension Tangible Behind the Scenes,” *Kansas City Star*, December 22, 1978.

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<sup>23</sup> US Department of Transportation, *Fifth Annual Report*, 22.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Preston, ed., *FAA Historical Chronology*.

<sup>27</sup> US Department of Transportation, *Fifth Annual Report*, 23; Preston, ed., *FAA Historical Chronology*.

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<sup>29</sup> Preston, ed., *FAA Historical Chronology*.

<sup>30</sup> US Department of Transportation, *Fifth Annual Report*, 26.

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<sup>32</sup> Department of Transportation News: Federal Aviation Administration, no title, FAA Press Release No. 72-9, January 12, 1972.

<sup>33</sup> Department of Transportation News: Federal Aviation Administration, no title, FAA Press Release No. 73-50, March 16, 1973.

<sup>34</sup> Department of Transportation News: Federal Aviation Administration, no title, Press Release No. 72-35, March 6, 1972.

<sup>35</sup> Department of Transportation News: Federal Aviation Administration, no title, FAA News Release No. 72-26, February 6, 1972.

<sup>36</sup> US Department of Transportation, *Seventh Annual Report, Fiscal Year 1973* (Washington, DC: Government Printing Office, 1974): 40.

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<sup>39</sup> *Federal Register* 37, no. 44 (March 4, 1972): 4905-4905.

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<sup>44</sup> Public Law 93-366.

<sup>45</sup> US Congress, House Committee on International Relations, Subcommittee on International Security and Scientific Affairs." International Terrorism, Legislative Initiatives: Hearings and Markup," 95th cong., 2nd sess., Appendix 7, 196.

<sup>46</sup> Department of Transportation News: Federal Aviation Administration, no title, FAA Press Release No. 75-51, April 21, 1975.

<sup>47</sup> Federal Aviation Administration, "Fifth Semi-Annual Report to Congress on the Effectiveness of the Civil Aviation Security Program, July 1-December 31, 1976," 7, File 22.1(.1), FAA History Archives.

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<sup>50</sup> Department of Transportation News: FAA, "Terrorist Danger to Aviation Cited," FAA Press Release 120-77, December 2, 1977.

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<sup>52</sup> Federal Aviation Administration, "Semi-Annual Report to Congress on the Effectiveness of the Civil Aviation Security Program. January 1-July 30, 1977," File 22.1(.1), FAA History Archives; Howard Benedict, "Officials Say Little More Can Be Done to Prevent Hijackings," *Eagle* (Bryan-College Station, TX), October 30, 1977.

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<sup>55</sup> *Ibid.*

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<sup>57</sup> Douglas Feaver, "Bomb Kills Custodian at Airport; Mystery Bomb Kills Airport Worker," *Washington Post*, April 24, 1977.

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<sup>68</sup> Federal Aviation Administration, "Twelfth Semiannual Report to Congress on the Effectiveness of the Civil Aviation Security Program, October 14, 1980," 3-4; "Thirteenth Semiannual Report to Congress on the Effectiveness of the Civil Aviation Security Program, April 15, 1981," 3-5, File 22.1(.1), FAA History Archives.

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<sup>74</sup> *Ibid.*

<sup>75</sup> SCC Meeting on Terrorism, December 27, 1977, Box 55, Presidential Papers of Jimmy Carter, Collection 12, National Security Affairs, Jimmy Carter Library.

<sup>76</sup> *Ibid.*

<sup>77</sup> US Congress, Senate Committee on Governmental Affairs, "S. 2236, A Bill to Strengthen Federal Policies and Programs And International Cooperation To Combat International Terrorism," 95th cong., 2nd sess., January 25, 1978, 42.

<sup>78</sup> Bond to Adams, memo, "U.S. Initiatives to Improve International Civil Aviation," January 11, 1978, Box 55, Presidential Papers of Jimmy Carter, Collection 12, National Security Affairs, Jimmy Carter Library.

<sup>79</sup> *Ibid.*

<sup>80</sup> US Congress, "S. 2236, A Bill to Strengthen Federal Policies and Programs And International Cooperation To Combat International Terrorism," 45.



<sup>81</sup> Odom to Brzezinski, memo, "Weekly Report," January 26, 1978, Box 55, Presidential Papers of Jimmy Carter, Collection 12, National Security Affairs, Jimmy Carter Library.

<sup>82</sup> Bill Gold, "Eventually, They Must Come Down," *Washington Post*, October 26, 1977.

<sup>83</sup> Examples of Antiterrorism Legislation Introduced in the House of Representatives during the 95<sup>th</sup> and 96<sup>th</sup> Congresses:

Legislation	Title	Introduced	Sponsor	Number of Cosponsors	Last Major Action
HR 457	Air Piracy Quarantine Act	1/4/77	Robert Lagomarsino (R-CA)	None	Referred to House Committee on Public Works and Transportation
HR 1058	A bill to amend the Federal Aviation Act of 1958 to improve prevention of aircraft and airport violence	1/4/77	John Murphy (D-NY)	None	Referred to House Committee on Public Works and Transportation
HR 1227	A bill to amend Title 18 of the U.S. Code to provide the death penalty for certain destructive acts to airports, airplanes, and related things and places	1/4/77	Robert Roe (D-NJ)	None	Referred to House Committee on the Judiciary
HR 6430	A bill to amend Title 18 of the U.S. Code to provide the death penalty for certain destructive acts to airports, airplanes, and related things and places	4/20/77	Theodore Risenhoover (D-OK)	None	Referred to House Committee on the Judiciary
HR 6466	A bill to amend the Internal Security Act of 1950 to control and penalize terrorists.	4/21/77	John Ashbrook (R-OH)	15	Referred to House Committee on the Judiciary
HR 7726	A bill to prohibit the pretrial release of any person charged with an act of aggravated terrorism	6/10/77	William Lehman (D-FL)	None	Referred to House Committee on the Judiciary
HR 9775	Omnibus Antiterrorism Act	10/27/77	Don Claussen (R-CA)	None	Referred to House Committee on Public Works and Transportation
HR 10086	Antiterrorism Act	11/15/77	James Lloyd (D-CA)	None	Referred to House Committee on Public Works and Transportation
HR 10139	Omnibus Antiterrorism Act	11/29/77	Dawson Mathis (D-GA)		Referred to House Committee on Public Works and Transportation
HR 10164	A bill to amend the Internal Security Act of 1950 to control and penalize terrorists	11/30/77	John Ashbrook (R-OH)	1	Referred to House Committee on the Judiciary

HR 10249	Omnibus Antiterrorism Act	12/7/77	Glenn Anderson (D-CA)	1	Referred to House Committee on Public Works and Transportation
HR 10258	Antiterrorism Act	12/7/77	James Lloyd (D-CA)	2	Referred to House Committee on Public Works and Transportation
HR 10295	Omnibus Antiterrorism Act	12/15/77	Don Clausen (R-CA)	21	Referred to House Committee on Public Works and Transportation
HR 10394	A bill to amend Chapter 2, Title 18, U.S. Code, and Sections 101 and 902 of the Federal Aviation Act of 1958, to implement the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation	12/15/77	Peter Rodino (D-NJ)	None	Referred to House Committee on Public Works and Transportation
HR 10572	Omnibus Antiterrorism Act	1/26/78	Don Clausen (R-CA)	7	Referred to House Committee on International Relations
HR 10804	Antiterrorism Act	2/7/78	James Lloyd (D-CA)	13	Referred to House Committee on Public Works and Transportation
HR 11319	Omnibus Antiterrorism Act	3/2/78	Edward Boland (D-MA)	None	Referred to House Committee on the Judiciary
HR 13261	Act to Combat International Terrorism	6/22/78	Glenn Anderson (D-CA)	21	Referred to House Committee on Ways and Means
HR13283	Act to Combat International Terrorism	6/26/78	Don Clausen (R-CA)	17	Referred to House Committee on Public Works and Transportation
HR 13370	Act to Combat International Terrorism	6/29/78	Lester Wolff (D-NY)	None	Referred to House Committee on Ways and Means
HR 13652	Act to Combat International Terrorism	7/31/78	Glenn Anderson (D-CA)	19	Referred to House Committee on Public Works and Transportation
HR 406	Omnibus Antiterrorism Act of 1977	1/15/79	Tennyson Guyer (R-OH)	None	Referred to House Committee on International Relations (Subsequently: Foreign Affairs)
HR 1235	Omnibus Antiterrorism Act of 1979	1/22/79	Dawson Mathis (D-GA)	None	Referred to House Committee on International Relations (Subsequently: Foreign Affairs)

HR 1834	Act to Combat International Terrorism	2/5/79	Glenn Anderson (D-CA)	2	Referred to House Committee on Public Works and Transportation
HR 3412	A bill to amend the Federal Aviation Act of 1958 to provide a criminal penalty for placing, attempting to place, or attempting to have placed a loaded firearm aboard an aircraft	4/3/79	Pat Schroeder (D-CO)	32	Referred to House Committee on Public Works and Transportation
HR 4692	Foreign Terrorist Exclusion Act of 1979	6/29/79	Robert Dornan (R-CA)	10	Referred to House Committee on the Judiciary
HR 4926	A bill to amend the Federal Aviation Act of 1958 to provide a criminal penalty for placing, attempting to place, or attempting to have placed a loaded firearm aboard an aircraft	7/23/79	Pat Schroeder (D-CO)	37	Referred to House Committee on Public Works and Transportation
HR 8009	Omnibus Antiterrorism Act of 1980	8/22/80	Lester Wolff (D-NY)	None	Referred to House Committee on the Judiciary
S 205	A bill to amend Title 18, U.S. Code, relating to criminal offenses committed by terrorists	1/12/77	Lloyd Bentsen (D-TX)	1	Referred to Senate Committee on the Judiciary
S 206	A bill requiring the president to suspend economic assistance, military assistance, government and commercial sales of arms, export-import bank loans, and the generalized system of preferences to any country that willfully aids or abets terrorism	1/12/77	Lloyd Bentsen (D-TX)	1	Referred to Senate Committee on the Judiciary
S 1026	A bill to prohibit the pretrial release of any person charged with an act of aggravated terrorism	3/17/77	Lloyd Bentsen (D-TX)	None	Referred to Senate Committee on the Judiciary
S 333	Act to Combat International Terrorism	2/5/79	Abraham Ribicoff (D-CT)	21	Placed on calendar in Senate
S 355	A bill to amend Title 18, U.S. Code, relating to criminal offenses committed by terrorists	2/6/79	Lloyd Bentsen (D-TX)	None	Referred to Senate Committee on the Judiciary
S 1213	A bill to amend the Federal Aviation Act of 1958 to provide a criminal penalty for placing, attempting to place, or attempting to have placed a loaded firearm aboard an aircraft	5/22/79	Gary Hart (D-CO)	4	Referred to Senate Committee on Commerce, Science, and Transportation

S 1248	Comprehensive Counterterrorism Act of 1979	5/24/79	Adlai Stevenson (D-IL)	1	Referred to Senate Committee on the Judiciary
S 1501	A bill to prohibit the pretrial release of any person charged with an act of aggravated terrorism	7/12/79	Lloyd Bentsen (D-TX)	None	Referred to Senate Committee on the Judiciary

Source: [www.hathitrust.org](http://www.hathitrust.org)

<sup>84</sup> Federal Aviation Administration, “Second Semiannual Report to Congress on the Effectiveness of Passenger Screening Procedures, October 6, 1975,” 12.

<sup>85</sup> *Ibid.*, 12; Federal Aviation Administration, “Third Semiannual Report to Congress on the Effectiveness of Passenger Screening Procedures, April 19, 1976,” 11; “Fifth Semiannual Report to Congress on the Effectiveness of Passenger Screening Procedures, April 5, 1977, 16, File III 22.A (.1), FAA History Archives.

<sup>86</sup> Federal Aviation Administration, “Thirteenth Semiannual Report to Congress on the Effectiveness of Passenger Screening Procedures, April 15, 1981,” 14 and Exhibit 14; “Fourteenth Semiannual Report to Congress on the Effectiveness of Passenger Screening Procedures, March 31, 1978,” 16.

<sup>87</sup> Department of Transportation News: FAA, “FAA Proposes Screening of Charter Flight Passengers,” FAA 21-78, March 13, 1978; “Security Rules Issued for Charter Flights,” FAA 48-78, June 16, 1978; *Federal Register* 43, no. 111 (June 8, 1978): 24827.

<sup>88</sup> *Federal Register* 43, no. 57 (March 23, 1978): 11974.

<sup>89</sup> *Ibid.*, 11976.

<sup>90</sup> *Federal Register* 42, No. 116 (June 16, 1977): 30766-30770.

<sup>91</sup> *Federal Register* 43, No. 250 (December 28, 1978): 60786-60794.

<sup>92</sup> Department of Transportation News: FAA, “FAA Will Permit ‘Roving’ By Police at Some Airports,” FAA Press Release 1-79, January 2, 1979.

<sup>93</sup> “Security Policy ‘Roving’ Oked,” *FAA Headquarters Intercom*, January 8, 1979, 2.

<sup>94</sup> Federal Aviation Administration, “Ninth Semiannual Report to Congress on the Effectiveness of the Civil Aviation Security Program, April 25, 1979” 9, File III 22.A (.1), FAA History Archives; Preston, ed., *FAA Historical Chronology*.

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<sup>96</sup> Federal Aviation Administration, “Eleventh Semiannual Report to Congress on the Effectiveness of the Civil Aviation Security Program,” May 22, 1980, 12; “Postal Service Begins Screening for Explosives,” *Santa Cruz Sentinel*, December 28, 1978; “Mail Service Disrupted After Bomb on Plane,” *Washington Post*, November 17, 1979.

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<sup>98</sup> *Federal Register* 46, no. 10 (January 15, 1981): 3782; Michael Feazel, “Commuters Oppose Added Regulations,” *Aviation Week & Space Technology*, November 5, 1979, 5.

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- <sup>101</sup> Stephen Doig, "U.S. Seeks New Anti-Hijack Rule," *Miami Herald*, November 1, 1979.
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- <sup>104</sup> "Westinghouse Gets Airport Device Pact," *Pittsburgh Press*, August 7, 1977.
- <sup>105</sup> Federal Aviation Administration, "Semiannual Report to Congress on the Effectiveness of the Civil Aviation Security Program, January 1-June 30, 1981, 1, 5, File III 22.A (.1), FAA History Archives.
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- <sup>110</sup> "Those Gerbils are Sensitive Little Critters," *Indianapolis News*, June 15, 1979; Margaret Carroll, "Little Gerbils May be Drafted for Hijack Patrol," *Miami Herald*, June 16, 1979.
- <sup>111</sup> Curt Suplee, "Inside Story: 'Making It,'" *Washington Post*, September 1, 1982.
- <sup>112</sup> "Bureaucratic Paw-Dragging," *Perspectives on Current Developments*, May/June 1979, 9.
- <sup>113</sup> Department of Transportation News: Federal Aviation Administration, no title, FAA Press Release 73-23, February 1, 1973.
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- <sup>116</sup> Jonathan Randal, "The Survivors; Hostages, Shaken by 'Sadism' of Hijackers, Had No Hope of Rescue," *Washington Post*, October 19, 1977.
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<sup>121</sup> Ibid.

<sup>122</sup> Samuel Koo, "By Unanimous Vote, U.N. Calls for End to Hijackings," *Courier-Post* (Cherry Hill, NJ), November 4, 1977.

<sup>123</sup> "U.S. Asks Quick Positive Action Implementing Anti-hijack Vote," *Aviation Week & Space Technology*, November 14, 1977, 15; "DOT Secretary Adams Urges Airport Screening," *FAA Headquarters Intercom*, November 7, 1977, 1.

<sup>124</sup> Suzanne Pinkerton, "Aviation," *University of Miami Inter-American Law Review* 530 (1978): 352, <http://repository.law.miami.edu/umialr/vol10/iss2/11>.

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<sup>131</sup> Richard Dudman, "Allies Denounce Afghanistan Invasion," *St. Louis Post-Dispatch*, June 23, 1980.

<sup>132</sup> "Airline Pilots Fault Media On Terrorists," *Washington Post*, November 19, 1977.

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<sup>135</sup> Robert H. Kupperman and Harvey A. Smith, "Defending Against Terrorism," *Span*, September 1978, 47.

<sup>136</sup> Ralph E. Dowling, "Terrorism and the media: A rhetorical genre" *Journal of Communication* 36(1), 1986, 12-24.

<sup>137</sup> Walter Laqueur, *The New Terrorism. Fanaticism and the Arms of Mass Destruction* (London: Phoenix Press, 2001): 44.

<sup>138</sup> US Congress, House Committee on Public Works and Transportation, Subcommittee on Aviation, "International Terrorism," 95th cong., 2nd sess., July 18, 1978, 93.

<sup>139</sup> “Broadcast of Hijacker Conversation Nixed,” *FAA Headquarters Intercom*, September 22, 1980, 3; “Broadcasts Rules Illegal,” *FAA Headquarters Intercom*, December 15, 1980, 2.

## Chapter 10

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<sup>4</sup> Ibid., 18

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<sup>7</sup> Gary Eads, “History of PATCO: Safety Committee Reacts,” *PATCO Newsletter*, February 1979, 13.

<sup>8</sup> Edmund Preston, *Troubled Passage: The Federal Aviation Administration During the Nixon-Ford Term, 1973-1977* (Washington, DC: Government Printing Office, 1987): 262.

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<sup>10</sup> US Congress, Senate Committee on Commerce, Subcommittee on Aviation, “To determine the appropriate course of federal action for the coming years in the field of airport/airways development,” 91st cong., 1st sess., June 17, 1969, 24.

<sup>11</sup> Edmund Preston, ed., *FAA Historical Chronology: Civil Aviation and the Federal Government, 1926-1996*, [https://www.faa.gov/about/history/chronolog\\_history/media/b-chron.pdf](https://www.faa.gov/about/history/chronolog_history/media/b-chron.pdf).

<sup>12</sup> Department of Transportation News: Office of the Secretary, no title, DOT 17689, July 21, 1969, [www.hathitrust.org](http://www.hathitrust.org).

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<sup>14</sup> Department of Transportation News: Office of the Secretary, no title, DOT 18769, August 4, 1969.

<sup>15</sup> Department of Transportation News: Office of the Secretary, no title, DOT 19269, August 11, 1969.

<sup>16</sup> FAA Administrator to Regional Center Directors, Area Managers, and all Air Traffic Control Facilities, memo, “Report of the Air Traffic Controller Career Committee,” January 30, 1970, File III.7C, FAA History Archives.

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<sup>19</sup> The Labor Management Relations Act of 1947 codified the long-standing prohibition of federal employee strikes.

<sup>20</sup> On February 5, 1981, the U.S. Court of Appeals, District of Columbia Circuit, reversed the suspensions.

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<sup>23</sup> John F. Leyden, “A Message from President John F. Leyden: The Classification Standard,” *PATCO Newsletter*, January 27, 1977, 3.

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## Chapter 11

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<sup>44</sup> Affidavit of Thomas P. Kossiaras, FAA, for Professional Air Traffic Controllers Organization v. Federal Aviation Administration, United States District Court for the District of Columbia, Civil Action No. 79-1691, vol. 6 files, Immunity 1979, FAA History Archives.

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<sup>48</sup> US Congress, House Committee on Science and Technology, Subcommittee on Space Science and Applications, "1982 NASA authorization (program review)," 96th cong., 2nd sess., vol. 1, September 9, 1980, 53.

<sup>49</sup> Michael Krause to PATCO Safety Committee, "Regarding Meeting of PATCO National Safety Committee," memo, November 6, 1978, PATCO IV\_08\_05, Professional Air Traffic Controllers Organization Records (electronic version), L1986-45, Southern Labor Archives, Special Collections and Archives, Georgia State University, Atlanta.

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<sup>54</sup> PATCO Safety Blitz, "PATCO Aviation Safety Advisory Program, August 8, 1979," File III 7q.6, FAA History Archives.

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- <sup>58</sup> US Congress, House Committee on Ways and Means, Subcommittee on Oversight, "Review of Midair Aviation Safety," 96th cong., 1st sess., November 26, 1979, 30.
- <sup>59</sup> See for example, US Congress, House Committee on Ways and Means, Subcommittee on Oversight, "Review of Midair Aviation Safety," 96th cong., 1st sess., November 26, 1979; US Congress, House Committee on Public Works and Transportation, Subcommittee on Aviation, "Safety of the Air Traffic Control Systems," 96th cong., 1st sess., December 6 and 11, 1979; US Congress, Senate Committee on Commerce, Science, and Transportation, Subcommittee on Aviation, "Aviation Safety," 96th cong., 2nd sess., August 25, 26, and 27, 1980; US Congress, House Committee on Science and Technology, Subcommittee on Transportation, Aviation, and Communications, "1981 FAA R. & D. Authorization," 96th cong., 2nd sess., February 19, 20, and 21, 1980; US Congress, House Committee on Public Works and Transportation, Subcommittee on Aviation, "Adequacies of the Air Traffic Control Systems In the New York City Area," 96th cong., 2nd sess., August 8, 1980.
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<sup>104</sup> In September 1980, the FAA hired former PATCO president John Leyden. He joined the Operations and Procedures Division of the Air Traffic Service. He became the agency’s second John Leyden on staff, a John Leyden served as Chief of the Public and Employee Communications Division in the Office of Public Affairs, which created some short-term confusion. “Then There Were Two,” *FAA Headquarters Intercom*, August 25, 1980, 4. In December 1980, Leyden left the FAA to become the AFL-CIO’s director of public employees, *High Cotton*, PATCO Local 103 newsletter, December 1980, Box 15, George Brandon Collection, University of Texas at Arlington, Texas Labor Archives.

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<sup>106</sup> Bill Sedgwick, WS-Craig Tower, “Definition of a Scab,” n.d., File III 7h, FAA History Archives.

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<sup>109</sup> Poli to members, memo, April 15, 1980, enclosed education package, File III 7.h.4, FAA History Archives.

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<sup>111</sup> Tom Incantalupo, “Air traffic controllers’ strike looms in ‘81,” *Chicago Sun-Times*, July 23, 1980.

<sup>112</sup> William Carley, “Union Appears Ready to Call Illegal Strike, Slowdown Over Pay, Hours, Fringes,” *Wall Street Journal*, July 2, 1980.

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<sup>119</sup> Barlow to Scholz, letter, August 17, 1980, File III7h.1, FAA History Archives.

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<sup>124</sup> Ignatius to Goldschmidt, letter, September 12, 1980, File III 7q, FAA History Archives.

<sup>125</sup> *United States v. Professional Air Traffic Controllers Organization*, 653 F.2d 1134 (1981) June 18, 1981, United States Court of Appeals for the Seventh Circuit, No. 80-2854 653 F.2d 1134.

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<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

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<sup>158</sup> Ibid.

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<sup>160</sup> Ibid.

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<sup>163</sup> *Federal Register* 45, no. 221 (November 13, 1980): 75100-75121.

<sup>164</sup> Statement of Raymond J. Van Vuren, Director of Air Traffic, Federal Aviation Administration, Before the House Post Office and Civil Service Committee, Subcommittee on Investigations, Concerning Air Traffic Control, September 30, 1980, File III 7.h, FAA History Archives.

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<sup>166</sup> "Komon's Synopsis of Talk by Langhorne Bond to FAA Public Affairs Officers on PATCO, October 15, 1980, at FAA Headquarters Building," October 17, 1980, File III 7h, FAA History Archives.

<sup>167</sup> K.A. Burger, Chief Labor Relations Branch, "Strike Preparations, Record of Conference," November 4, 1980, File III 7h.3, FAA History Archives.

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<sup>170</sup> Michael Feazel, "FAA Readies Emergency Plan in Event of Strike by PATCO," *Aviation Week & Space Technology*, October 6, 1980, 34-35.

<sup>171</sup> *Federal Register* 45, no. 221 (November 13, 1980): 75100-75121.

<sup>172</sup> Robert Throne, unpublished account of FAA strike planning.

<sup>173</sup> "Reaction to FAA Contingency Plan Cautious," *Aviation Week and Space Technology*, November 17, 1980, File III. 7h, FAA History Archives.

<sup>174</sup> On August 2, 1981, when the strike appeared a certainty, the FAA requested the deployment of the first increment of military controllers. One hundred personnel were dispatched to New York's LGA and JFK, Chicago, and Atlanta. The deployment was completed within 18 hours. The second increment of personnel, totaling 270 controllers, was deployed on August 4. On August 6 and 7, the third and fourth increments were requested and deployed. At that point, 498 military personnel were in place at thirty-five FAA facilities. The fifth and sixth increments were deployed on the August 11 and 17 respectively. The seventh increment of 190 more military

controllers was deployed and in place on November 1, 1981, which brought the level of augmentation to 868 military personnel at some 100 FAA facilities. The breakdown by service included: 521 Air Force personnel, 194 Army personnel, and 153 Navy and Marine Corp personnel. Alton G. Keel, Jr., "Military Controllers in Civilian Towers," *Defense*, December 1981, 8-19.

<sup>175</sup> Keel, "Military Controllers in Civilian Towers," 18-19. As of August 31, 1981, the Air Force has accumulated approximately \$800,000 in per diem and \$373,500 in travel costs for a total of \$1,173,500, while corresponding Army cost figures approached \$825,000, and Navy costs and approximately \$200,000.

<sup>176</sup> Keel, "Military Controllers in Civilian Towers," 19.

<sup>177</sup> Poli to PATCO members, letter, with enclosed contract, October 1, 1980, File III 7.h.4, FAA History Archives.

<sup>178</sup> "FAA serves Contract proposal on PATCO," *FAA Headquarters Intercom*, December 15, 1980, 1.

<sup>179</sup> PATCO, handwritten note taken on day 1 of negotiations, February 17, 1981, PATCO VI\_42\_10, Professional Air Traffic Controllers Organization Records (electronic version), L1986-45, Southern Labor Archives, Special Collections and Archives, Georgia State University, Atlanta.

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<sup>181</sup> *Federal Register* 46, no. 149 (August 4, 1981): 39606-39607 and *Federal Register* 46, no. 151 (August 6, 1981): 39997-39999.

<sup>182</sup> *Federal Register* 46, no. 151 (August 6, 1981): 39997-39999.

<sup>183</sup> Preston, ed., *Historical Chronology*.

<sup>184</sup> *Ibid.*