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John B. Attanasio

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FOREWORD
AIRLINE SECURITY: A DOUBLE ENTENDRE
OF SAFETY AND SURVIVAL

JOHN B. ATTANASIO*

EVERY SO MANY years—perhaps once in a generation—the soul of a nation is tried. The response of its people defines its character and leadership for years to come. September 11, 2001 was a defining moment for this great land. Our mantle of leadership and perhaps the future of the world hang in the balance.

The events of September 11 beset our nation—and indeed the world—with many challenges. As a leading school on law and social policy, the Dedman School of Law has organized a series of conferences to discuss these myriad challenges. Among the most direct challenges is that imposed on the system of air transportation. That system is vital to American and world commerce.

Obviously, the airliners crashing into the World Trade Center, the Pentagon, and an isolated field in Western Pennsylvania exposed lethal dangers in what had previously been, and still continues to be, the safest means of transportation on earth.¹ Still, the events of September 11 revealed clear vulnerabilities. Hence, this conference began as one on airline security. While this has remained a central focus, a related danger emerged as the planning went forward: understandably, the disaster of September 11 instilled a fear of flying for the first time in many years. Until that fateful day, many from the United

* Dean and William Hawley Atwell Professor of Constitutional Law, Dedman School of Law at Southern Methodist University. B.A., University of Virginia; J.D., New York University School of Law; Dipl. In Law, University of Oxford; LL.M., Yale University. I wish to thank Kathleen Spartana, Heather Stobaugh, and Tina Brosseau for their able assistance.

¹ Dr. Michael Cox, *Airline Security and Economic Symposium*, 67 J. AIR L. & COM. 1, 35-36 (2002).

States and other parts of the world had come to regard air travel as a routine occurrence.

In the wake of September 11, airliners traveled with drastically reduced loads. An airline industry already gripped by recession reeled: some airlines went bankrupt²; others tottered on the brink.³ While the government bailout package helped,⁴ the unprecedented losses experienced by other major carriers threatened their very existences.⁵ As passengers began to return, close calls in the air provoked renewed fears.⁶

So a conference planned strictly to treat the grave problem of airline safety expanded to examine the fiscal viability of airlines. Of course, the uncertainty of the airlines' fiscal integrity threatened to push over the edge an already weak economy. Indeed, Osama bin Laden himself claimed that the attack was focused on hurting the American economy.⁷ After all, the airlines are central to prosperity. As the conference papers describe, air travel comprises a key means of transporting people and goods, particularly goods sold in e-commerce. As the conference illuminates, the airlines themselves account for a significant amount of America's travel industry. The financial risks that airline failures pose lent additional urgency to a conference already planned in an extremely short time frame.

When we first discussed this conference on September 12, 2001, Evan Singer, the Editor-in-Chief of the *Journal of Air Law and Commerce*, insisted that it be held in a short time. Consequently, it took place on October 29, 2001. To his credit, Evan also insisted that the conference be published quickly so that we could play some small part to inform debate on these momentous issues. The conference has already contributed to the dis-

² See Daniel Dombey & Jeremy Grant, *Preparing Filings: Swissair Faces Uncertain Future Without Flight Plan*, FINANCIAL TIMES (London), Oct. 4, 2001, at 25.

³ See Bloomberg News, *Continental Airlines Net Falls and America West Has a Loss*, N.Y. TIMES, Nov. 1, 2001, at C2.

⁴ Air Transportation Safety and System Stabilization Act of 2001, Pub. L. No. 107-42, 115 Stat. 230, H.R. 2926 (2001).

⁵ See Joe Sharkey, *As Travel Begins to Pick Up Again, the Airlines are Using New Strategies, and Prices, to Sell Tickets*, N.Y. TIMES, Oct. 3, 2001, at C10.

⁶ On December 22, 2001, Richard Reid, a British citizen, attempted to ignite plastic explosives in his shoes aboard American Airlines flight # 63. Fortunately, flight attendants and passengers intervened, thwarting his actions. The aircraft was diverted to Boston with a military escort. See CNN, *Shoe Bomb Suspect may have al Qaeda Link* (Jan. 11, 2001) available at <http://asia.cnn.com/2002/US/01/10/inv.shoebomber/>.

⁷ Helen Kennedy, *Osama: Hit U.S. Economy*, N.Y. DAILY NEWS, Dec. 28, 2001, at 9.

course on these issues, having been reported in or attended by the *New York Times*, the *Wall Street Journal*, the *Fort Worth Star Telegram*, the Associated Press, the *Dallas Morning News*, United Press International, Reuters, NPR, WKLRD, and all the local Dallas television stations. We hope the publication of these timely and important papers by luminaries in the field will further advance debate on these important issues.

Robert Crandall, former CEO of American Airlines, discusses the safety issues posed by the new terrorist threat. He is highly critical of the slow response by government to these dangers.

Al Casey, former CEO of American Airlines and former Inspector General of the U.S. Postal Service, discusses the financial condition of the airlines and their impact on the nation's economy. His detailed analysis illuminates the depth of the problem.

James Hall was Chairman of the National Transportation Safety Board when the Board investigated the explosion of TWA Flight 800. Mr. Hall's paper proposes a public-private security approach for air travel.

Ray Hutchison helped to develop Dallas Fort Worth International Airport and has represented the Airport from the start. He discusses the safety and financial challenges that September 11 has posed not only for DFW but also for airports around the United States.

The conference began three days after the Patriot Act became law⁸ and three days before the House of Representatives passed its version of the Airport Security Bill.⁹

We are also publishing the discussion of the conference itself, which elaborates many of these issues. Four additional papers, three by attorneys and one by a student, address issues emerging from or accentuated by September 11. Ruwantissa Abeyratne discusses the privacy implications that new security measures may pose to travelers. He focuses on implications in the United States, Canada, and Europe. Kent Krause, John Swiger, and Raymond Mariani discuss the Victim Compensation Fund of 2001 and the protection of the airlines. The paper by Krause and Swiger analyzes the Victim Compensation Fund of 2001. The paper by Raymond Mariani focuses on such varied issues as assistance to airlines and victims from general tax revenues, and the respective advantages of compensation versus liability regimes.

⁸ 107 Pub. L. No. 107-56, 115 Stat. 272 (2001).

⁹ H.R. 3150, 107th Cong. (2001).

Kristin Buja Schroeder discusses the Aviation Disaster Family Assistance Act of 1996, and the Air Transportation Safety and System Stabilization Act of 2001. The former provides a framework to help the survivors of victims through an airlines disaster, and the latter is designed to help the airlines survive September 11.

Putting on this conference six weeks after the terrible tragedy of September 11 took much hard work. I want to thank my partners in organizing the conference, Al Casey, John Nance, and Evan Singer. I also want to thank the entire staff of the *Journal* for a job well done. As this book goes to press, safety issues remain and the airlines continue to experience fiscal problems. We all hope that this volume contributes to the policy debate on these important issues.