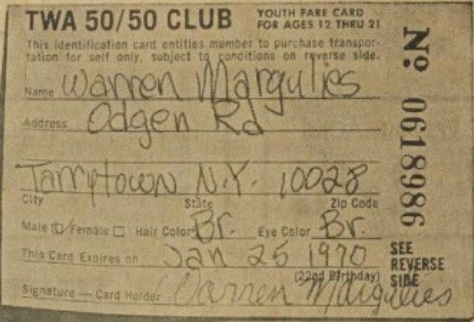


Dear NYU Legal History Colloquium participants –

Attached is a draft chapter from my book manuscript about social movements and airline regulation. Broadly, the book (currently entitled *Rights Take Flight*) focuses on how airline regulation, and especially the Civil Aeronautics Board, became a site of activism for student and consumer groups, neighbors worried about noise pollution, anti-apartheid activists, and disability rights organizations, in the 1960s through the 1980s. Each chapter offers a separate case study of one of these conflicts/sets of concerns, while also examining a different aspect of the regulatory process (ratemaking, rulemaking, domestic and foreign permitting, and enforcement).


Thanks to everyone for reading; I look forward to your comments. – jlg

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"My magic carpet ride": Discount Air Fares, Youth Culture and Bureaucratic Expertise

Joanna Grisinger, Northwestern University

• Introduction

Air travel in the postwar era was profoundly shaped by the federal government's pursuit of economic growth. Officials at the Civil Aeronautics Board were given enormous regulatory authority to develop a strong air transportation sector that would encourage passenger travel, facilitate commercial shipping, and support the national defense.¹ Mass consumption was one path toward industrial prosperity; the more that consumers could be convinced to spend their own money on air travel, the better off the airlines would be.² A central task for the CAB, then, was to get Americans to pay to fly. Indeed, there was a huge untapped market for air travel; in the early 1960s, only about 33% of Americans had ever flown.³ Air travel was expensive, and high prices kept most people on the ground.

In the 1960s, as a promotional gambit, the CAB authorized the airlines to offer steeply discounted airfare to attract Americans who had not yet embraced air travel. These discounted fares were enthusiastically embraced by the Americans at whom they were targeted—families, servicemen, and especially young travelers. Airlines were eager to cultivate the enormous baby boom generation, in their teens in the 1960s. Youth culture quickly came to include camping out at an airport for a standby seat. By 1971, one reporter noted, “the true jet-setters are poor, hairy and teen-aged.” During the 1960s, airline revenues increased, passenger traffic doubled, and

¹ Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (1995), 6-7; Judith Stein, *Pivotal Decade: How the United States Traded Factories for Finance in the Seventies* (Yale University Press, 2010), ch. 1; Reuel E. Schiller, *Forging Rivals: Race, Class, Law, and the Collapse of Postwar Liberalism* (Cambridge University Press, 2015); Jason Scott Smith, “The Triumph of the Mixed Economy: The New Deal Order, Keynes, and the Genius of American Liberalism,” in Romain Huret, Nelson Lichtenstein, and Jean-Christian Vinel, *Capitalism Contested: The New Deal and Its Legacies* (University of Pennsylvania Press, 2020).

² Meg Jacobs, “State of the Field: The Politics of Consumption,” *Reviews in American History* 39 (Sept. 2011): 561-573; Matthew Hilton, “Consumers and the State Since the Second World War,” *Annals of the American Academy of Political and Social Science* 611 (May 2007): 66-81; Meg Jacobs, *Pocketbook Politics: Economic Citizenship in the Twentieth Century* (Princeton University Press, 2005); Lizabeth Cohen, “A Consumers’ Republic: The Politics of Mass Consumption in Postwar America,” *Journal of Consumer Research* 31, No. 1 (June 2004): 236-239, 236; Lizabeth Cohen, *A Consumers’ Republic: The Politics of Mass Consumption in Postwar America* (Vintage, 2003). Although scholars have paid more attention to commodities than to travel, the same policy trends are evident. See also Berkowitz, “A New Deal for Tourism” in Shelley Osmun Baranowski & Ellen Furlough, eds., *Being Elsewhere: Tourism, Consumer Culture, and Identity in Modern Europe and North America* (University of Michigan Press, 2001); Christopher Endy, *Cold War Holidays: American Tourism in France* (UNC Press, 2004).

³ *Aviation Daily*, Oct. 12, 1971, 232; Gallup Organization, Inc., “The Incidence of Air Travel Among the General Public” (1971).

flying became much more of a mass market activity.⁴

However, many were critical of the CAB's choice to favor only some passengers with discounts. Bus companies, watching their passengers flee, argued that the CAB had no authority to discriminate in favor of certain demographics. Other critics, including several members of Congress, argued against the high fares that discriminated against everyone else. These critics called into question, through administrative processes and in court, whether the CAB was actually regulating in the public interest. They argued that the CAB's promotional responsibilities had tipped too far in favor of the airlines, to the neglect of (some) passengers' interests. What's more, they argued, the Board wasn't doing a good job promoting the airlines either, as evidenced by recurring economic problems in the airline industry.

When the CAB moved to roll back the promotional fares, the Board faced strong criticism from another sector—especially the young people who had quickly come to see discounted air travel as a generational right. They reacted furiously to defend the fares, arguing that easy access to travel was in the public interest—or at least in *their* interest. Working outside the administrative process, they bombarded the CAB with letters and petitions making moral and policy arguments about fairness, educational benefits, and environmental harm. As they learned, though, such mobilization outside the administrative process had little effect on decisionmaking within. The Board's dismissal of these arguments made adversaries out of a generation of politically active young people (and their parents) who may not have heard of the CAB ten years earlier but who had quickly come to assume they could always fly for cheap.

By 1974, when the promotional fares were phased out, the CAB had made enemies of all. Opponents of the discounted fares saw this fare policy as evidence of the CAB's inability to manage the airline industry. As fares continued to rise during the inflationary 1970s and amidst a fuel crisis, the CAB's role in the airline industry came under new scrutiny. Meanwhile, supporters of the promotional fares blamed the CAB for taking them away. Many turned against the CAB, joining a politically diverse consumer reformers, conservatives, and economists in support of ending the CAB's regulatory authority entirely.⁵

⁴ *Aviation Daily*, Oct. 12, 1971, 232; Gallup Organization, Inc., "The Incidence of Air Travel Among the General Public" (1971).

⁵ Vietor, "Contrived Competition," 80-83; David B. Cohen and Chris J. Dolan, "Debunking the Myth: Carter, Congress, and the Politics of Airline Deregulation," in Robert P. Watson, ed., *Contemporary Presidential Studies: A Reader* (Nova History Publications, 2002), 163-87; Reuel Schiller, "The Curious Origins of Airline Deregulation: Economic Deregulation and the American Left," *Business History Review* 93 (Winter 2019): 729-53.

- **The CAB Promotes the Airlines**

Congress created the Civil Aeronautics Board to grow and facilitate a commercial air transportation industry in the United States.⁶ The Civil Aeronautics Act of 1938 laid out the CAB's explicitly promotional responsibilities. Statutory language affirmatively instructed the Board, as part of its concern for the "public interest," to engage in the "promotion, encouragement, and development of civil aeronautics"; to "foster sound economic conditions" in air transportation; to "recognize and preserve the inherent advantages" of air travel; and to encourage the need for air transportation "properly adapted to the present and future needs of the foreign and domestic commerce of the United States[.]"⁷ The language of "public interest," then, was not intended as "a mere general reference to public welfare[.]" the CAB noted in 1940; instead, it was a directive to keep the airlines healthy.⁸ One critic later noted that the statute offered "the maximum protection and benefits that any major industry can elicit from the federal government."⁹

Protecting the financial health of air transportation meant making sure airlines charged enough to cover their costs. Airlines spent enormous amounts of money on equipment and labor, and needed to recoup these costs to avoid economic calamity. In the early years of air travel, airlines had undercut one other with below-cost fares and unsafe practices.¹⁰ To prevent this going forward, Congress put the CAB in charge of reviewing all air fares to ensure they were "reasonable"—not too high, but not too low. In evaluating fares, the Board was to consider the airlines' need to make enough money to provide "adequate and efficient" service "under honest, economical, and efficient management[.]"¹¹ The Board was there to forestall destructive competition that would bankrupt the airlines.

Although the CAB was authorized to set airline fares itself through elaborate formal proceedings, it rarely did so; most of the Board's ratemaking authority was exercised reactively, when the airlines proposed changes to their fares. The CAB could simply let the proposed fare

⁶ Richard E. Caves, *Air Transport and Its Regulators: An Industry Study* (Harvard University Press, 1962); Samuel B. Richmond, *Regulation and Competition in Air Transportation* (Columbia University Press, 1961)

⁷ Federal Aviation Act, § 102(a).

⁸ Docket 315, 2 CAB 1, 4 (1940).

⁹ K. G. J. Pillai, "Government Regulation in the Private Interest," *Journal of Air Law and Commerce* 40 (Winter 1974): 29-50, 30.

¹⁰ Federal Aviation Act § 404(a); *Report of the CAB Special Staff on Regulatory Reform* (1975), 20-21.

¹¹ Federal Aviation Act § 1002(e)(5).

take effect—the easiest option, since airlines didn’t need to support their proposal with evidence, and the Board didn’t need to make factual findings. Or, if on initial glance the fare appeared problematic, the Board could issue a short order flagging an issue suspending the proposed fare pending an investigation and hearing.¹² Often, airlines treated suspension orders as practical rejections of the fare and simply withdrew the proposal, thus mooting the investigation and ending any opportunity for a reasoned elaboration of underlying principles.¹³ As a result, the CAB’s actual fare policy had to be pieced together from patterns in the Board’s approval and disapproval of proposed fares.

In making sure airlines earned *enough* money to survive, the CAB’s Bureau of Economics applied a “fare-cost” test. Bureau economists evaluated fares to make sure that each fare on a route covered its share of the fully allocated costs of the flight (the cost of a flight divided by the number of seats), plus a little extra for profit.¹⁴ Airplanes, labor, and in-flight amenities were all expensive, so fares stayed high. In 1955, a round-trip ticket between Seattle and Houston cost around \$223.00 regardless of airline; this ticket was a little more expensive than a television set, but a little less expensive than a washing machine.¹⁵ Although the CAB encouraged competition by allowing multiple airlines to fly the same route, airlines in direct competition were barred from competing on price.¹⁶ Passengers would pay the same fare no matter which airline they flew.

At the same time, the Board was also supposed to consider the need for air transportation “at the lowest cost consistent with the furnishing of such service[.]”¹⁷ Fares shouldn’t be so high that no one could afford to fly; indeed, the airline industry would only prosper if lots of people could afford to buy tickets. In the 1950s, less than a third of Americans had ever flown, and, on an average flight, about 30-40% of airplane seats were empty. Cost wasn’t the only factor; many Americans were reluctant to adopt a new and unfamiliar travel option. As one marketing

¹² “Federal Administrative Law Developments—1970,” 1971 *Duke Law Journal* 149, 201-02; Pillai, 220; Jordan, *Airline Regulation in America*, 57-58. Unless the CAB acted, fares would take effect in 30 days. The CAB could suspend the fares for 180 days pending an investigation.

¹³ Ralph Spritzer, “Uses of the Summary Power to Suspend Rates: An Examination of Federal Regulatory Agency Practices,” *University of Pennsylvania Law Review* 120 (Nov. 1971): 39-107, 40, 76

¹⁴ Bureau of Transportation Statistics, *National Transportation Statistics*, Table 3-18.

¹⁵ Continental Airlines timetable (1955) <https://timetableimages.com/ttimages/co55.htm>; BLS, *Retail Prices* (1955).

¹⁶ Aaron J. Gellman, “The Regulation of Competition in United States Domestic Air Transportation: A Judicial Survey and Analysis—II,” *Journal of Air Law & Commerce* 25 (1958) at 162-63; Vietor, “Contrived Competition,” 88.

¹⁷ Federal Aviation Act § 1002(e)(3), (1).

professional observed, “Probably no other service or product ever offered the public had to be so perfect, so safe, and so reliable” before people would be willing to fly.¹⁸ However, cost was a major factor. Most people could not afford the high costs of air travel, no matter how safe or fast it was.

During the 1950s, the CAB authorized some lower fares aimed at expanding the number of passengers. However, designing discounts to increase overall revenues was a complicated proposition. The CAB and the airlines were concerned about the risk of passenger diversion—that is, offering discounted fares to passengers who would have been willing to pay full fare. Losing full-fare passengers to discounts was bad for the airlines’ bottom line. Legal restraints were another factor. The Federal Aviation Act barred “unjust discrimination,” and the CAB had a general “rule of equality” that required airlines to charge similar fares for similar travel.¹⁹ Airlines, as common carriers, weren’t supposed to charge some people less for the same service.

Early on, the CAB balanced these concerns by letting airlines charge different rates for more and less desirable flights. Since most business travel happened on weekday mornings and evenings, airlines had a lot of empty seats in the middle of the day, overnight, and on weekends. With the CAB’s permission, airlines offered discounted night-coach and excursion fares to attract passengers willing to pay less to travel at these off-peak times. Since the fare varied by time of day, there were no discrimination concerns, and the diversion risk was low because businessmen were unlikely to sacrifice convenience for price.²⁰ The CAB also allowed airlines to experiment with different fares for different levels of service, in pursuit of “placing air travel within the economic reach of the great majority of the traveling public.”²¹ In place of one-class service, airlines began offering both full-fare first-class service and reduced-fare coach service on the same flight. Both discrimination and diversion problems were avoided by making first-class service worth the higher fare; coach service on these flights included only free “coffee or similar beverages” while first-class passengers got fed.²²

In another approach, the CAB allowed airlines to offer “family fares” that allowed the head of household flying full-fare to bring his (almost always *his*) family members along at a

¹⁸ John H. Frederick, “Some Problems of Selling Air Travel,” *Journal of Marketing* 9, no. 2 (1944): 144-50, 144.

¹⁹ Federal Aviation Act § 404(b).

²⁰ Jordan, *Airline Regulation in America*, 58.

²¹ § 399.19, 20 Fed. Reg. 4119 (June 11, 1955). See also William A. Jordan, *Airline Regulation in America: Effects and Imperfections* (The John Hopkins Press, 1970), ch. 3.

²² S. 399.19, 20 Fed. Reg. 4119 (June 11, 1955).

significant discount.²³ By building on the existing foundation of business travel, airlines hoped people would consider air travel for their family vacations. American Airlines, for example, offered a 50% discount on first-class tickets sold to wives and children traveling with a husband paying full fare. The Board waved off the discrimination concerns here; after all, the railroads had long offered similar fares to breadwinners and their families. And the diversion risk was minimal, since the discounts went to wives and children who were otherwise unlikely to fly on their own.

In 1958, twenty years into the regulation experiment and at the dawn of the jet age, the airline industry seemed to be thriving under the CAB's encouragement. Airplanes had overtaken railroads in passenger miles traveled.²⁴ Airlines reported a healthy 11.9% rate of return on investment.²⁵ By 1960, the CAB bragged that under the Board's supervision, "the air transportation system of the United States has achieved a growth, state of development, and degree of financial stability unparalleled in transportation history."²⁶ A 1961 FAA report on national aviation goals boasted of all the ways that the CAB had grown the airline industry:

More airlines have been operated; more cities have been served; more seats have become available; larger airlines cruise at faster speeds; airline payrolls have quadrupled in the last 10 years; substantially more mail is carried; vastly greater numbers of people are carried; more ton-miles of freight are transported; and the average fare per passenger-mile has risen above the 1939 level but is still below the increase in the cost-of-living index.²⁷

This wasn't just good for the airlines' profits; these jobs and travel opportunities arguably benefited all Americans.

The beginning of scheduled jet service in 1958 seemed poised to expand on all this promise. Jet planes transported Americans around the country, and the world, much (much) faster than before.²⁸ Passengers quickly embraced the new and streamlined equipment that cut travel times almost in half; flights from New York to California that had taken eleven hours now took six.²⁹ Airlines scrambled to keep up with their passengers' demand for jet travel, boasting

²³ Family fares for first-class travel had been approved in 1948, as a way to promote travel on quieter days early in the week; these were, the *New York Times* said, the "biggest travel boon to large families since the invention of the wheel[.]" Frederick Graham, "Aviation: Family Fares," *NYT*, July 8, 1951, 89.

²⁴ Air Transport Association, *Air Transportation Facts and Figures* (1958), 5.

²⁵ Air Transport Association, *Air Transportation Facts and Figures* (1963), 2.

²⁶ CAB, "Memorandum: Analysis and Evaluation of the Hecter Memorandum to the President" (1960), 4, 3.

²⁷ Project Horizon, *Report on the Task Force on National Aviation Goals* (FAA, GPO, 1961), 39.

²⁸ American Airlines ad (1947) <https://repository.duke.edu/dc/adaccess/T0267>

²⁹ United Airlines timetable, June 1952 <https://timetableimages.com/ttimages/ua5206.htm>

of the number of jets they flow and branding their new equipment (as in American Airlines' "Astrojet"). The planes themselves quickly became glamorous signifiers of modernity in popular culture. Pan Am transported James Bond (in 1962's "Dr. No") and the Beatles (when they arrived in New York in 1964). Jazz album covers, like Frank Sinatra's "Come Fly With Me," Dave Brubeck's "Jazz Impressions of Eurasia," and Stan Getz's "Stan Getz in Stockholm," prominently featured the artist in front of an airplane. Jet design influenced the design of cars, home décor, and fashion.³⁰

Although the planes were different, the CAB's approach to fares remained the same. Airlines spent some \$3 billion in the late 1950s ordering new jet planes, and the CAB made sure that fares stayed high enough to cover these investments. In 1961, a one-way first-class ticket from New York to Chicago on a jet plane cost approximately \$50 (approximately \$525 in 2025). Coach passengers would pay approximately \$40 (approximately \$495 in 2025).³¹ (As a comparison, my round trip coach ticket from Chicago for this workshop cost \$222.) Passengers already paying high prices to fly were eager to switch to jet travel, but most Americans remained priced out. Meanwhile, the problem of empty seats now loomed larger, since jet planes could carry twice as many passengers as the propeller planes they replaced. During the 1960s, the "load factor" (the % of seats filled by paying passengers) dropped below 60%. As an American Airlines official explained in 1961, "The biggest single problem facing the industry is to persuade more people to use it."³² Airlines needed to figure out how to sell these seats.

Unable to lower their fares, airlines tried to lure new passengers with luxury and glamour. The Federal Aviation Act explicitly barred the Board from dictating airlines' accommodations or service, so airlines were free to spend enormous sums on advertising and on extravagant travel experiences. Airlines partnered with advertising agencies—Pan Am with J. Walter Thompson Co., United with Leo Burnett—to make the jet age glamorous. A 1963 study of air travelers noted the "atmosphere of high status symbolism" intended to appeal to a select few.³³ Pilots were

³⁰ See Thomas Hine, *Populuxe* (Alfred A. Knopf, 1986), 87-89, 110-116; A. Bowdoin Van Riper, *Imagining Flight* (Texas A&M University Press, 2004), 90; Vanessa R. Schwartz, *Jet Age Aesthetic: The Glamour of Media in Motion* (Yale University Press, 2020), 186; William Stadiem, *Jet Set: The People, the Planes, the Glamour, and the Romance of Aviation's Glory Years* (Ballantine Books, 2014), ch. 10

³¹ American Airlines timetable, effective Dec. 1, 1961, jlg personal collection. Fares adjusted for inflation via the consumer price index tool at <https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator>

³² G. Marion Sadler, quoted in *Aviation Daily*, Aug. 1, 1961, 183-184.

³³ Chicago Tribune, "Why Don't More People Fly?: A Study of the Psychological Resistance to Air Travel Specifically Among the 'Air-Avoiders,'" (1963), 70.

snappily dressed; flight attendants promised to take care of passengers' every whim. Airlines tried to top each other with elaborate amenities. In 1959, Continental Airlines introduced its Denver-New York jet service with a "Gypsy Caravan" package that included a flight to New York, dinner at Sardi's, a room at the Waldorf, and tickets to Broadway shows (including Gypsy, starring Ethel Merman—then married to Continental Airlines president Bob Six).³⁴ Delta advertised its "Royal Service" – including complimentary champagne, Rock Cornish game hen, and steak cooked to order—while Continental offered first class passengers a "7-course dinner from a golden cart."³⁵ American advertised international delicacies like Chicken Kiev and Crepes Crab Bengal.³⁶

Airlines were particularly eager to attract new business travelers and retain existing ones. Much of the commercial air travel industry's revenue in the 1950s and 1960s came from business travel, which airlines assumed to be fairly price inelastic. Businesses were willing to spend a lot to send their executives around the country, and *Time* Magazine remarked in 1964 that "One of the 20th century's greatest romances is between the businessman and the jet."³⁷ The white male business traveler featured prominently in many airline ads from the era; airplanes were depicted as areas of respite for these businessmen who could loosen their ties, recline their seats, and enjoy a cocktail after a tough day of meetings. Taking the masculine coding of air travel one step further, United continued its male-only "executive flights" each evening between Chicago and New York that offered the "surroundings of the den rather than the cabin" to attract businessmen flying home after a busy day of meetings.³⁸ On these flights, female flight attendants offered men slippers and steaks, lit their pipes and cigars, and sent them off with masculine souvenirs like golf balls, ties, money clips, and cigarette lighters.³⁹

34. "Bob Six's Denver-to-N.Y. Jet Showplane," *Variety*, July 29, 1959, 1.

35. Continental Airlines ad <https://www.departedflights.com/COsevendcourse59.html>

36. American Airlines, Welcome Aboard pamphlet, jlg personal collection.

37. "Management: Era of the Seven-League Sell," *Time*, Dec. 18, 1964.

<https://time.com/archive/6814222/management-era-of-the-seven-league-sell/>

38. William Garvey and David Fisher, *The Age of Flight: A History of America's Pioneering Airline* (Pace Communications, 2002), 146.

39. *Premium Practice—The Magazine of Incentive Merchandising* 120, no. 4 (Oct. 1965), 71. The "executive flight" ended after protests from the National Organization of Women, among others—but not *because* of them, a United official defensively argued. See Judy Klemesrud, "Another 'Men-Only' Barrier Falls: United Drops Its Shoes-and-Jackets-Off Flight," *NYT*, Jan. 16, 1970, 54. Chapter 4 discusses the CAB's handling of complaints about the executive flight in more detail.

**United Air Lines
invites you to fly
"THE CHICAGO
EXECUTIVE"**

**A CLUB
IN THE SKY
FOR MEN
ONLY**

**Leaving New York at 5 p.m. daily—
Arriving Chicago in 3 hrs. 15 min.**

Relax after a busy day on this special DC-6 Mainliner flight. You'll enjoy the informal, club-like atmosphere. Smoke your pipe or cigar, if you wish, and make yourself more comfortable by using the pair of slippers provided . . . take off your coat, and stretch out in a deep, soft Mainliner seat. Or, enjoy congenial company in the lounge.

Take advantage of many special services on this flight. Closing market quotations are available and your favorite business magazines. If you'd like to do some work, your stewardess will arrange a table for you.

Last-minute message service is available as you leave New York. Simply write out your messages and United will telephone them promptly.

A full-course steak dinner is table-served by the two stewardesses aboard. It's a delicious meal, prepared by experienced Continental chefs.

Enjoy a fine return flight on "The New York Executive" which leaves Chicago at 5 p.m. daily. Its comfort, relaxing atmosphere, and fine food will provide a pleasant end to your busy day.

Note: "The Chicago Executive" is in addition to the regular 5:00 p.m. nonstop. Eleven other nonstops daily each way between New York and Chicago.

UNITED AIR LINES

**COMPARE THE FARE AND
YOU'LL GO BY AIR**

When companies became less willing to spring for first-class seats, airlines got CAB permission to offer new business class service (cheaper than first-class, but nicer than coach) to reclaim at least some business travel revenue.⁴⁰ United introduced "One-Class Red Carpet" service that offered business-friendly "first-class feeling of comfort...at a price that's close to coach."⁴¹

40. UPI, "First Class Worth It, Airlines Say," *Atlanta Journal and Atlanta Constitution*, Nov. 5, 1961, 49.

41. United Airlines ad <https://www.departedflights.com/UAREDcarpet64.html>

Airlines tried to instill loyalty by inviting important businessmen and politicians to join membership-only clubs, like Pan Am's Clipper Club, American's Admirals Club, and TWA's Ambassadors Club, that provided reservation services and airport club lounges at the airlines' expense. Airlines selected the members, so that VIPs could relax with other VIPs; as Braniff explained to one of its own new club members, "these rooms will *not* be open to the general public."⁴² Airlines were also aware of the women behind the scenes who made many of the travel decisions. Initiatives like American Airlines' "Fair Ladies" program and Eastern's "Women in Travel" cultivated the secretaries who booked business travel with gifts like ashtrays, gold charm bracelets, and silk flower arrangements.⁴³

- **The Airlines in Crisis**

The glamour of the jet age belied the unwise financial decisions airlines were making to build it. Airlines were spending vast sums on new planes, frequent flights, food, drink, and advertising, and hoping to recoup that money through fares. However, there simply weren't enough passengers willing to pay. While airlines had reported an 11.9% rate of return on investment (ROI) in 1955, this number plunged to the single digits in the early 1960s—down to 2.1% in 1961.⁴⁴ The CAB used a rough goal of 10.5% ROI to measure the industry's health; by this metric, 2.1% was potentially calamitous.⁴⁵ While it seemed clear that the airlines needed help from the CAB, it was not at all clear what the Board should do.

The CAB had a limited set of tools here; it could raise fares, lower fares, or keep the fares as is. However, the Board had never developed clear standards that would guide its fare decisions. Alongside other federal economic regulatory agencies, the CAB was sharply criticized in the late 1950s and early 1960s for its failure to engage in the kind of expert planning that Congress had intended. Some of its loudest critics were former CAB members and airline lawyers who complained that the Board made its enormously consequential fare decisions on an ad hoc basis, without ever coming up with principles to determine what made a fare "reasonable" or "unreasonable." Though "a precise mathematical formula" might not be feasible, former Pan

42. Letter quoted in Fred Zimmerman, "A Thirsty Traveler Spurs CAB to Probe Airlines' Private Clubs," *WSJ*, July 11, 1966, 1.

43. Eastern Airlines *Falcon*, March 29, 1965; "20 Airlines Accused of Favors for VIPS," *Atlanta Constitution*, Dec. 27, 1974, 5A.

44. Air Transport Association, *Air Transportation Facts and Figures* (1963), 2.

45. Order E-16068, Docket 8008 et al (1960), quoting from CAB, *Annual Report* (1956), 9. Order E-10279, Docket 8008 et al (May 10, 1956); Emmette S. Redford, *The Regulatory Process* (University of Texas Press, 1958).

Am lawyer Henry J. Friendly remarked, “should not the Civil Aeronautics Board, after more than twenty years, have been able to announce some understandable criteria as to the amount of airline competition that it deems consistent with sound economics?”⁴⁶ The CAB’s 1952 effort to develop a clear fare policy had failed, putting the Board, as one observer commented, “in the position of continuing to regulate prices—fare levels, structure, and differential and competitive pricing—without having produced the analysis indispensable as a prerequisite of such regulation.”⁴⁷ Another general fare investigation in the late 1950s, launched by the CAB to develop “appropriate and well-defined standards” for Board staffers to apply in determining the reasonableness of fares, had also petered out. The investigation had concluded that a 10.5% return on investment (ROI) would keep the airlines in decent economic health, but hadn’t figured out how the Board should consider airlines’ spending or passenger capacity in assessing the reasonableness of fares.⁴⁸ Without such a metric, airlines spent lavishly on equipment and service, and then demanded permission to raise their fares. With only the ROI to guide it, the Board often acquiesced.

This led to significant contemporary criticism that the CAB was simply doing the airlines’ bidding.⁴⁹ This wasn’t just a result of the CAB’s fare policy; people also looked askance at the close ties the CAB had to airline executives. While the CAB was, like other agencies, supposed to be politically insulated from industry influence, Board officials constantly interacted with airline representatives both during Board proceedings and at conferences and industry events beyond the walls of the hearing room.⁵⁰ This friendliness raised obvious ethical dilemmas as airlines tried to woo their regulators. As one lawyer who’d appeared before the Board suggested, Board members “are somewhat akin to Marilyn Monroe” since everyone who sees

⁴⁶ Henry J. Friendly, “A Look at the Federal Administrative Agencies,” *Columbia Law Review* 60, no. 4 (April 1960): 429-446, 437.

⁴⁷ Gellman, “The Regulation of Competition in United States Domestic Air Transportation,” 153.

⁴⁸ Order E-16068 (September 25, 1960); Emmette S. Redford, *The Regulatory Process* (University of Texas Press, 1969); Friendly, “A Look at the Federal Administrative Agencies,” 432-33.

⁴⁹ Marver H. Bernstein, *Regulating Business by Independent Commission* (Princeton University Press, 1955); James M. Landis, Report on Regulatory Agencies to the President-Elect, Senate Judiciary Committee, Committee Print, 86th Cong. 2d Sess. (Dec. 1960); Henry J. Friendly, “A Look at the Federal Administrative Agencies,” *Columbia Law Review* 60, no. 4 (April 1960): 429-446; Louis J. Hector, “Problems of the CAB and the Independent Regulatory Commissions,” *Yale Law Journal* 69 (1960): 931-64; Donald A. Ritchie, “Reforming the Regulatory Process: Why James Landis Changed His Mind,” *Business History Review* 54 (Autumn 1980): 283-302; Daniel T. Rodgers, *Age of Fracture* (Belknap Press of Harvard University Press, 2011).

⁵⁰ James A. Durham, “How Not to Regulate Air Transportation,” *Law & Contemporary Problems* 15 (1950): 105-21; Civil Aeronautics Board Answers to November 1957 Questionnaire Submitted by Special Subcommittee on Legislative Oversight of the Committee on Interstate and Foreign Commerce, Subcommittee Print (1960), 72.

them “has something in mind.”⁵¹ Given the CAB’s statutory charge, the line between industry promotion (required by statute) and industry orientation (problematic) could be hard to draw.⁵² There was, of course, a difference between making expert decisions in the public interest to encourage the development of a growing industry, and simply giving the airlines everything they asked for. However, few agreed on where to draw that line.

In this environment, the Board was reluctant to authorize yet another general fare increase to help the airlines. Plus, basic rules of supply and demand suggested that higher prices would turn away some paying passengers away without attracting new ones. Any solution that threatened to reduce the number of passengers seemed backwards, since the most obvious problem was all of these empty seats.

The CAB was also unwilling to let airlines simply slash their fares. While reducing fares across the board would have benefited existing passengers and possibly brought in new ones, it would have harmed airlines’ bottom line by reducing existing guaranteed revenue for only the promise of potential new revenue. There was a huge untapped market; as of 1962, only 33% of adults had ever flown.⁵³ Travelers were increasingly converted to air travel, but, as of 1962, only 10.7% of people who were traveling, were traveling by air.⁵⁴ But no one really knew how many more people would be willing to fly, or what they’d be willing to spend. Both the airlines and the Board were reluctant to gamble with existing revenue streams to explore new ones.

Instead, the Board tried to have it both ways. In order to retain the high fares paid by existing passengers, and also bring in lots of new paying passengers to fill all the empty seats, the CAB decided to allow airlines to experiment with promotional fares aimed at segments of the population that had not yet embraced air travel. As one survey of air travel concluded, “there is a much greater market for air travel than the current one if its social and personal meaning can be altered.”⁵⁵ Throughout the 1950s, air travel remained the province of business and wealthy leisure travelers; airlines wanted to broaden the market. They had long been eager to target

51. House Committee on Interstate and Foreign Commerce, Special Subcommittee on Legislative Oversight, “Major Administrative Process Problems, Panel Discussion by Representatives of Industry, of the Government, and of the Bar,” Hearings 86th Cong. 1st Sess. (1959) (William C. Burt), 21-22.

52. Daniel Carpenter and David A. Moss, eds., *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (Cambridge University Press, 2014), 3, 9.

⁵³ *Aviation Daily*, Oct. 12, 1971, 232; K. William Horn, “The Frequency of Air Travel,” (pp. 23-34) in George W. James, ed., *Airline Economics* (Lexington Books, 1982), 25.

⁵⁴ John B. Lansing and Dwight M. Blood, *The Changing Travel Market* (March 1964).

⁵⁵ Chicago Tribune, “Why Don’t More People Fly?: A Study of the Psychological Resistance to Air Travel Specifically Among the ‘Air-Avoiders,’” (1963), 68.

groups of Americans who had more leisure time than money, who might jump at the opportunity to fly for cheap, and who might become “air-minded” once they started flying. Now the CAB signaled it would be more receptive to proposals that might create a mass market for air travel.

Airlines recognized this as a major policy change. In earlier years, airlines had asked the CAB to let them offer discount fares to students; to teachers; to elderly travelers; and to military wives and mothers.⁵⁶ However, the Board had consistently rejected such fares, which seemed to violate the Federal Aviation Act’s ban on “unjust discrimination.” Airlines were barred by statute from discriminating among members of the public, in the common carrier tradition. The Federal Aviation Act specified a very short list of people authorized to receive free or reduced-rate transportation (including airline employees and their immediate families; those injured in aircraft accidents and the medical staff attending to them; and ministers of religion) and the CAB declined to expand this further.⁵⁷ The Board had often pointed to its own 1951 decision that discriminatory fares could be justified “only when an extraordinarily important and serious business interest of the carrier or of air carriers generally was involved.”⁵⁸ The Board was not convinced by, for example, Frontier Airlines’ pitch that discounted fares for teachers would promote the airline industry by allowing teachers and, through them, their students, to learn about the benefits of air travel.⁵⁹

However, as airlines’ economic problems worsened in the early 1960s, and airplanes were increasingly empty, the CAB reevaluated its position. Special fares offered only to certain groups were discriminatory, of course, but were they *unjustly* discriminatory? Not if filling

56. Order E-5677, Docket 2737 et al (Sept. 4, 1951); Order E-11635, Docket 8456, 25 CAB 280 (July 31, 1957) (student fares); Order E-14349, Agreement CAB 13146 (Aug. 17, 1959) (travel agents); Order E-14928, 30 CAB 1552 (Feb. 17, 1960) (tour conductors?); Order E-19311, Docket 14325 (Feb. 1963) (former American Airlines employees); Order E-19519, Dockets 14428, 14438 (April 23, 1963) (United Nations delegates and employees); Order E-19599, Docket 14512 (May 21, 1963) (field trips for school children); Order E-19793, Docket 14526, 38 CAB 1148 (July 10, 1963) (teachers); Docket 14521, 39 CAB 808 (Oct. 24, 1963) (travel agents); Order E-21667, Docket 15757 (Jan. 12, 1965) (student standby fares between Virgin Islands, Puerto Rico, Dominican Republic, and West Indies); Orders E-20436, E-20437, Docket 14526, 39 CAB 615, 617 (Feb. 4, 1964); Order E-21973, Docket 16004, DOT files (March 31, 1965); Order E-26935, Docket 19966, 48 CAB 960 (June 18, 1968); Order E-24563, Docket 18068, 46 CAB 791, 792 (Dec. 27, 1966); Order E-25417, Dockets 18722, 18728, 18729, DOT files (July 13, 1967).

57. P.L. 865, 70 Stat. 784 (1956); Clyde H. Freed, “The Story of Clergy Fares,” *Christianity Today* 2 no. 22 (Aug. 18, 1958), 17-18.

58. Order E-5677, Docket 2737, 14 CAB 481, 483 (Sept. 4, 1951). See also Order E-14928, Agreements CAB 13146 and 10782, 30 CAB 1552 (Feb. 17, 1960); Docket 14526, 39 CAB 615, 618-19 (Feb. 4, 1964), Initial decision of the hearing examiner.

⁵⁹ Orders E-19620, E-19793, Docket 14526, 38 CAB 1148, 1148-49 (July 10, 1963); Orders E-20436, E-20437, Docket 14526, 39 CAB 615, 616 (Feb. 4, 1964).

empty seats with paying passengers could significantly improve the airlines' finances, the CAB now reasoned.⁶⁰ To support these discounts, the CAB adopted a new, more expansive, test for evaluating fares.⁶¹ Unlike the "fare-cost" test that required all airfares to cover their own costs (fares divided by costs), the new "profit-impact" test considered a rate "reasonable" if it simply improved the airlines' profits. Assuming the full-fare passengers already covered most of the costs of the flight, the CAB was only concerned with whether each promotional fare was more than the (small) fuel, labor, and service costs of adding another passenger to the flight, as well as the diversion of passengers who would have otherwise paid full fare.⁶² Appropriately designed discount fares, targeting only people who weren't already flying and mostly off-limits to those who were, might be able to bring in new passengers while minimizing the risk of diversion. Plus, the Board reasoned, bringing in more money from new passengers could benefit *all* travelers, by avoiding the need to increase fares at the top end.

- **Experimenting with Youth Fares**

In 1961 the CAB approved (as a six-month experiment), 50% off first-class fares for young people flying standby.⁶³ Standby fares helped the airlines, allowing gate staff to sell empty seats shortly before takeoff. An airline seat was an extremely perishable commodity; once a flight takes off, the empty seat loses all value. Selling even heavily discounted standby fares wrung some money from seats that otherwise would have gone empty, without airlines having to manage reservations or worry about overbooking. Passenger satisfaction was also less of an issue, since standby passengers accepted the uncertainty of travel (and the additional risk of being bumped at a stopover city) in exchange for savings. Making standby tickets available to all, though, carried a significant risk of diversion. Passengers already at the airport gate were

⁶⁰ Order E-19376, Dockets 14341, 14345, 38 CAB 1038 (March 14, 1963), 1040. As the Board noted, "we have recently utilized a more liberal approach" to help airlines "in their efforts to promote additional traffic."

⁶¹ CAB, *Annual Report* (1961), 28; Order E-19376, Dockets 14341, 14345, 38 CAB 1038 (March 14, 1963), 1040; Order E-19907, Docket 14325, 38 CAB 670, 676 (Aug. 15, 1963); Order E-5677, Docket 2737, 14 CAB 481, 483 (Sept. 4, 1951). See also Order E-14928, Agreements CAB 13146 and 10782, 30 CAB 1552 (Feb. 17, 1960); Order _____, Docket 14526, 39 CAB 615, 618-19 (Feb. 4, 1964).

⁶² See Timothy J. Vineyard, "Air Tariffs - Abuse of Discretion - Rate Discrimination," *Journal of Air Law and Commerce* 36 (1970): 136-145; William J. Baumol and Alfred G. Walton, "Full Costing, Competition and Regulatory Practice," *Yale Law Journal* 82 (1973): 639-655.

⁶³ Order E-17367, Dockets 12905, 12906, 12917, 12923, DOT files (Aug. 25, 1961). Bonanza, a local service airline, had launched a similar plan for people 12-21 a few months earlier, with a \$2 ID card, but American's was the first one at a trunk airline. "Trunklines Adopting Youth Fare Proposed by American to Fill Seats," *Aviation Week & Space Technology*, Aug. 7, 1961, 37; *Aviation Daily*, Aug. 10, 1961, 244.

flying on fully refundable tickets; they would have been happy to exchange their full-fare tickets for discounted ones. And since there were plenty of empty seats on many flights, the risk of inconvenience was often low. Thus an explicit age restriction was added so that airlines could bring in new passengers without cannibalizing the full-fare market.

Standby fares aimed at travelers between the ages of 12 and 21 served another goal of the airlines: converting a new generation to air travel.⁶⁴ As the president of American Airlines pointed out in 1961, young people made up 15% of the population but only 3% of all airline passengers.⁶⁵ Young people had lots of free time and, the media trumpeted, unprecedented discretionary funds; a 1959 *Life* Magazine headline described teenage consumers as “A New, \$10 Billion Power.”⁶⁶ They might be willing to spend some of their free time waiting around at airport gates in pursuit of a bargain. As both the airlines and the CAB recognized, the airlines would immediately benefit if young people could be convinced to spend some of their money on leisure travel. And, airlines hoped, this could also have long-term benefits, as young people who got hooked on cheap air travel now would want to keep flying for decades to come. Even more broadly, young travelers might change the cultural understanding of air travel. As one study noted, flying was still so expensive and luxurious that, like “a rural couple” uncomfortable “in an elegant French restaurant,” potential passengers might be turned off by such luxuries.⁶⁷ These new passengers could make air travel seem more approachable.

The fares took effect in late August 1961, as college students were returning to campus. The fares were immediately popular; young people were thrilled to benefit from the airlines’ overcapacity problem. A few weeks into the experiment, American Airlines reported flying an average of 936 youth standby passengers a day.⁶⁸ The fare was possibly *too* popular—as some airline representatives had anticipated, travelers quickly figured out ways to exploit the program.⁶⁹ Airlines didn’t require identification to buy a ticket or to fly, so some older people lied about being under 22, and some young people bought standby tickets and handed them to

⁶⁴ See Stanley C. Hollander and Richard Germain, *Was There a Pepsi Generation Before Pepsi Discovered it?: Youth Based Segmentation in Marketing* (NTC Business Books, 1992); Cohen, *A Consumers’ Republic*.

⁶⁵ G. Marion Sadler, quoted in *Aviation Daily*, Aug. 1, 1961, 184.

⁶⁶ “A New, \$10 Billion Power: The Teenage Consumer” *Life* Magazine, Aug. 31, 1959, 78; Victor Brooks, *Last Season of Innocence: The Teen Experience in the 1960s* (Rowman & Littlefield Publishers, Inc., 2012).

⁶⁷ Chicago Tribune, “Why Don’t More People Fly?: A Study of the Psychological Resistance to Air Travel Specifically Among the ‘Air-Avoiders,’” (1963), 70.

⁶⁸ *Aviation Daily*, Sept. 22, 1961, 130.

⁶⁹ “Airline Cites Need to Cut Youth Fares,” *Indianapolis Star*, Aug. 24, 1961, 60; see also *Aviation Daily*, Aug. 1965, 1961, 269.

older travelers.⁷⁰ Wily passengers also found ways to guarantee themselves standby seats. While standby passengers had pretty good odds of getting on many flights, seats on flights to desirable locations during peak times and dates could be scarcer. In a method endorsed by *Consumer Reports*, to the airlines' chagrin, some young passengers tried to fly standby while holding refundable full-fare tickets as backup.⁷¹ As *Consumer Reports* pointed out, this certainly made the airlines' capacity calculations more difficult, but "no one could feel anything but uneasy about the prospects of a youngster marooned 24 to 48 hours or more at an airport waiting for a bargain seat home at Christmas."⁷² Other travelers ensured empty seats by making flight reservations under fake names, and then buying cheap seats when those passengers failed to appear.

The airlines found the program so chaotic that several asked the CAB for permission to abandon the six-month experiment early, before holiday travel made things even worse. As one airline official reportedly told the CAB, "By their own greed, those people killed the goose that laid their travel egg[.]"⁷³ The airlines had learned, however, that there was a tremendous untapped youth market, one they would soon return to.

- **Experimenting with Military Standby Fares**

Even with these wrinkles, the airlines and the Board saw revenue potential in standby fares as a concept. They identified the approximately two million active members of the military in the United States as potential air travelers who might be lured by low fares. In 1963, the CAB approved a proposal to offer half-off *coach* standby fares to members of the military traveling on leave or furlough.⁷⁴ Such passengers routinely tried to travel long distances in a short time.⁷⁵ While not all eligible travelers were male, of course, the airlines envisioned young servicemen as the audience for this promotional fare. "Jet to her side," encouraged one Delta Airlines ad showing a young white woman on a front porch; "It's your stateside duty!"⁷⁶ Military passengers

70. AP, "Abuses Doom Youth Fares," *Chicago Daily Tribune*, Nov. 7, 1961, C7; UPI, "First Class Worth It, Airlines Say," *Atlanta Journal and Atlanta Constitution*, Nov. 5, 1961, 49.

71. UPI, "First Class Worth It, Airlines Say," *Atlanta Journal and Atlanta Constitution*, Nov. 5, 1961, 49.

72. "Air Travel," *Consumer Reports*, Nov. 1961, 641.

73. Quoted in AP, "Abuses Doom Youth Fares," *Chicago Daily Tribune*, Nov. 7, 1961, C7.

74. Order E-19376, Dockets 14341, 14345, 38 CAB 1038 (March 14, 1963), 1039. National Airlines timetable, effective May 31, 1964, <https://timetableimages.com/ttimages/na64.htm>

75. See Christian G. Appy, *Working-Class War: American Combat Soldiers and Vietnam* (University of North Carolina Press, 1993).

76. Delta Airlines ad, <https://www.departedflights.com/DLjoinher66.html>

might also be less likely than teens or college students to abuse the loopholes in the system.

Airlines hoped to convert such travelers from ground transportation to air travel. Passenger railroads were in significant decline in the 1960s, so servicemen were most likely to travel by car or bus. Both were much slower than flying, of course, but also much cheaper. In 1965, Trailways charged \$40.40 for a one way bus trip between New York and Miami; airlines charged almost twice that.⁷⁷ A 50% military standby discount made the two-hour flight cost about the same as a thirty-hour bus trip; for people with limited travel time, there was no contest. The National Trailways Bus System soon complained bitterly of the harm to their own profits. Bus revenues in San Antonio, near Lackland Air Force Base, had dropped from \$336,000 in 1962 to \$46,324 in 1964; in San Diego, bus revenues dropped from \$634,893 in 1962 to \$96,884 in 1964.⁷⁸

When in 1965 the airlines asked the CAB for permission to extend these rates, Trailways registered its strong objection. Taking advantage of rules allowing anyone to file a complaint challenging proposed rates, the bus company complained that the military standby fares were unjustly discriminatory and should be suspended.⁷⁹ There was no justification for treating servicemen differently, since they cost the airlines the same as anyone else and faced little risk of actually getting bumped.⁸⁰ The CAB was simply making fares on an ad hoc basis, without any underlying policy. Further, the bus system argued, the CAB's decision to endorse *ad hominem* fares was illegal; the Board had no authority "to 'liberalize' or conservatize' the Federal Aviation Act" to single out certain passengers for preferential treatment. This was as bad, they argued, as offering "half-fares to red-headed airline employees and free transportation to brunette airline employees[.]"⁸¹

⁷⁷ Trailways ad, *New York Daily News*, Jan 24, 1965, 491.

⁷⁸ Consolidated Joint Complaint of National Trailways Bus System and its Forty-Six Independent Member Carriers Requesting Suspension and Investigation, Docket 16021, April 5, 1965, 10, Record on Review, Vol. 2, Box 16, 1965-1969, Selected Appeals Litigation Case Files 1944-69, Litigation Division, Office of the General Counsel, Record Group 197, NARA II (hereafter RG 197).

⁷⁹ §302.502.

⁸⁰ Consolidated Joint Complaint of National Trailways Bus System and its Forty-Six Independent Member Carriers Requesting Suspension and Investigation, Docket 16025, April 5, 1965, 16, Record on Review, Vol. 2, Box 16, 1965-1969, Selected Appeals Litigation Case Files. 1944-69, Litigation Division, Office of the General Counsel, RG 197.

⁸¹ Consolidated Joint Complaint of National Trailways Bus System and its Forty-Six Independent Member Carriers Requesting Suspension and Investigation, Docket 16025, April 5, 1965, 25, 20, Record on Review, Vol. 2, Box 16, 1965-1969, Selected Appeals Litigation Case Files. 1944-69, Litigation Division, Office of the General Counsel, RG 197.

Military officials made their own case to the CAB that standby fares were good for military morale, and thus advanced the national interest. The Secretary of the Army argued that military personnel “who are many, many miles from home” could now “through the miracle of modern aviation, return home periodically to visit.”⁸² Planes also safeguarded traveling soldiers. Military members were otherwise likely to hitchhike “at great personal risk” or speed, in older and more dangerous cars, to meet “short return deadlines” at their peril.⁸³ Of course, the fares were also good for the airlines, since many soldiers flew for the first time on military fares, and many were converted, “having experienced the comfort and advantages of air travel.”⁸⁴ Encouraging these mostly young, mostly male passengers to make air travel a habit could bolster the airlines’ bottom line in years to come.

When the CAB approved the fares over these objections, the bus company sued.⁸⁵ In 1967, the Fifth Circuit upheld the military fares, finding that the CAB was entitled to consider both the competitive advantages and the national defense advantages of air travel.⁸⁶ Military power required strong morale, which required fast transportation, which required airplanes.

- **The CAB Expands the Promotional Fare Experiment**

In the early 1960s, the Board also authorized airlines to expand their use of family fares to offer significant discounts off reserved *coach* travel.⁸⁷ Here airlines could continue to capture the full-fare revenue of the business traveler, likely paid for by his employer, while offering him significant discounts to bring along his dependents. Family fares were a traditional exception to the CAB’s previously strict “rule of equality,” but the Board had never quite explained why they made an exception for families. Now, though, the CAB justified discrimination as long as the discriminatory fares significantly boosted the airlines’ profits. Here, the CAB recognized, the structure of family fares would retain the profits from full-fare passengers while adding new

82. Reply of the Secretary of the Army, Docket 16025, 2, Record on Review, Vol. 2, Box 16, 1965-1969, Selected Appeals Litigation Case Files. 1944-69, Litigation Division, Office of the General Counsel, RG 197. For more on hitchhiking, see Jeremy Packer, *Mobility Without Mayhem: Safety, Cars, and Citizenship* (Duke University Press, 2008), ch. 2; Jack Reid, *Roadside Americans: The Rise and Fall of Hitchhiking in a Changing Nation* (University of North Carolina Press, 2020).

83. Reply of the Secretary of the Army, Docket 16025, 4, Record on Review, Vol. 2, Box 16, 1965-1969, Selected Appeals Litigation Case Files. 1944-69, Litigation Division, Office of the General Counsel, RG 197.

84. *Ibid.*, 3.

85. Order E-22186, p. 4, Dockets 15845, 15925, 15973, 15983, 16000, 16025, 16026, DOT files (May 20, 1965).

86. *Transcontinental Bus System, Inc. v. Civil Aeronautics Board*, 383 F.2d 466 (5th Cir. 1967).

87. Order E-19121, Dockets 8229, 8706, 8856, 9058, 14152, DOT files (Dec. 20, 1962); Order E-26431, Docket 19047 (Feb. 29, 1968), 5.

discounted ones.⁸⁸ Airlines wanted to get more families traveling for leisure; if the head of the household was already used to flying, he might be able to convince everyone else. Delta offered a one-third discount on a wife's fare, and a two-thirds discount for each child under 22. The bigger the family, the larger the savings; Delta pictured a family of 12 able to fly on 4 ⅓ fares.⁸⁹

Here, too, airlines hoped to reframe popular notions of air travel. A 1963 survey found that many Americans saw air travel as the province of ambitious, sophisticated men who belonged to the "bureaucratically organized achievement oriented world, the world of big business and get-ahead" – which was also "the world of ulcers and isolation."⁹⁰ By contrast, friendly, average guys who had "warm intimate relationships with friends and family" traveled by car.⁹¹ Women, specifically, saw the figure of the "Air-Traveler" as "totally alien[.]"⁹² Only "glamorous" and "sophisticated" single and career-oriented women flew, they thought; married women and housewives drove.⁹³ Changing these perceptions, and getting middle-class families to fly, would help the airlines.

Advertisements often targeted the breadwinners, encouraging them to bring along the wives and children who would otherwise be left behind. American Airlines touted its "Wife Vacation Plan," for "the little woman with rugs to vacuum, beds to make and children to get off to school."⁹⁴ United flipped the script, launching an extremely successful \$1.7 million dollar "Take Me Along" ad campaign aimed at wives.⁹⁵ Print ads included "take me along!" stickers that enthusiastic wives could place on resistant husbands' coffee mugs and shaving mirrors in anticipation of business travel. Television ads featured couples dancing to the title song from the Broadway musical "Take Me Along."

⁸⁸ Order E-26431, Docket 19047 (Feb. 29, 1968), 10. The CAB also noted that the Interstate Commerce Commission had long allowed railroads to offer family discounts for more than a century; indeed, family fares were "a time-honored discrimination in transportation." (9).

⁸⁹ Delta Airlines ad <https://www.departedflights.com/DLfamily67.html>

⁹⁰ Chicago Tribune, "Why Don't More People Fly?: A Study of the Psychological Resistance to Air Travel Specifically Among the 'Air-Avoiders,'" (1963), 26, 51, 34.

⁹¹ Chicago Tribune, "Why Don't More People Fly?: A Study of the Psychological Resistance to Air Travel Specifically Among the 'Air-Avoiders,'" (1963), 51. Train passengers were "weak" and "cowardly" and "Low in ambition." (26)

⁹² Chicago Tribune, "Why Don't More People Fly?: A Study of the Psychological Resistance to Air Travel Specifically Among the 'Air-Avoiders,'" (1963), 44

⁹³ Chicago Tribune, "Why Don't More People Fly?: A Study of the Psychological Resistance to Air Travel Specifically Among the 'Air-Avoiders,'" (1963), 39.

⁹⁴ American Airlines ad <https://www.departedflights.com/AAwifevacation63.html>; *New York Daily News*, April 1, 1963, 51.

⁹⁵ Order E-26431, Docket 19047 (Feb. 29, 1968); Ad, *Life Magazine*, Oct. 13, 1967, 112; Philip H. Dougherty, "Advertising: Making a Business of Wives in the Sky," *NYT*, Aug. 24, 1967, 49.

"Take me along"

Or how to turn your husband's next business trip into a swinging time for both of you.

How long has it been since you danced together?

Explored a city together?

Or been alone together?

United will show you the way.

With our "Take Me Along" fare, that saves you up to $\frac{1}{3}$ of a wife's fare.

With our credit card, that lets you charge it.

We'll even give you side-by-side seating. Naturally.

What's more, you can get reduced hotel and car rental rates on the weekend in most cities. So you can stay over and stretch your trip.

Sound good?

Say "Take Me Along" tonight.

Then dust off your suitcase, and call United or your Travel Agent.

"But, Don, we can't dance on the plane!"

*fly the
friendly skies
of
United.*



Try the lyrics below on your husband.
They're from the Broadway Musical "Take Me Along."



"Take me a-long, if you love-a-me. Take me a-long, if you love-a-me. Take me a-long with you.



My heart will ride, sweet and glo-ri-ous, high a-bove the throng, if you will take me a-long with you."

Indeed, some travelers may have used family fares more broadly than technically authorized. Airlines didn't require identification to buy or use an airline ticket, so there was no way to prove that parties were actually married, or minors, or related.⁹⁶ While there were rumors that airlines wouldn't sell a family fare ticket to a man and woman with different last names, nothing stopped passengers from lying about their names or status. Northeast Airlines stated that the airline "cannot risk offending its passengers" by asking for proof, and Air West explained: "We have a lot of faith in human goodness."⁹⁷ Plus, airlines had no desire to turn away paying passengers.

Additional promotions tried to entice yet more people into air travel.⁹⁸ In 1964 airlines began offering "Visit USA" fares to encourage people living outside the U.S. to fly in and spend money.⁹⁹ In 1966, airlines introduced "Discover America" excursion fares, as part of a broader "See the U.S.A." tourism program launched by the Johnson White House to boost domestic travel.¹⁰⁰ The program sought to keep American spending their money in the U.S.; the airlines were happy to encourage Americans to hop on flights and use their leisure time to explore farther-flung parts of the United States. Open to all, these fares offered a 25% discount for anyone whose return flight was the week after they left.

Air travelers became skilled bargain hunters. As of early 1966, a traveler looking to fly round trip between Chicago and Miami on a jet plane might be charged \$188.40 for a first-class seat (~\$1825 in 2025), about half the price of a color television set, or \$149.40 for a coach seat (~\$1447 today).¹⁰¹ A traveler might also choose to pay \$112.20 on an excursion fare (restricted to travel on certain days) (~\$1086 today), \$87.15 for family fare (averaged among a family of

⁹⁶ Second- and third-hand stories abound about airlines thanking businessmen's wives after the businessmen had paid for a family-fare ticket, to the surprise of the wives who had not flown. Jan Harold Brunvand, *The Baby Train and Other Lusty Urban Legends* (W.W. Norton, 1994), 166-68.

⁹⁷ Information Responses of Northeast Airlines, Inc., Exhibit NEA-16, April 13, 1970?, vol. 8, Box 1141, Docket 21866-5, RG 197; Nathan S. Simat, Air West, Transcript, July 7, 1970, Docket 21866-5, v. 2, 69. See also TWA Exhibit 5013, vol. 8, Box 1141, Docket 21866-5, RG 197; National Airlines, Exhibit NAL-IR-12, vol. 12, Box 1142, Docket 21866-5, RG 197.

⁹⁸ Albert D. Hughes, "New Air Fare offered to 'fill the seats,'" *Christian Science Monitor*, March 29, 1966, 16.

⁹⁹ Air Transport Association of America, *Facts and Figures* (1964), 13.

¹⁰⁰ "Travel in U.S.' Drive Pushed at White House," *Minneapolis Tribune*, Aug. 12, 1965, 17; "Airlines Back U.S. Travel," *NYT*, June 15, 1965, 82. In 1964, Congress issued a joint resolution authorizing and requesting the president to issue a proclamation encouraging domestic travel. H.J. Res. 658, P.L. 88-416, 78 Stat. 388 (Aug. 11, 1964); extended in P.L. 89-235, 79 Stat. 910 (Oct. 2, 1965). <https://www.presidency.ucsb.edu/documents/proclamation-3780-discover-america-planning-week>

¹⁰¹ Bureau of Labor Statistics, City Worker's Family Budget (Department of Labor, Autumn 1966), Table 3.

four) (~\$844 today), and \$74.70 for standby fares limited to certain groups (~\$723 today).¹⁰² By 1966, columnist Art Buchwald was joking about airline promotions offering "a special rate if you fly between Monday and Friday and promise not to smoke over Salt Lake City"—or, "If you're a Rhodes scholar majoring in the humanities and you have a draft-deferred status and two children, you can take our coach service any time after midnight on the Fourth of July for one-third less."¹⁰³ Although some consumers found all these fares confusing, CAB chairman Charles S. Murphy defended them: "I do not find anything startling or terrible about the concept that, one must shop for a bargain in air travel in a fashion similar to shopping for bargains elsewhere."¹⁰⁴ Air travel was no longer simply for the wealthiest; savvy consumers with some disposable income could also find ways to fly.

The promotional fares did succeed in getting more Americans in the air. Revenue from these new passengers, combined with the consistent business of full-fare passengers, helped the airlines out of their early 1960s economic slump. Airlines were also starting to see the efficiency returns on jet planes. By the middle of the 1960s, airlines' rate of return on investment rose to 12%, and the CAB trumpeted this period of "unprecedented prosperity" for the major airlines as revenues and net income hit "an all time high[.]"¹⁰⁵ However, there were also signs of trouble. The percentage of seats filled with paying passengers declined from 64.1% in 1955 to 55.4% in 1965. As airlines continued to take delivery of jets they had ordered years earlier, airline capacity grew even faster than traffic. Airlines needed to fill these empty seats.

- **Another Round of Youth Fares**

Given the overcapacity problem, many airlines again looked longingly to the enormous youth market. The oldest members of the baby boom generation, estimated at approximately 33 million young people, were in their late teens in the mid-1960s. Getting them used to air travel now would be good for the airlines; creating customer habits was a major investment in the future.¹⁰⁶ As American Airlines' director of sales later explained: "The purpose of the youth fare is to encourage young people to travel by air. We don't want them to acquire the habit of 'taking

¹⁰² Air Transport Association of America, *Air Transport Facts and Figures* (1966), 9; *City Worker's Family Budget: Pricing, Procedures, Specifications, and Average Prices*, Autumn 1966, Table 3.

¹⁰³ Art Buchwald, "It's the Only Way Not to Fly," *Los Angeles Times*, March 10, 1966, A5.

¹⁰⁴ Murphy before National Transportation Symposium, quoted in *Aviation Daily*, May 5, 1966, 28.

¹⁰⁵ ATA, *Air Transport Facts and Figures* (1967), 4; CAB, *Annual Report* (1966), 1.

¹⁰⁶ Thomas Frank, *The Conquest of Cool: Business Culture, Counterculture, and the Rise of Hip Consumerism* (University of Chicago Press, 1998), 108-09.

a train,' or 'riding buses.'"¹⁰⁷ Passengers who'd become accustomed to the speed and ease of air travel would be unlikely to convert back to buses or trains even after they aged out of the discounted fares.

In late 1965, several airlines proposed, and the CAB approved, new standby youth fares that would allow solo travelers aged 12 to 21 to fly at half off *coach* fares—much cheaper than first-class discount airlines had offered to young people in 1961.¹⁰⁸ While some airlines were dubious that the youth fares plan could work this time—TWA considered the earlier experiment “a catastrophe”—most were willing to try again given the money at stake.¹⁰⁹ The CAB agreed; chairman Charles S. Murphy suggested that “the potential advantages from standby fares are so great that one cannot lightly pass them by or abandon the whole idea[.]”¹¹⁰ Young passengers were already eligible for family fares if they traveled with a parent, but youth fares were aimed directly at teens.

These new youth fares were, as before, immediately popular. American Airlines reported that about 1000 passengers—almost all students traveling to or from college at the end of January 1966—took advantage of half-price flights on the promotion's first day, and about 5000 eligible passengers flew standby on American in the first week.¹¹¹ By May 1966, United, TWA, and Eastern Airlines had each carried tens of thousands of youth fare passengers.¹¹² Airlines had tweaked their earlier offerings to minimize the worst abuses, excluding certain peak travel dates and requiring young travelers to verify their age at the gate by presenting an ID card provided by the airline.¹¹³ (These youth fare cards could be purchased from the airline for a few dollars upon presentation of birth certificate or other ID.) However, this surge of new young passengers still created challenges for airport and airline staff. Unpredictable passenger numbers complicated

¹⁰⁷ Quoted in “Probe into Youth Fares hinges on which space basis is better,” *The Travel Agent*, n.d., Folder Youth Fare, Box 164, United States Student Association Records, 1946-2007, M70-277, Wisconsin Historical Society (hereafter USSA Records).

¹⁰⁸ Order E-23137, Dockets 16805, 16806, 16807, 16808, 16811, 16823, 16851 (Jan. 20, 1966).

¹⁰⁹ Complaint of Trans World Airlines, Dec. 23, 1965, 7, Record on Review, Vol. 1, Box 16, 1965-1969 Selected Appeals Litigation Case Files. 1944-69, Litigation Division, Office of the General Counsel, RG 197.

¹¹⁰ Order E-23137, Dockets 16805, 16806, 16807, 16808, 16811, 16823, 16851 (Jan. 20, 1966); Order E-23138, Docket 16826 (Jan. 20, 1966); Murphy before National Transportation Symposium, quoted in *Aviation Daily*, May 5, 1966, 28.

¹¹¹ Edward Hudson, “New Youth Fares Bring Big Turnout,” *NYT*, Jan. 28, 1966, 43; Peter B. Greenough, “Youth Fares Aimed at CAB?” *Boston Globe*, Feb. 4, 1966, 26.

¹¹² Joseph W. Carter, “Conflict Over Youth Fares Intensifying,” *Aviation Week and Space Technology*, April 25, 1966, 34; *Aviation Daily*, May 11, 1966, 68.

¹¹³ Order E-23137, Dockets 16805, 16806, 16807, 16808, 16811, 16823, 16851 (Jan. 20, 1966).

airline seating assignments, baggage handling, and meal service. Young, often underage, passengers camped out at airport gates for hours, sometimes overnight.¹¹⁴ American Airlines tried to corral youth passengers into "youth lounges" at JFK and LAX, offering television, a jukebox, and a soda machine; often, however, passengers made themselves at home wherever they liked.¹¹⁵ Airline phones rang off the hook with calls from would-be travelers calling to find out how full a flight was before heading to the airport, and from people making real or fictional reservations to guarantee seats at peak travel times.¹¹⁶ Parents called the airlines to track down their children who may or may not have gotten on a flight, and may or may not have been bumped somewhere along the way.¹¹⁷ A 1966 *Mad* Magazine piece about air travel joked that by the time standby passengers actually got on a plane, they might have turned 22.¹¹⁸

Airlines also had to manage a surge of young travelers disrupting the traditionally polite in-flight experience. Turning air travel into a mass market experience came with tradeoffs, including, as one reporter described, a lot of new "ill-mannered, rambunctious 'beatnicks'" in the air.¹¹⁹ Some young people demanded that flight attendants serve them alcohol, and the president of United Airlines described one spring break flight where a pilot turned a plane around to kick off some unruly youth fare passengers.¹²⁰ Airlines developed policies about appropriate attire after young passengers complained of being turned away because they were barefoot, and others complained about having to sit near barefoot passengers.¹²¹ Anecdotal evidence abounded of airlines turning away passengers until they took showers.¹²²

114. UPI, "Airlines Divided on Youth Fares," *NYT*, May 8, 1966, 81. While airlines reported fewer ticketing shenanigans by military standby passengers, those travelers presented similar last minute bumping and meal service problems. After some discussion, airlines agreed to board military standby passengers ahead of youth fare and clergy standby passengers (and other ones), and give them better information. See House Committee on Armed Services, Special Subcommittee on Commercial Air Transportation for Service Personnel while on Authorized Leave, *Report*, 89th Cong. 2d sess. (Oct. 10, 1966).

115. Edward Hudson, "New Youth Fares Bring Big Turnout," *NYT*, Jan. 28, 1966, 43; *Aviation Daily*, April 21, 1966, 328.

116. Joseph W. Carter, "Conflict Over Youth Fares Intensifying," *Aviation Week and Space Technology*, April 25, 1966, 34; "Business & Finance," *LAT*, April 12, 1966, B9.

117. Bruce Galphin, "Bloom of Youth (Fare) Fades," *Atlanta Constitution*, May 30, 1966, 4; Stanley B. Rosenfield, "A Case for the Legality of Youth Standby and Young Adult Airline Fares," *Journal of Air Law and Commerce* 36, no. 4 (1970): 615-650, 617-18.

118. *Mad Magazine* no. 106, Oct. 1966, 22.

119. Robert J. Serling, "Officials of Airlines Can't Agree about Half Fares—Monster or Success," *Boston Globe*, May 8, 1966, 36.

120. *Chicago Tribune*, Sept. 9, 1966, 65; Robert J. Serling, "Officials of Airlines Can't Agree about Half Fares—Monster or Success," *Boston Globe*, May 8, 1966, 36.

121. David Hoffman, "Airlines Face New Problem: The Odor of Shoeless Hippies," *Washington Post*, Nov. 9, 1967, F16.

122. Robert J. Serling, "Officials of Airlines Can't Agree about Half Fares—Monster or Success," *Boston Globe*,

This didn't sour the airlines on youth fares, but airlines did quickly make some adjustments to their offerings. A few months after the youth fares took effect, United and TWA got permission from the CAB to excluded youth standby passengers from first-class seats, where their presence was often particularly unwelcome.¹²³ Some other airlines, finding the standby process difficult to manage, got CAB permission to replace their standby fares with a one-third discount on coach reserved seats.¹²⁴ The CAB found such fares were not unjustly discriminatory given the promotional benefits of attracting young travelers, and the economic need to prevent full-fare passengers from taking advantage of these incentives.

- **Youth Culture Embraces Air Travel**

Airlines were eager to make young people into consumers of air travel, building habits of leisure travel that would benefit the airlines for decades to come. Airlines aggressively ingratiated themselves into the youth market, hiring college students to sell youth fare cards and promote airlines to other college students.¹²⁵ Airlines tried to clothe themselves in the language and signifiers of youth culture. Eastern Airlines sold psychedelic Eastern Airlines posters in college bookstores, and TWA used the Fifth Dimension song "Up, Up, and Away" in their ads, the first airline to advertise using a rock song (and one with alleged drug references at that).¹²⁶ Continental advertised "Another groovy way to stretch your travel dollar[.]"¹²⁷ American Airlines reminded young travelers that they could fly half-fare to the Newport Folk Festival, and partnered with Shubert Theaters to offer half-price standby theater tickets to youth fare card holders.¹²⁸ Airlines also played on the generation gap in their college newspaper ads.¹²⁹ One

May 8, 1966, 36; FAA official quoted in David Hoffman, "Airlines Face New Problem: The Odor of Shoeless Hippies," *Washington Post*, Nov. 9, 1967, F16.

123. Joseph W. Carter, "Conflict Over Youth Fares Intensifying," *Aviation Week & Space Technology*, April 25, 1966, 34; "Airline Observer," *Aviation Week & Space Technology*, May 9, 1966, 45.

124. "Airlines Curtail Youth Fare Program," *Harvard Crimson* (Apr. 11, 1968) (Eastern, National, and Braniff); Order E-23656, Dockets 17257, 17263, DOT files (May 9, 1966); *Aviation Daily*, April 12, 1966, 267. Allegheny had already been offering youth travelers one-third off reserved first-class fares. Order E-23138, Docket 16826 (Jan. 20, 1966). (Delta, Eastern, National, and Braniff).

125 Eastern Airlines *Falcon*, Oct. 24, 1966, 1; Pan Am *Clipper*, vol. 21, no. 20, Sept. 28, 1970, 1; TWA *Today*, July 31, 1972, 8.

126 "Eastern Goes Psychedelic," *Boston Globe*, Oct. 22, 1967, A20; Jack Donald Kennedy Jr., "An Analysis and Evaluation of the Advertising Practices of Five of the Larger Airlines and Other Selected Trunkline Carriers" (M.A. Thesis, Texas Tech University, 1972), 32-33; Jack Anderson, "Washington Merry-Go-Round," *Washington Post, Times Herald*, Aug. 1, 1970, C11.

127 Continental Airlines pamphlet (1968), jlg personal collection.

128. Ad, *Daily Princetonian*, April 25, 1966, 6; Travel Log, *Boston Globe*, May 15, 1966, A23; *Aviation Daily*, May 12, 1966, 77.

129. *The Trail* (University of Puget Sound), March 4, 1966; Frank, *The Conquest of Cool*.

TWA ad invited students to purchase a youth fare card, claiming: "Here's one card from the establishment that no student will ever burn."¹³⁰ American Airlines invited you to take a flight "home to mother"—"And if you're a mother who hasn't been visited lately, you can send this ad to your prodigal kids."¹³¹ TWA explained that now fares were so cheap that there was now "only one excuse for not going home for the holidays. Getting your hair cut."¹³²

TWA put a price on your head that even your parents might agree to pay.

We're out to get you home for the holidays. Fast.
Which is something that your parents will probably enjoy too.
Something else they'll enjoy is our fares for students. (Students, that is, who are between the ages of 12 and 21.) On a standby basis, you'll get 40% off regular coach fares.
Which doesn't mean you'll be flying second class or anything like that.

You still get all the great food and TWA features like movies and stereo music.* But it won't cost you like it does everyone else.
And TWA flies to nearly all the major cities in the U.S., plus we have a special youth fare to Hawaii.
With all that going for you, there's only one excuse for not going home for the holidays.
Getting your hair cut.

*By Inflight Motion Pictures Inc. on transcontinental non-stops.

TWA
Our million dollar bonus.
It's working.

While everyone aged 12-21 was eligible for youth fares, college students were a particularly valuable potential market. Young people were attending college in record numbers

¹³⁰ Ad, *Michigan Daily*, Jan. 24, 1969, 7.

¹³¹ "Take One Home to Mother," *Billboard* 80, no. 21, (May 25, 1968): 48-49.

¹³² Ad, *College Times*, Nov. 25, 1969, 3.

(many aided by new federal tuition assistance and loan programs), and, by 1969 more than one-third of those between 18 and 24 were attending college.¹³³ Many of these students attended college out of state and far from home; the 1967 film *The Graduate* begins with Benjamin Braddock flying home from college. Travel costs could be a significant part of one's college budget.¹³⁴ In the late 1960s, for example, tuition at a private university was, on average, under \$2000 a year.¹³⁵ Meanwhile, a full-fare round-trip American Airlines plane ticket from Los Angeles to New York cost more than \$300.¹³⁶ A 50% discount didn't make air travel cheap, exactly, but it did bring it in line with bus travel. It was also faster, and maybe safer, than any kind of ground transportation. One Eastern Airlines ad, aimed at parents, portrayed a student hitchhiking to New York: "No one wants him going off to school on his thumb."¹³⁷ Flying to and from college was now much easier.

Young people took to the skies with enthusiasm, to the airlines' delight. In 1966, the major airlines carried more than 2.1 million youth fare passengers (2.7% of all passengers); from July 1, 1967 to June 30, 1968, more than 5.7 million passengers (5.6% of all passengers) traveled on youth fares.¹³⁸ Youth fares bolstered airline profits and encouraged young passengers to adopt the habit of air travel. College students with discretionary funds used promotional fares to travel between home and college, to visit friends at other campuses, and to take spring break adventures. One Barnard College student, interviewed at JFK, told a reporter: "Now I can see my boy friend twice as much[.]"¹³⁹ One reporter reflected that the fares offered "young Americans a degree of mobility unknown to any other generation"¹⁴⁰; another observer, looking back wistfully, called his Northeast Airlines youth fare card "my magic carpet ride."¹⁴¹ Model Anne

¹³³ Elizabeth Tandy Shermer, *Indentured Students: How Government-Guaranteed Loans Left Generations Drowning in College Debt* (Belknap Press of Harvard University Press, 2021), 198, ch. 5; see also John R. Thelin, *Going to College in the Sixties* (Johns Hopkins University Press, 2018), 12; National Center for Education Statistics, *120 Years of American Education: A Statistical Portrait* (US Department of Education Office of Educational Research and Improvement, Jan. 1993), 66.

¹³⁴ Thelin, *Going to College in the Sixties*, 34-36.

¹³⁵ National Center for Education Statistics, Table 320.

¹³⁶ https://nces.ed.gov/programs/digest/d07/tables/dt07_320.asp

¹³⁷ Demos, *Where Congress Went to College: Comparing Tuition Then and Now at our Elected Officials' Alma Maters* (2017?), 52; American Airlines Youth Fare pamphlet (1967-68?).

¹³⁸ Eastern Airlines ad, *Life Magazine*, Aug. 11, 1967, 75.

¹³⁹ Order 69-8-140, Docket 18936, 53 CAB at 478 (Aug. 27, 1969), selections from Initial Decision by HE.

¹⁴⁰ "Air Fares Cuts Youth Benefits," *Daily Pennsylvanian*, Feb. 8, 1966, 6.

¹⁴¹ Robert Lindsey, "Thousands Beat Youth Fare's End," *NYT*, June 1, 1974, 58.

¹⁴² Donald Mahler, *Valley News* (White River Junction, VT), Sept. 8, 2018, 1.

Powers enrolled at Boston University and flew back and forth to New York for modeling jobs.¹⁴² Photographer Annie Leibovitz recalled convincing Rolling Stone editor Jann Wenner it would be cheaper for her, at age 21, to use her youth fare card to fly across the country and photograph John Lennon than to hire a New York photographer.¹⁴³

Yount people enthusiastically used these capitalist opportunities for antiestablishment ends. An anonymous “Yippie conspirator” described flying around giving speeches: “Up in the sky fellow conspirators! What would we do without airplanes?”¹⁴⁴ The satirical underground paper *The Realist* suggested American Airlines was “destroying America” by making it easy for young protesters to fly around the country: “Hello, Charlie, Peggy, Lynn. We’re having a confrontation this week. Come on down.”¹⁴⁵ Even some airplane hijackers flew on youth fare tickets, although, as one reporter remarked, using a discount to hijack a plane was really “adding insult to injury.”¹⁴⁶

The advantages of youth fares weren’t entirely limited to those under 22; in practice, discounted travel was available to anyone who could borrow or steal a youth fare card and plausibly pass as reasonably young. Purchasing a youth fare card from the airline required a traveler to show identification, but *using* a youth card didn’t. Since cards included only limited personal information (name, signature, and sometimes sex, hair and eye color), so it was very easy to fly on someone else’s card. A suspicious gate agent might ask a particularly mature-looking traveler to confirm the information on the card (as in the case of a 72-year-old woman using her granddaughter’s card), but it rarely went further than that.¹⁴⁷ Since airlines soon agreed to honor each other’s ID cards as proof of age, possessing any youth fare card meant flying for cheap.¹⁴⁸

For many, the experience of air travel included getting one over on the capitalist establishment. Underground newspapers ran ads from people seeking to borrow an ID to get a

¹⁴² Virginia Bohlin, “\$400-a-day model yearns to become an art teacher,” *Boston Herald*, June 17, 1973, s. 7, 30.

¹⁴³ “Snap Judgments,” *Rolling Stone*, Dec. 15, 1977, 62 (for the January 21, 1971, cover of *Rolling Stone*).

¹⁴⁴ Agent 31- Yippie Conspirator, “How TWA, Bevo Francis, Che Guevara, and the Yippies Conspired to Cross State Lines to Commit Campus Riots,” *Kaleidoscope Chicago* 1, no. 11 (April 11, 1969), 15-16.

¹⁴⁵ Jerome Agel, “The Cocktail Party,” *The Realist*, no. 85 (Dec. 1, 1968), 4.

¹⁴⁶ Fred Andersen, “2 TWA Hijackers Add Insult to Injury,” *Miami Herald*, Dec. 13, 1968, 30A. See also AP, “Airliner Stops Hijack But Another Is Pirated,” *Morning Advocate* (Baton Rouge, LA), Feb. 4, 1969, 1.

¹⁴⁷ Ronald G. Shafer, “Nation’s Airlines Split over Youth Fares,” *WSJ*, Dec. 5, 1968, 17. There are a handful of cases where airlines did pull aside passengers who seemed older and also possibly fit the FAA’s new hijacking profile. *United States v. Mitchell*, 352 F. Supp. 38 (E.D.N.Y. 1972); *United States v. Doran*, 482 F.2d 929 (9th Cir. 1973); *State v. Miller*, 110 Ariz. 491 (Ariz. 1974).

¹⁴⁸ Order E-23477, Docket 16899 (April 5, 1966).

fake youth fare card (or asking plaintively for their own card to be returned). Younger-looking activists carried youth fare cards—their own and others—as they flew around the country. When 27-year-old SDS leader Bernadine Dohrn was arrested on drug charges in 1969, police found two other people's youth fare cards in her purse. (As one reporter joked, "we'd call that challenging the Establishment at half fare!"¹⁴⁹) In *Steal This Book*, Abbie Hoffman advised readers to borrow or fake a youth fare card for cheaper travel.¹⁵⁰ Memoirs from the period feature fond memories of flying on other people's youth cards. Reporter Ellen Sander described how, in 1969, she "flew up to Toronto on an hour's notice and a borrowed youth-fare card to interview John Lennon."¹⁵¹ Naomi Weisstein described touring with the Chicago Women's Liberation Rock Band, "totally unable to recall the name on the youth-fare card in my wallet."¹⁵²

This didn't always work, of course, especially for more recognizable folks; airline staff ripped up Hoffman's borrowed card at LaGuardia Airport in September 1967, as he flew to Washington D.C. before the March on the Pentagon.¹⁵³ Susan Stern, flying to Chicago to stand trial on charges arising out of the 1969 Weatherman protests, tried to fly on a friend's youth fare card but was detained when the airline recognized her.¹⁵⁴ And in at least one instance, a not-young passenger was identified when the plane was hijacked, leading authorities to scrutinize the passenger list.¹⁵⁵ In 1969, Yippie leader Stew Albert proposed a Yippie boycott of American Airlines, which was "the most uptight" about fake cards and excursion fare rules; "It's another wing of fascism."¹⁵⁶ In a few short years, cheap air travel had become a new generational right.

• Young People Rally in Defense of Youth Fares

The airlines were pleased with the success of the youth fares. Young travelers were buying seats that would otherwise have gone empty, bolstering airlines' profits. They were also making air travel a part of their lives, in ways that promised to pay dividends later. However, youth and military fares posed an existential threat to intercity bus companies, who relied on

149. Robert Wiedrich, "Tower Ticker," *Chicago Tribune*, Sept. 1, 1969, 23.

¹⁵⁰ Abbie Hoffman, *Steal This Book* (1970).

151. Ellen Sander, "The Americanization of the Stones," *Vogue Magazine* (Feb 1, 1970), 170.

152. Naomi Weisstein, "The Chicago Women's Liberation Rock Band, 1970-1973," *New Politics* 15 (2014), p. 34-42, 36.

153. Martin Carey, "Diggers Busted for Litter," *East Village Other*, vol. 2, no. 22 (October 1, 1967), 6.

154. Susan Stern, *With the Weathermen: The Personal Journal of a Revolutionary Woman* (Doubleday, 1975), 337-38.

¹⁵⁵ Don Bedwell, "Youth Fare's Wings Are Folded," *Miami Herald*, May 31, 1974, 2B.

¹⁵⁶ Stew Albert, "Abbie Aloft: The High and Mighty," *Berkeley Tribe* 1, no. 20 (Nov. 21, 1969), 3.

business from young people, military travelers, and lower-income Americans.¹⁵⁷ Air travel was so much faster that, once prices came down, bus companies couldn't compete. The University of Delaware newspaper told readers that a trip to Los Angeles "would cost you \$88 and take 52 hours by bus" but by plane "you arrive in four hours after a movie – for \$18 less."¹⁵⁸ And if you were going to Miami, "unless you get hijacked, you get one full day longer in the sun if you fly."¹⁵⁹ (A not implausible risk in the Golden Age of hijacking.¹⁶⁰)

In 1965, when the CAB was considering the fares, the Transcontinental Bus System had complained that certain youth fare proposals were, like military standby fares, unjustly discriminatory. Standby passengers risked little practical inconvenience; young adult reserved fares were even less justifiable, since there was no element of uncertainty that distinguished these fares from others. More broadly, the bus company saw no rhyme or reason in the CAB's fare policy; this was all "a disoriented potpourri of airline rates" that represented "rate-making by whimsey."¹⁶¹ The airline industry routinely bragged that all of these promotional fares saved Americans money. However, while this was true on average, the benefits were uneven; not all passengers were eligible for all discounts. Segmenting the market into high fares and low fares benefited the airlines more than the American public, since they could keep charging full-fare passengers high prices while using low fares to lure new customers. Americans would be better off, they argued, if fares were lowered across the board. The bus companies argued that it was "truly ironic" that they were the ones standing up for the public's interest. However, "neither the airline community nor any consumer organization has come forward to stem the flow of recent discriminatory and uneconomic tariffs."¹⁶² After the CAB approved the fares over these objections, the bus system sued.

¹⁵⁷ On intercity bus travel, see Albert E. Meier and John P. Hoscheck, *Over the Road: A History of Intercity Bus Transportation in the United States* (Motor Bus Society, Inc., 1975)

¹⁵⁸ "Is the Youth Fare Dead?" University of Delaware, Feb. 7, 1969, Reprinted in Congressional Record - House, Feb. 17, 1969, 3406-07.

¹⁵⁹ Ibid.

¹⁶⁰ See Elizabeth Rich, *Flying Scared* (Stein and Day, 1972); Brendan I. Koerner, *The Skies Belong to Us* (Crown Publishers, 2013); Teishan A. Latner, "Take Me to Havana! Airline Hijacking, U.S.-Cuba Relations, and Political Protest in Late Sixties' America," *Diplomatic History* 39, no. 1 (2015): 16-44; Johan Grimmonprez, *dial H-I-S-T-O-R-Y* (film, 1997).

¹⁶¹ Joint Complaint of National Trailways Bus System and its Forty-Six Independent Member Carriers Requesting Suspension and Investigation, Docket 16826, Jan. 3, 1966, 3, Record on Review, Vol. 2, Box 16, 1965-1969, Selected Appeals Litigation Case Files. 1944-69, Litigation Division, Office of the General Counsel, RG 197.

¹⁶² Joint Complaint of National Trailways Bus System and its Forty-Six Independent Member Carriers Requesting Suspension and Investigation, Docket 16826, Jan. 3, 1966, 2, Record on Review, Vol. 2, Box 16, 1965-1969, Selected Appeals Litigation Case Files. 1944-69, Litigation Division, Office of the General Counsel, RG 197.

The Fifth Circuit agreed that the Board should not have dismissed the bus system's complaints without a hearing.¹⁶³ "The rule of equality is the very core and essence" of transportation fare regulation, the court noted, and claims that the fare was unjustly discriminatory needed more consideration than the Board had offered.¹⁶⁴ The court was particularly suspicious of the CAB's sudden choice to let airlines experiment with promotional fares, after years of a more conservative approach; Although "the genius of the administrative practice is its adaptability and flexibility to the rapidly changing social and economic situation," the court was skeptical that "such a radical change in policy can be justified without any evidentiary basis or rational justification."¹⁶⁵ The court returned the matter to the CAB for more consideration, during which time the fares remained in place.¹⁶⁶ After a two-year investigation, CAB hearing examiner Arthur S. Present concluded in February 1969 that limiting the youth fares to young people was impermissibly discriminatory.¹⁶⁷ Nor did social policy reasons, like the relative safety of air travel versus highway travel, convince him that the fares should continue.¹⁶⁸ The CAB quickly announced it would review the decision itself given the significance of the matter, and set a hearing for March.¹⁶⁹

This threat to the youth fares came as a shock to young travelers who thought that cheap airfare was very much in *their* interest. Youth fares had created their own constituency, one that now mobilized to fight. As one reporter noted, "In an uncharacteristic reversal of roles, the youth of America is attempting to maintain the status quo."¹⁷⁰ Young people already accustomed to protesting the government turned their attention to the CAB.¹⁷¹ In March, the *Wall Street Journal* reported, "The student protest movement has spread to the Civil Aeronautics Board."¹⁷²

163. *Transcontinental Bus System, Inc. v. CAB*, 383 F.2d 466 (5th Cir. 1967).

164. *Transcontinental Bus System, Inc.*, 383 F.2d at 485.

165. *Transcontinental Bus System, Inc.*, 383 F.2d at 491.

166. Order E-25581, Dockets 16805, 16806, 16807, 16808, 16811, 16823, 16851, 16826, 18936, 47 CAB 1058 (Aug. 23, 1967).

167. Excerpts from the Initial Decision of Examiner Arthur S. Present, Order 69-2-106, Docket 18936, reprinted at 53 CAB 459, 475 et seq. (Feb. 20, 1969), 9.

168. Excerpts from the Initial Decision of Examiner Arthur S. Present, Order 69-2-106, Docket 18936 (Feb. 20, 1969) 41.

169. Order 69-1-106, Docket 18936 (Jan. 27, 1969).

170. Don Hagengruber, "Congress Getting Into Youth Fare Controversy," Wausau (WI) *Daily Herald*, July 11, 1969, 10.

171. Todd Gitlin, *The Sixties: Years of Hope, Days of Rage* (Bantam Books, 1987); Maurice Isserman, *If I Had a Hammer* (Basic Books, 1987); Douglas Rossinow, *The Politics of Authenticity* (Columbia University Press, 1998); Ronald Fraser, *1968: A Student Generation in Revolt* (Pantheon, 1988); Kenneth J. Heineman, *Campus Wars: The Peace Movement At American State Universities in the Vietnam Era* (NYU Press, 1994).

172. "Collegians Bombard Proposal to Abolish Airline Youth Fares," *WSJ*, March 13, 1969, 10. On policy feedback,

Protesters were admittedly uncertain about how best to influence an independent board, but turned to direct pressure techniques that had worked elsewhere. A *Yale Daily News* writer suggested to readers (with little evidence): "The Board can be influenced by public opinion, if protest comes in large enough numbers."¹⁷³ More than 2,000 Yale students signed a petition, and some 25-50 Yale students protested in front of the local Trailways Bus Terminal, highlighting the bus company's role in the challenge.¹⁷⁴ The National Student Association asked college students across the country to make sure to write in support of the youth fares before the March 1969 hearing.¹⁷⁵ Protesters sent thousands of letters, telegrams, and petitions berating the Board¹⁷⁶; it was, one correspondent said, "a parasite on the body of mankind."¹⁷⁷ Administrative hearing examiner Arthur S. Present was personally excoriated in the student and underground press.¹⁷⁸ One paper described Present's "'past' thinking" and suggested "There's more future than present involved for young America."¹⁷⁹ While the CAB didn't consider the letters part of the formal record, Board members were aware of the volume and general tenor of the replies, and CAB vice-chairman Whitney Gillilland quoted liberally from the letters in his speeches.¹⁸⁰

Young travelers didn't just write to the CAB; they also reached out to members of Congress, to the White House, and to college, state, and national newspapers to express their opposition.¹⁸¹ Princeton students from Illinois traveled to Washington D.C. to present Sen. Charles Percy (R-Ill.) with a draft bill to save the fares; they also formed "Half-Fair," a group dedicated to pushing students across the country to express their support.¹⁸²

see Daniel Béland, "Reconsidering Policy Feedback: How Policies Affect Politics," *Administration & Society* 42 (2010): 568-90.

173. Wayne Liebman, "Youth Fare and You," *Yale Daily News*, Feb. 17, 1969, 2.

174. Wayne Liebman, "Yale Backs Youth Fare; Demonstration Scheduled," *Yale Daily News*, Feb. 21, 1969, 1; "Student Picket Buses, Congress Favors Youth," *Yale Daily News*, Feb. 24, 1969, 1.

175 Robert S. Powell Jr. to "Dear Student Leader," March 7, 1969, Folder Youth Fare, Box 164, USSA Records.

176. "Decision Makers: Hearing Examiners Play Key Role in Operations of Regulatory Agencies," *WSJ*, Sept. 16, 1969, 1, 19; see also UPI, "Youth Air Fares Supported," *LAT*, March 14, 1969, H7; Whitney Gillilland, "Youth Fares - Chapter Two," *Transportation Law Journal* 4 (January 1972): 11-20.

177 Remarks by Whitney Gillilland, "Youth Fares - Chapter Two," to the Association of Local Transport Airlines, Sept. 30, 1971 [HathiTrust], 12.

178 Marc Rosenberg, "Washington Man could clip our wings," *Toronto Star*, Mar 29, 1969, 28; Parade Magazine, *Wichita Eagle*, April 20, 1969, 128, 2.

179 *Capital* (Annapolis, Maryland), Feb. 12, 1969, 10.

180 Gillilland, "Youth Fare Case," Remarks to the Association of Local Transport Airlines, May 19, 1969, 8, Folder 8, Box 1, Whitney Gillilland Papers, University of Iowa Special Collections (hereafter Gillilland Papers); Gillilland, "Youth Fares - Chapter Two," Remarks to the Association of Local Transport Airlines, Sept. 30, 1971 [HathiTrust], 4.

181. Stephanie Southgate, letter to the editor, University of Tampa *Minaret*, Feb. 1969, 2 (letter reprinted in several other college newspapers).

182. Mike O'Toole, "Frosh Prompt Percy to introduce youth fare bill," *Daily Princetonian*, March 3, 1969, 5;

Young people argued that cheap fares were good social policy. Students described in their letters and phone calls how much they relied on half-price air travel to afford colleges far from home. A Georgetown University student explained that “For many of us, the decision of going away to school, particularly to the fine schools that the Northeast offers, was due in large part to the availability of reasonable transportation.”¹⁸³ One Ohio student sent a more pointed telegram to President Nixon: “If I can't go to Harvard next year it's because of you, sir.”¹⁸⁴ A California student asked the CAB to consider the “several thousand” college students “who will probably spend next Christmas in a dorm.”¹⁸⁵ International students were also worried about what this meant for their own time in the U.S.; representatives from the Danish National Union of Students and the Irish Student Travel Service contacted the National Student Association in alarm.¹⁸⁶ The National Student Association submitted a brief to the CAB arguing that youth fares were a net win, since they increased airline traffic *and* offered “an extraordinary opportunity to broaden educational horizons by bringing air travel within their economic reach for the first time.”¹⁸⁷

Young people also disparaged the idea that it was somehow discriminatory to give young people cheaper air fares. Here students were often talking past the CAB, drawing on moral ideas of nondiscrimination drawn from the civil rights movement rather than the economic ones that underlay common carrier regulation. The *Michigan Daily* said it was “almost totally absurd” that the matter turned on “civil rights—perhaps the cause which inspired the most fervent and widespread response among this nation's students[.]”¹⁸⁸ How could the government use nondiscrimination law to take something away from the young? As the *Catholic University Tower* argued: “A government agency should seek to preserve justice, not create hardships where none exist.”¹⁸⁹ Plus, they argued, young people were more typically the victims of discrimination, and should get the advantages here. The College Press Service noted the

“Airlines: Flying with Student Power,” *Time Magazine*, May 23, 1969.

183. John P. Newman, letter to the editor, *Washington Post, Times Herald*, Jan. 30, 1969, A20.

184. Quoted in “Collegians Bombard Proposal to Abolish Airline Youth Fares,” *WSJ*, March 13, 1969, 10

185. Quoted in Gilliland, “Youth Fare Case,” Remarks to the Association of Local Transport Airlines, May 19, 1969, 8, Folder 8, Box 1, Gilliland Papers.

186. Telegram, Feb. 13, 1969; Gordon Colleary, Secretary and General Manager, Irish Student Travel Service, to Niels de Terra, USNTA, Feb. 20, 1969, both in Folder Youth Fare, Box 164, USSA Records.

187. Brief of the U.S. National Student Association to the Civil Aeronautics Board, Docket 18936, Feb. 26, 1969, 1, Folder Youth Fare, Box 164, USSA Records.

188. Walter Shapiro and Jim Heck, “An exceptionally ‘fare’ way to fly high,” *Michigan Daily*, Jan. 31, 1969, 4.

189. “Keep ‘Em Flying,” *Catholic University Tower*, Feb. 14, 1969, reprinted in Cong. Rec. House, Feb. 17, 1969, 3408.

“generational conflict” at play,¹⁹⁰ and writers for the *Michigan Daily* described how “[a]dult paranoia against the reputed power of American youth reached new heights” in this finding that “the adults of America are being discriminated against[.]”¹⁹¹ Meanwhile, calling examples of age discrimination “inexhaustible” one writer pointed to the fact that young men could be drafted at 18 but couldn’t vote until they were 21.¹⁹² Young people were more disadvantaged than not; another young correspondent asked the CAB to make good policy for those who were too young to vote and whose interests were overlooked by the powers that be: “You ask why students revolt. You ask why there is violence. There is revolution, and violence because this letter will not be read, just ignored.”¹⁹³

Some members of Congress jumped in to defend youth travelers. Democrats and Republicans alike sponsored a concurrent resolution expressing “the sense of the Congress” that the child, youth, and military air fares were legal.¹⁹⁴ Members also quickly introduced bills in both houses—none of which got very far—to amend the Federal Aviation Act to explicitly allow free and reduced fares for youth passengers. Rep. Arnold Olsen (D-Mont.), a strong supporter of youth fares, expressed concern that young people would return to hitchhiking (“both illegal and dangerous”) or driving (in “inadequate vehicles for exhausting trips on already overcrowded highways, straining their reflexes and health to make long trips as quickly as possible[.]”)¹⁹⁵ The youth fare didn’t just help people afford college; it saved lives.

In August 1969, young travelers were thrilled to hear the CAB’s final verdict: the youth fares would stay in place. Over a dissent from CAB member Adams (a “father of a youth” who was nonetheless troubled by the discrimination), the CAB announced that the fares were not unjustly discriminatory, and would not be eliminated.¹⁹⁶ While it was not at all clear that the CAB was convinced by the volume of letters and telegrams, or by substantive arguments about the social utility of youth travel, those who had pressured the CAB savored their victory.

¹⁹⁰ CPS, “Youth Fares Still Uncertain,” *Oakland Observer*, March 28, 1969, 5.

¹⁹¹ Walter Shapiro and Jim Heck, “An exceptionally ‘fare’ way to fly high,” *Michigan Daily*, Jan. 31, 1969, 4.

¹⁹² Jim Marzano, “Youth Fare Fair?” *Loyola News*, Feb. 14, 1969, reprinted in Cong. Rec. House, Feb. 17, 1969, 3407-08.

¹⁹³ Gilliland, “Youth Fare Case,” Remarks to the Association of Local Transport Airlines, May 19, 1969, 12, Folder 8, Box 1, Gilliland Papers.

¹⁹⁴ H. Con. Res. 144, 91st Cong. 1st sess., Feb. 19, 1969.

¹⁹⁵ Rep. Arnold Olsen to CAB chairman John Crooker, reprinted in Cong. Rec. extension of remarks, Jan. 23, 1969, 1714.

¹⁹⁶ Order 69-8-140, Docket 18936, 53 CAB at 474 (Aug. 27, 1969).

- **The CAB Reconsiders Its Fare Policy**

Economic considerations were much more responsible for the CAB's about-face. The CAB wasn't really concerned about *why* Americans were flying—that is, whether air travel helped them pursue educational pursuits or otherwise enriched their lives. Although one correspondent had urged the CAB to “stop being such capitalists[,]” the CAB's task was to make sure that the airline industry as a whole remained financially stable.¹⁹⁷ Board members focused on the purely financial question—were the youth fares actually helping the airlines? A majority of the Board members determined that the discriminatory aspects of youth fares could indeed be justified by their economic benefits. The fares had brought in lots of new passengers, and could only work if they were restricted to certain segments of the population; otherwise, full-fare passengers would simply choose to pay less, hurting the airlines' bottom line. The CAB took seriously the airlines' “expert judgment” that expanding standby fares to all carried “a sizeable risk of substantial adverse results” to profits.¹⁹⁸ Statutory nondiscrimination language did not require the Board “to take an action which would accomplish no useful purpose and appears to be so clearly at war with the fundamental objectives of the Act.”¹⁹⁹ Plus, although these fares were discriminatory, in the common carrier sense, the CAB pointed out that offering discounted fares to young people wasn't “blatant and invidious” like discrimination “on racial or religious grounds[.]”²⁰⁰ Such discrimination would be more legally problematic.

The Board authorized continued use of the youth fares even as it was grappling with larger challenges in the airline industry throughout 1969. The CAB allowed a general fare increase in April, and another in September, to tackle the airlines' lagging profits. Some of the problems, the CAB thought, came from the airlines' use of promotional fares. While the CAB would conclude that youth fares, on their own, weren't a problem, the Board was suspicious that, taken together, youth fares, family fares, military fares, and excursion fares were having unintended consequences for airline finances.²⁰¹ On the one hand, passenger traffic had almost doubled between 1964 and 1969; about 40% of those passenger-miles came from some kind of

¹⁹⁷ Gilliland, “Youth Fare Case,” Remarks to the Association of Local Transport Airlines, May 19, 1969, 10, Folder 8, Box 1, Whitney Gilliland Papers, University of Iowa Special Collections.

¹⁹⁸ Order 69-8-140, Docket 18936, reprinted at 53 CAB 461 et seq (Aug. 25, 1969) 470.

¹⁹⁹ Order 69-8-140, Docket 18936, reprinted at 53 CAB 461 et seq (Aug. 25, 1969), 471.

²⁰⁰ Order 69-8-140, Docket 18936, reprinted at 53 CAB 461 et seq (Aug. 25, 1969), 470.

²⁰¹ Order 69-8-140, Docket 18936, reprinted at 53 CAB 461 et seq (Aug. 25, 1969).

promotional fare.²⁰² This suggested that all these promotional fares were working; the CAB boasted to Congress that its policies had “done much to bring the benefits of air transportation to persons who might otherwise find it too expensive.”²⁰³ The airline lobby similarly bragged that promotional fares had saved Americans more than \$500 million.²⁰⁴

However, overcapacity remained an enormous, and growing, problem. The percentage of seats filled by paying passengers—53%—was the lowest it had been in 20 years.²⁰⁵ The Board suspected that airlines had reacted to the sharp rise in promotional traffic not by filling all their empty seats and pocketing the profits, as the CAB had intended. Instead, assuming that the number of passengers would continue to grow indefinitely, airlines bought more planes and added more flights.²⁰⁶ Airlines were also taking on billions of dollars of new debt to order new wide-bodied jumbo jet planes that could hold twice as many passengers.²⁰⁷ Once Pan Am had placed an order for new jumbo jets, the other airlines had followed. While the last thing any airline needed was more seats, no airline executive wanted to be caught with older equipment than its competitors. External factors also hit the airlines hard. While airlines had assumed that a booming economy and passenger growth would continue indefinitely, in the late 1960s prices, fuel costs, labor costs, airport fees, and interest rates all skyrocketed.²⁰⁸ While 1966 had been a banner year, airline earnings started to decline in 1967; in 1968 profits dropped 48% and the airlines' return on investment was down to 5%.²⁰⁹

Early in 1969, airlines came to the CAB begging for permission to increase fares. United warned of the “economic deterioration” that would result from all of these external factors, which (airline officials hastened to add) were “completely beyond the ability of management to

202. Order 69-8-140, Docket 18936, reprinted at 53 CAB 461, 467 (Aug. 25, 1969), 467.

203 Response of the Civil Aeronautics Board to Sen. Kennedy, April 7, 1969, reprinted in Responses to Questionnaire on Citizen Involvement and Responsive Agency Decision-Making, Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary, Committee Print, 91st Congress, 1st Session (Sept. 9, 1969), 7.

204 ATA, *Air Transport Facts and Figures* (1967), 20, 9.

205. Air Transport Association, *Air Transport Facts and Figures* (1969); *Aviation Daily*, March 3, 1969, 1.

206 No airline wanted to be the first to pull back, but the airlines did get permission from the CAB to agree to collectively reduce the number of flights they offered. Robert Lindsey, “Recession Curtails Scheduled Jet Flights,” *NYT*, Dec. 6, 1970, 82; Orders 71-8-91, 71-3-71, Docket 22908, 57 CAB 641 (1971); Order 72-8-42, reprinted at 61 CAB 822, 840.

207 United Airlines Statement of Justification, July 31, 1969, Box 345, John E. Moss Papers, 1977/01, California State University, Sacramento (hereafter Moss Papers).

208 Najeeb E. Halaby, *Crosswinds: An Airman's Memoir* (Doubleday & Co., 1978), 249-50; see also Robert M. Collins, “Growth Liberalism in the Sixties: Great Societies at Home and Grand Designs Abroad,” in David Farber, ed., *The Sixties... From Memory to History* (UNC Press, 1994), ch. 1.

209. Air Transport Association, *Air Transport Facts and Figures* (1969), 14.

avoid.”²¹⁰ American Airlines bemoaned plunging stock prices, spiraling costs, and declining profits, and noted the “urgently-required increase in revenue” that higher fares would bring.²¹¹ The CAB grudgingly authorized a general 3.8% fare increase in April 1969, while expressing frustration that the Board had to save the airlines from a problem of their own making. As the Board noted, airlines would be better off “exercising restraint in ordering new flight equipment and in the use of its available capacity” rather than raising prices.²¹² However, the Board had no authority to regulate how many planes the airlines bought, or how many flights they offered; its authority centered on the fares airlines charged. Since the CAB was tasked with keeping the airlines in good financial health, vice chairman Whitney Gillilland explained, to suspend the proposed fare increases “would be like stopping a fire truck for a formal investigation to determine what route to take on the way to a fire.”²¹³ The CAB’s most immediate task was to prevent the airlines from financial calamity.

- **Rep. John Moss Versus the CAB**

The April 1969 general fare increase was immediately attacked by Rep. John Moss (D-Cal.), a long-time critic of the CAB.²¹⁴ Moss, the author of the Freedom of Information Act, was committed to transparency in government operations and skeptical of administrative opacity. Moss excoriated the CAB for simply giving the airlines the fare increases they wanted, without reference to any rule about when fare increases were appropriate.²¹⁵ In a lengthy complaint filed with the CAB, Moss described in detail how “many thousands of individual fare changes have been filed by the air carriers during the past 31 years” but yet “the Board has never investigated the overall fare structure of the air transportation industry to determine whether the charges made

²¹⁰ United Statement of Justification, July 31, 1969, Box 345, Moss Papers.

²¹¹ William D. Stewart, Jr., Vice President, American Airlines to CAB, Aug. 11, 1969, 7, Folder: Moss vs. Civil Aeronautics Board – Fare Change 1969, 1972, Box 345, Moss Papers. See also “Take-Off on Airlines,” *Barron’s*, July 28, 1969 and Aug. 4, 1969.

²¹² Order 69-5-28, Docket 20928 (May 8, 1969), 4.

²¹³ Remarks by Whitney Gillilland, “Youth Fares – Chapter Two,” to the Association of Local Transport Airlines, Sept. 30, 1971 [HathiTrust], 5

²¹⁴ Ward Sinclair, “The Man Who Perfected Oversight,” *Washington Post*, Jan. 14, 1979, G3. See Michael R. Lemov, *People’s Warrior: John Moss and the Fight for Freedom of Information and Consumer Rights* (Fairleigh Dickinson University Press, 2011) for a description by a former Moss employee of Moss’s overall philosophy, although there’s no discussion of his beef with the Civil Aeronautics Board. On transparency, see John E. Moss, “Future Problems and Prospects,” in *The Voice of Government*, eds. Ray E. Hiebert and Carloon E. Spitzer (John Wiley and Sons, 1968), 25-36.

²¹⁵ Complaint of Members of Congress and Air Transportation Users with Request for Tariff Suspension and a General Rate Investigation, April 21, 1969, Folder Moss vs. Civil Aeronautics Board - Fare Change Proposal 1969, Box 345, Moss Papers; Press Release, April 21, 1969, Folder “TWA - JEM et al v. TWA”, Box 124, Moss Papers.

for passenger service by the air carriers, including the applicant, are in fact ‘just and reasonable.’”²¹⁶ Without standards that considered not just ROI, but also costs, spending, and load factors, the CAB had little choice but to keep raising fares. Thus, airlines, not the CAB, were “the actual creators not only their own ratemaking policy, but more importantly, the national policy.” Ignored were “the vital interests of the present and future needs of the foreign and domestic commerce of the United States for an adequate and efficient air carrier system.”²¹⁷ As he noted, “The remarkable thing about the regulation of air passenger fares in the United States, therefore, is how little of it there has been.”²¹⁸

Moss filed another complaint with the CAB when the Board approved a second, larger fare increase in September 1969.²¹⁹ By the fall, inflation had already swallowed up the benefits of the April fare increase. The CAB noted that it couldn't let airlines continue to suffer “with operating costs spiraling upward”²²⁰ – a fare increase was necessary “to maintain the financial vitality of the carriers as a group.”²²¹ Moss protested, arguing that the fares had been “considered solely from the standpoint of air carriers and not the public interest.”²²²

Moss was furious not just about the higher fares, which he saw as a giveaway to the airlines, but also the way the CAB had made them. When the airlines had proposed higher fares, the CAB had suspended them but indicated the conditions under which the Board *would* approve them.²²³ This seemed to Moss a particularly egregious example of the CAB substantively following the lead of the airlines, while procedurally avoiding the transparency of formal rulemaking.²²⁴ Not only was this bad policymaking, it was collusive. Instead of holding public hearings setting rates, CAB officials talked privately and informally with airline officials about what fares it *might* approve. Once the airlines formally filed them, the CAB let them take effect.

When the CAB ignored his objections, Moss sued, and the D.C. Circuit agreed that the

²¹⁶ Congressional Record, 10131 (April 23, 1969).

²¹⁷ Congressional Record, 10132 (April 23, 1969).

²¹⁸ Complaint of Members of Congress and Air Transportation Users with Request for Tariff Suspension and a General Rate Investigation, April 21, 1969, 4, Folder Moss vs. Civil Aeronautics Board - Fare Change Proposal 1969, Box 345, Moss Papers.

²¹⁹ Air Transport Association, *Facts and Figures* (1970), 9; “3.8% Fare Rise is backed by CAB,” *NYT*, Jan. 17, 1969.

²²⁰ Order 69-9-68 (Sept. 1969), 5.

²²¹ Order 69-9-68 (Sept. 1969), 8.

²²² Moss quoted in *Aviation Daily*, Oct. 7, 1969, 208

²²³ Order 69-9-68, Docket 21322 (Sept. 12, 1969), 3.

²²⁴ “32 in Congress Go to Court to Halt Rise in Air Fares,” *NYT*, Nov. 11, 1969, L95. Fun fact: Moss’s attorney, Stanford Ross, was married to historian Dorothy Ross.

CAB couldn't make rates in this cozy way.²²⁵ If the CAB wanted to set rates itself, it was required to follow the formal administrative processes set out in the regulations. The Board couldn't simply suggest to the airlines what rates it *would* accept, "after closed sessions with carrier representatives" and without any of the protections of ratemaking, like public hearings or the right to judicial review.²²⁶ The court rejected this "complete and innovative scheme for setting all passenger rates for the continental United States."²²⁷ If the CAB wanted to make rates, it had to follow the rules for doing so.

The court also strongly critiqued how well the CAB was actually protecting the public interest, joining the chorus of those questioning agency governance in the late 1960s. Federal judges were increasingly skeptical of administrators' decisionmaking at the CAB and beyond.²²⁸ Outside the courts, Ralph Nader and his colleagues were busily highlighting how closely administrative priorities reflected the priorities of the regulated businesses.²²⁹ In *Moss v. CAB*, the court was skeptical that the CAB had properly balanced its responsibility to the carriers with its responsibility to the public. Higher fares would boost airlines' profits, but, the court noted that "there is more to rate-making than providing carriers with sufficient revenue to meet their obligations to their creditors and to their stockholders."²³⁰ Higher fares would squeeze passengers, and the Board did not have "a carte blanche" to simply look out for the carriers while ignoring statutory factors like "the traveling public's interest in the lowest possible fares and high standards of service[.]"²³¹ The court was forced to ask "whether the regulatory agency is unduly oriented toward the interests of the industry it is designed to regulate, rather than the public interest it is designed to protect."²³² Vice chairman Whitney Gilliland defended the CAB against claims that the industry was calling the shots. As he argued, the system of American air transportation "splendidly serves the public interest. I am not its captive, nor am I in cahoots with

225. *Moss v. Civil Aeronautics Board*, 430 F.2d 891, 901 (D.C. Cir. July 1970); see also Comment, "Public Participation in Federal Administrative Proceedings," *University of Pennsylvania Law Review* 120 (1972): 702; James C. Kitch, "Some Observations on *Moss v. CAB*," *Stanford Law Review* 23, no. 4 (1971): 833-845.

226. *Moss v. CAB*, 430 F.2d at 900.

227. *Moss v. CAB*, 430 F.2d at 899.

228. See ch. 2 for a full discussion of the environmental law cases, including *Palisades Citizens Association v. CAB*.

229. See ch. 4 for a full discussion of Ralph Nader, his Aviation Consumer Action Project, consumer protection, and the public interest movement.

230. *Moss v. CAB*, 430 F.2d at 901.

231. *Moss v. CAB*, 430 F.2d at 900.

232. *Moss v. CAB*, 430 F.2d at 893.

it, but I greatly admire it.”²³³

The court’s decision in *Moss v. CAB* had little practical effect, as airlines simply observed additional procedural niceties as they refiled the higher fares that were basically identical to the ones previously approved.²³⁴ Moss’s criticism, however, had spurred the CAB to launch a Domestic Passenger Fare Investigation (DPFI) at the beginning of 1970.²³⁵ Described by one Board member as “perhaps the most exhaustive, thorough, comprehensive, and capacity taxing formal investigation” in CAB history, the Board tried again to create the standards for evaluating fares that Moss had demanded. The Board soon divided the DPFI into multiple parts, to separately consider matters like appropriate fare levels, rate of return calculation, optimal load factors, and discount and promotional fares.²³⁶ The CAB folded into the DPFI an ongoing investigation of promotional fares as a whole, which it had begun in 1969. It also included in the DPFI a separate examination of family fares that the Board had launched after Trailways Bus Company successfully challenged the CAB’s failure to justify *those* fares in court.²³⁷

- **The Jumbo Jet Era Arrives at the Worst Time**

In 1970, the airline industry was struggling to climb out of a financial hole at least partly of its own making. At the same time, airlines began taking delivery of enormous new jumbo jets they couldn’t afford and didn’t need. These planes were massive, with twice as many seats as regular jets; one reporter described how seats in the coach section “seem to undulate in endless acres like August corn in Iowa[.]”²³⁸ The planes were so big that airports, jetways, and equipment all had to be reconfigured or replaced, at significant additional expense. Employee wages and airline costs also increased significantly in 1970. Meanwhile, there weren’t anywhere near enough passengers to fill these seats; a recession in the early 1970s dampened leisure travel, and the airlines’ load factor would drop under 50%. This combination of bad airline decisions

²³³ Gillilland, “Captives of Industry?,” Address to Braniff International Airlines Management Club, Nov. 16, 1970, Folder 9, Box 2, Gillilland Papers.

²³⁴ Peter Osnos, “CAB Asks Stay on Air Fares,” *Washington Post, Times Herald*, July 30, 1970, G10.

²³⁵ Order 70-1-147, Docket 21866 (Jan. 29, 1970).

²³⁶ Gillilland, “Fair Fares,” Address to Management Club of United Air Lines, Nov. 2, 1971, 6, Folder 10, Box 2, Gillilland Papers.

²³⁷ *Trailways of New England, Inc. v. Civil Aeronautics Board*, 412 F.2d 926 (1st Cir. 1969). The court explained that “the Board’s compilation of reasons amount to little more than generalizations of principles, unsupported by underlying facts warranting either their invocation or their applicability to the apparent discriminatory aspects of the family fare.” 412 F.2d at 936.

²³⁸ Horace Sutton and David Butwin, “Will It Be the Soaring Seventies?,” *Saturday Review*, Jan. 3, 1970, 32.

and broader economic forces added up to what the airline trade association president called a “witches’ brew of problems.”²³⁹ Airlines’ return on investment in 1970 was 1.5%—far from the CAB’s own 10.5% benchmark—and *Aviation Daily* warned of “staggering” economic losses at the beginning of 1971.²⁴⁰ Once the CAB announced a Standard Industry Fare Level in April 1971 with goals of a 12% rate of return and a 55% load factor, the CAB did permit a 6% general fare increase to ease airlines’ plight. A Stanford economics professor wrote to complain that under CAB supervision the airlines were counterintuitively allowed “to raise prices to offset the effect of falling demand in order to maintain profits.”²⁴¹ Vice chairman Whitney Gilliland defended the CAB, noting that the Board was criticized whenever it raised fares, whether deserved or not. “The regulation of rates is a miserable business at best[,]” he lamented.²⁴²

Meanwhile, airlines threw more money at the problem of overcapacity, trying to turn this unwanted extra space into a luxurious experience. Starting in 1970, airlines configured both their old narrow-body jets and their new jumbo jets to offer passengers a roomier and more luxurious experience—what one reporter called an “inch war” and another called an “‘elbow room’ competition.”²⁴³ Some airlines replaced middle seats with seats that easily folded down into tables, allowing passengers to spread out. A businessman would have room for both his important papers and his Scotch (according to one United ad). Another airline removed seats entirely, replacing three seats on either side of the aisle in coach with 3-2 seating that offered all coach passengers bigger seats and a wider aisle.²⁴⁴

Airlines also tried to entice passengers with new in-flight lounge space, kicking off the

²³⁹ Air Transport Association, *Air Transport Facts and Figures* (1971).

²⁴⁰ *Aviation Daily*, March 24, 1971, 138.

²⁴¹ Prof. Melvin W. Reder to CAB, April 19, 1971, Docket 21866-5, volume 1A, Box 1129, RG 197.

²⁴² Gilliland, “Fair Fares,” Address to Management Club of United Air Lines, Nov. 2, 1971, 18, Folder 10, Box 2, Gilliland Papers.

²⁴³ Robert Lindsey, “In Airlines’ Battle, Every Inch Counts,” *NYT*, Nov. 28, 1970, 1 at 93; Richard Witkin, “Airline ‘Space Race’ Turns to Economy-Class Lounges,” *NYT*, Sept. 26, 1971, S30.

²⁴⁴ Seating competition among airlines became significant enough that airlines asked the CAB to figure out if seating, usually within the airline’s discretion, implicated fares—that is, should airlines be required to charge the same fare for a narrow coach seat as a wider and more comfortable one? The Board determined in April 1971, as part of the DPFI, that airlines were free to choose a 3-2 configuration but would have to raise the fares accordingly. Since this would likely drive price-conscious coach passengers to airlines without such seating, airlines retreated from these configuration wars. Order 71-4-48, Docket 21866-6A, DPFI phase 6A (April 8, 1971). This involved the predicate question of whether the CAB even had authority over seating, or whether that fell into the § 401(e) accommodations discretion left to the airlines. In *Continental v. CAB*, the court determined that the CAB had exceeded its authority. 522 F.2d 107 (D.C. Cir. 1974). However, by this point, airlines were already moving to remove their lounges. *Aviation Daily*, Nov. 15, 1974, 82.

“Lounge Wars” of 1971-73.²⁴⁵ First-class lounges were already fairly common on airplanes, but airlines now replaced coach seats with bars and lounges for coach passengers. “The Pub” on Continental flights offered free popcorn; United’s lounge was catered by Trader Vic’s Polynesian restaurant.²⁴⁶ On some United and Continental flights, passengers could stroll between two different coach lounges.²⁴⁷ Passengers drank, often heavily, and, the *New York Times* reported, “Single passengers—and some not single—used the lounges as sort of an airborne pick-up bar.”²⁴⁸ One underground newspaper described how “airlines are turning their heads when horny passengers decide to pass a few hours balling 20,000 feet in the air.”²⁴⁹ Beyond alcohol and sociability, airlines offered live entertainment like caricaturists, wine-tasting, fashion shows, magic shows, and sing-a-longs.²⁵⁰ American added electric pianos to some flights for any passenger to play; Frank Sinatra Jr. and his jazz combo were booked on one overnight flight.²⁵¹ Pan Am featured a guitar trio on flights between New York and San Juan, and Continental had a “folk rock pop” guitar duo called the Pineapple Splits perform on Los Angeles-Honolulu

245. “The Lounge War,” *WSJ*, May 24, 1971, 12; Thomas Petzinger Jr., *Hard Landing: The Epic Contest for Power and Profits That Plunged the Airlines into Chaos* (Random House, 1995), 20. As with the “inch wars,” the “lounge wars” died out after the CAB told TWA in February 1973 that it could charge less on flights without lounges. Order 71-4-48, Docket 21866-6A, DPFI Phase 6A (April 8, 1971). Robert Lindsey, “Those Economy Flights of Fancy are Fast on Way Out: Wine-Tasting Parties,” *NYT*, Feb. 16, 1973; *Aviation Daily*, Nov. 15, 1974, 82.

246. Jerry Hulse, “Airlines Escalate War of the Lounges,” *Atlanta Constitution*, Jan. 16, 1972, 8F.

247. “United to Make Skies More Friendly in 747 With 2 Coach Lounges,” *WSJ*, May 19, 1971, 22.

248. Robert Lindsey, “Those Economy Flights of Fancy are Fast on Way Out,” *NYT*, Feb. 16, 1973.

249. Jack Frazier, “In Flight Balling,” *NOLA Express*, September 24, 1971, 5.

250. Robert Lindsey, “Those Economy Flights of Fancy Are Fast on Way Out,” *NYT*, Feb. 16, 1973.

251. “‘Seat War’ on Airlines Is Now Musical Chairs,” *NYT*, Aug. 26, 1971; “Piano Stool Added in Airline Seat War,” *Los Angeles Times*, Aug. 26, 1971, F2

flights.²⁵²



Vintage postcard depicting Continental's Polynesian Pub (a coach lounge on a 747)



American Airlines' 747 coach lounge is pictured before piano-bar installation. (Jon Proctor Collection)

252. Todd E. Fandell, "Aerial 'Happenings' Planned by United Air in Lounge War Sequel," *WSJ*, July 13, 1972, 20.

All of these in-flight amenities seemed pretty frivolous to Americans who were bearing the brunt of the recent fare increases. Some businesses suggested that they would pull back on business travel. Others were angry about new limits on the popular “Discover America” excursion fares that were part of the overall fare increase.²⁵³ Carole F. Humphreys, of Humphrey's Chihuahuas, described how she had used these fares frequently as an American Kennel Club judge and dog exhibitor. With the new seven-day stay requirement, she and her family (and her chihuahuas) would have to start driving.²⁵⁴ Another American Kennel Club judge appealed to the CAB for relief “on behalf of some one million pure-bred dog fanciers in the United States” given all the travel required for the job.²⁵⁵

Travelers facing higher prices were increasingly resentful of those who were eligible for promotional fares. As part of the fare increases, the CAB had allowed airlines to reduce the standby youth fare discount from 50% to 40% and the young adult reserved fare discount from 33% to 20-25%.²⁵⁶ These were still significant discounts, however, especially as inflation hit Americans' travel budgets. Many were particularly exercised that young people were getting something that others did not; this smacked of discrimination. As a representative of the Federal Employees Metal Trades Council argue to the CAB, “If they charged a black man more than a white man, I believe you would disapprove of that. To me there is no difference.”²⁵⁷ A veteran attending college complained about the “gross inequity” of providing discounts to younger travelers but not to older students using the GI bill, or people in the Peace Corps and VISTA.²⁵⁸ Older Americans argued that they, like young people, were also an untapped market with limited funds and lots of time, and they were just as worthy—if not more so—than the younger generation. One woman implored, “the teenagers have had their chance now let's let the sixty-

²⁵³ Robert Dietsch, “Civil Aeronautics Board is Winning War Over Airline Fares,” *Knoxville News-Sentinel*, Dec. 10, 1967, 39.

²⁵⁴ Carole F. Humphreys, Humphrey's Chihuahuas, Glendora CA, to CAB, April 13, 1971, Box 1129, Docket 21866-5, Selected Docket Files, Docket Section, Office of the Secretary, RG 197.

²⁵⁵ Testimony of Forest Hall (FH-1), 1, vol. 14, Box 1143, Docket 21866-5, Selected Docket Files, Docket Section, Office of the Secretary, RG 197.

²⁵⁶ Deborah B. Johnson, “Airlines Increased Stand-By Prices,” *Harvard Crimson*, Oct. 11, 1969; Norman, L. Dean, “Youth Fare Discounts Decreased,” *Yale Daily News*, Oct. 16, 1969, 1-5; “4 Major Airlines Decrease Benefits On ‘Youth Fares,’” *Columbia Daily Spectator*, Oct. 13, 1969, 3. In 1971, the discount on some youth fares would decline further, to 1/3 off. Order 70-11-93; CAB, *The Feasibility and Economic Impact of Youth Standby Fares* (May 1978).

²⁵⁷ William J. Courtney, Federal Employees Metal Trades Council, Ft. Benning, GA, Aug. 3, 1972, to CAB, Docket 21866-5, vol. 1, Box 1138, RG 197.

²⁵⁸ Jon G. Flower, South Dakota, to CAB, March 11, 1970 [141], Docket 21866-5, vol. 1, Box 1139, RG 197.

agers have theirs!”²⁵⁹ Another letter complained of youth travelers as “a vagabond band traversing through the air, contributing nothing and taking advantage of the talent and years of training of young men who had ambition enough to build the planes they fly on.”²⁶⁰ Social Security only went so far, they pointed out, and “Many of us haven’t seen our children or grandchildren for many years.”²⁶¹

This generation gap in air travel only intensified in spring 1971, when airlines began offering last-minute bargain fares to travelers under 26 in a desperate attempt to fill their own empty jumbo jets. The CAB had only limited legal authority over international fares, so foreign airlines were able to slash fares for American travelers, kicking off what *Time Magazine* called “the greatest price-cutting war in airline history.”²⁶² In many cases, it became cheaper for young people to fly to abroad than to travel within the United States. The Belgian airline Sabena, facing transatlantic jumbo jet flights that were only 11% full, offered youth passengers \$220 round trip tickets between New York and Brussels. Other airlines quickly joined in with their own discounts.²⁶³ The *Boston Globe* suggested: “Kids, this is your summer to see Europe.”²⁶⁴ Young Americans flocked to Europe in the summer of 1971.²⁶⁵ These “blue-jeaned invaders” arrived with backpacks and copies of Arthur Frommer’s *Europe on \$5 A Day*, traveled on cheap Eurail passes or hitchhiked, and slept in hostels and parks.²⁶⁶

At a time when fewer than 6% of all Americans had been to Europe, cheap fares aimed at young people seemed particularly unfair to everyone else.²⁶⁷ One reporter noted that “a horde of callow youths flitting around the world at bargain basement prices provokes spite, anger and

²⁵⁹ Mrs. Edward W. Burke, Newport Beach, CA to CAB, July 9, 1971, Box 1138, Docket 21866-5, vol. 1A, Selected Docket Files, Docket Section, Office of the Secretary, RG 197.

²⁶⁰ Correspondent, received Aug. 19, 1971, Box 1138, Docket 21866-5, vol. 1A, Selected Docket Files, Docket Section, Office of the Secretary, RG 197.

²⁶¹ Petition, Dec. 7, 1970, Docket 21866, Vol. 1A, Box 1129, Selected Docket Files 1938-84, Docket Section, Office of the Secretary, RG 197.

²⁶² “Business: Exodus 1971: New Bargains in the Sky,” *Time Magazine*, July 19, 1971. International airfares were largely determined by the International Air Transport Association (IATA), essentially an airline cartel, with which the CAB had an awkward relationship. There’s a complicated story here about a temporary breakdown in the IATA order that allowed this all to happen, but it’s beyond the scope of this story. See Gilliland, “Youth Fares - Chapter Two,” 15-17.

²⁶³ “Business: Exodus 1971: New Bargains in the Sky,” *Time*, July 19, 1971.

²⁶⁴ “Youth Fares in an air war,” *Boston Globe*, June 21, 1971, 18.

²⁶⁵ For more on young Europeans traveling in this period, see Richard Ivan Jobs, *Backpack Ambassadors: How Youth Travel Integrated Europe* (University of Chicago Press, 2017), 160.

²⁶⁶ “Business: Exodus 1971: New Bargains in the Sky,” *Time*, July 19, 1971; Paul Goldberger, “On the Champs-Élysées,” *NYT*, June 13, 1971, XX1, 15, 18.

²⁶⁷ “Business: Rites of Passage: The Knapsack Nomads,” *Time*, July 19, 1971.

some emerald green envy.”²⁶⁸ A *Washington Post* headline asked of the fares: “Are they Unfair to Parents?”²⁶⁹ One Sacramento resident wrote to Rep. John Moss that she and her husband “simply see red” over the cheap fares offered to “our sloppy lazy young[.]” Meanwhile they, as part of “that miserable, discriminated-against group that is being taxed out of existence” were left to “rot in Sacramento in the hot summer.”²⁷⁰ One woman tried to sue Alitalia for discrimination after she paid \$707 for a round trip ticket to Rome, and her younger sister paid only \$202 to sit next to her.²⁷¹ A correspondent from New Jersey reported “learning one thing from youth – PROTEST!”²⁷²

- **Americans Rally, Again, for Youth and Family Fares**

In the fall of 1972, as the CAB wrapped up the promotional fares phase of its sprawling Domestic Passenger Fare Investigation (DPFI), rumors circulated on college campuses that the CAB was going to eliminate youth fares.²⁷³ Many suspected that the Nixon administration was waiting until after the November 1972 election—the first presidential election in which 18-year-olds could vote—before antagonizing young voters. Indeed, shortly after the election, the CAB announced that it was going to phase out youth fares and family fares.²⁷⁴

The CAB’s findings did not paint the Board’s previous fare decisions in a good light. It turned out that the promotional fares approach wasn’t particularly good for the airlines.²⁷⁵ The CAB had let airlines discriminate—offering discounts restricted to young people, and to families traveling together—assuming that such discrimination was justified if it returned “significant

²⁶⁸ William Davis, “Youth Fares bring smiles, law suits, and confusion,” *Boston Globe*, June 27, 1971, 63.

²⁶⁹ Anita F. Mintz, “New Airline Youth Fares: Are they Unfair to Parents?” *Washington Post, Times Herald*, June 20, 1971, E1.

²⁷⁰ Mrs. Bertram G. Chappell to Rep. John Moss, Aug. 5, 1971, Folder Fares/Service Air, Box 125, Moss Papers.

²⁷¹ William Davis, “Youth Fares bring smiles, law suits, and confusion,” *Boston Globe*, June 27, 1971, 63; *Gallagher v. Alitalia--Linee Aeree Italiane, S.p.A.*, 361 F. Supp. 1097 (S.D.N.Y. July 23, 1973); *Gallagher v. Alitalia--Linee Aeree Italiane, S.p.A.*, 1976 U.S. Dist. LEXIS 16548 (S.D.N.Y. Feb. 20, 1976). A court rejected a separate class action lawsuit over fares between New York and Paris/London. *Danna v. Air France*, 463 F.2d 407 (2d Cir. 1972).

²⁷² Quoted in Gilliland, “Fair Fares,” Address to Management Club of United Air Lines, Nov. 2, 1971, 11, Folder 10, Box 2, Gilliland Papers.

²⁷³ Debbie Eichner, “Possible Youthfare Sparks Rumor, Misinformation,” *Duke Chronicle*, Nov. 15, 1972, 7; Mary Ann Bradshaw, “CAB May Halt Youth Fares, Studies Age Discrimination,” *Daily Princetonian*, Oct. 10, 1972, 4; Kerry North, “CAB Balks on Air Fare Statement,” *Daily Princetonian*, Oct. 27, 1972, 1-3.

²⁷⁴ Fares that were open to all—like the Discover America fares, which had been reduced to a 12.5% discount—could be continued with an 18 month expiration period, as long as they “are not unjustly discriminatory and meet the profit-impact test[.]”

²⁷⁵ DPFI Docket 21866-5, 234.

developmental benefits” to the airlines.²⁷⁶ However, the CAB’s own analysis suggested that this wasn’t happening. Airline data indicated that many passengers would have simply paid more if the discounts weren’t available.²⁷⁷ Plus, the CAB explained, the whole reason for allowing discounted flights was to fill existing seats with new passengers. Traffic had indeed increased—in 1967, passengers took 28.5 million trips by air; by 1972, this had gone up to 53.9 million trips.²⁷⁸ However, rather than simply absorbing those passengers into existing service and reaping the benefits, airlines had responded by adding *more* flights and *more* planes—thus aggravating the very problem that the fares were trying to solve. As CAB chairman Robert Timm explained to Congress, “because of the discount fare traffic, there are more seats to fill up.”²⁷⁹ The CAB didn’t have the authority to directly ban this behavior, but it had done little through its fare policy to incentivize airlines to spend less.²⁸⁰ Even worse, the CAB explained, the discounted fares were so low that full-fare passengers were being charged more to make sure the costs were covered. Eliminating the discount fares would, the CAB predicted, allow airlines to be able to charge lower fares across the board.²⁸¹

Some Americans were delighted to hear the news that they would no longer be the victims of discrimination. One doctor was pleased that the Board was eliminating “all these foolish discount fares which have so overburdened the rest of us who pay the full fare. Hurrah for you.”²⁸² The president of the National Passenger Traffic Association (for people who managed corporate travel), complained about “discounts for blondes, discounts for brunettes, discounts for everybody except the business traveler. He's trapped.”²⁸³ A woman from Texas wrote the CAB encouragingly: “I am delighted that you are doing away with this injustice!!!I will enjoy my trips even more because I’ll know I’m getting a fair shake from the CAB!”²⁸⁴ A self-described “middle age, single woman” wrote in in support, saying “I resent very much subsidizing the education, taxes, travel, etc. of non-single people in this country. Now if only

²⁷⁶ DPFI Docket 21866-5, 234.

²⁷⁷ DPFI Docket 21866-5, 233.

²⁷⁸ U.S. Bureau of the Census, *1972 Census of Transportation* (1974), v. 1 National Travel Survey, xiv.

²⁷⁹ Senate Commerce Committee, Subcommittee on Aviation, *Reduced Rate Transportation for the Youth, Elderly, and Handicapped, Hearings*, 93rd Cong. 1st Sess. (May 7, 1973), Timm, 36.

²⁸⁰ Order 72-12-18, Docket 21866-5 (Dec. 5, 1972).

²⁸¹ DPFI Docket 21866-5 (1972), 229.

²⁸² Irvine H. Page, MD, to CAB, May 4, 1973 [231] Docket 21866-5, vol. 1A, Box 1138, RG 197.

²⁸³ Quoted in Michael C. Jensen, “On Ground and in Air, Businessmen Complain About Problems of Traveling,” *NYT*, Dec. 24, 1972, 39.

²⁸⁴ Margaret Edelman, Dallas TX, May 7, 1973, [240], Docket 21866-5, vol. 1A, Box 1138, RG 197.

somebody would approve just one scheme to benefit the spinsters and bachelors of this world...”²⁸⁵

Those Americans who had been eligible for the youth and family fares reacted furiously, however.²⁸⁶ Having learned in 1969 that there was at least a correlation between bombarding the CAB with mail and a positive outcome, parents and children tried to convince the CAB that the fares were good social policy. Their letters made clear how much Americans had come to think of access to air transportation as in the public interest—or, at least, in their own interest. College students and their parents complained that the high price of travel, combined with rising tuition, meant they would pay more to travel to and from college. One correspondent from Chicago with four children (two in college) complained colorfully: "I don't know whose axe you are grinding but your typical bureaucratic head up your butt action is hitting me directly in the wallet and I don't like it one damn bit."²⁸⁷ High schoolers sent letters and petitions, bemoaning the end of a cheap fares they had hoped to spend several more years enjoying.²⁸⁸

Other Americans complained that ending family fares hurt families. One correspondent, writing on behalf of Large Families of America, Inc., called the elimination of family fares "another blow to the family unit in American society."²⁸⁹ A Nixon supporter wrote to the president that government policy should “encourage the family group”; indeed, “family togetherness is needed today to help combat this ‘free love’ that is giving the taxpayer so many Welfare problems – children with no father around – broken homes etc.”²⁹⁰ Another correspondent called the decision “another kick in the teeth to family life”; “the CAB is in danger of promoting family destruction.”²⁹¹ A California man wrote to United Airlines complaining that its recent family-oriented ad was a "cruel hoax" since now his family couldn't afford to see their grandparents.²⁹² Ending family fares was actually “reverse discrimination”

285. Allison Bailey, to CAB, June 4, 1973 [19], Docket 21866-5, vol. 1B, Box 1138, RG 197.

286. Robert L. Thornton, "Deregulation: The C.A.B. and Its Critics," *Journal of Air Law and Commerce* 43, no. 4 (Autumn 1977): 641-660, 643.

287. M.H. Smith, Chicago, to Robert Timm, July 19, 1973, vol. 1B, Box 1138, RG 197.

288. James B. Query, Jr., to CAB, May 20, 1973; petition; both in Docket 21866-5, Vol. 1B, Box 1138, RG 197.

289. Judge John Henry Norton, Large Families of America, Inc. to Timm, CAB, May 7, 1973, Docket 21866-5, vol. 1A, Box 1138, RG 197.

290. W. Wallace Hogle to Nixon, May 24, 1973, Docket 21866-5, vol. 1B, Box 1138, RG 197. Mr. Hogle continued: “Our thoughts and prayers are with you on the ‘Watergate Affair[.]’”

291. Statement of Dr. Robert S. Mendelsohn to the Members of the Civil Aeronautics Board Regarding their Elimination of the Youth and Family Fares, Docket 21866-5, vol. 1B, Box 1138, RG 197.

292. John W. Hubbard, Portola Valley, CA, to E.E. Carlson, United, April 24, 1974 [28], vol. 1C, Docket 21866-5, Box 1138, RG 197.

against families, one San Diego mother of five argued.²⁹³

Letter writers also pointed out that the CAB's decision directly hindered other federal policies. President Nixon, like President Johnson before him, had encouraged Americans to vacation in the U.S. instead of going to Europe, but the international promotional fares still in place meant that, for young people, European travel was cheaper than domestic. And even as the administration was telling Americans to conserve fuel, more travelers would be forced to drive.²⁹⁴ One law professor complained that "when gasoline prices are rising and when auto pollution is a grave concern to all, the CAB is forcing the family and the young Americans back into the car—while admitting that it will cost the airlines substantial revenues! The logic makes Alice in Wonderland seem sane in the extreme."²⁹⁵ Frequent fliers wondered at the CAB's logic as they looked around at all the empty seats on planes. One correspondent, who sent a copy of his letter to the Environmental Protection Agency, explained that that "a midweek, midday flight will continue to be half empty and we will needlessly use 300 gallons of fuel."²⁹⁶

The idea that these discount fares constituted illegal discrimination made little sense to people who understood discrimination as something very different. The *New York Times* suggested that the decision "strains the meaning of egalitarianism" and the *Boston Globe* argued, "There seems to be no evidence that the discounted fares discriminate against blacks, women, Jews, Spanish-speaking people, welfare recipients, or any other group more commonly associated with discrimination."²⁹⁷ One travel company president complained about the "murder" of discount fares and seemingly referenced Kitty Genovese in suggesting that "as is the custom today, we all stood around and watched the killing and no one called for help. As there is still time H E L P!!!"²⁹⁸

Young travelers looked beyond the CAB to rally support. The National Student Lobby (NSL), formed in 1971 to target matters of interest to college students, saw affordable air fare as part of its focus on student finances.²⁹⁹ As NSL members suggested, the "CAB will bend to

²⁹³ Judith A. Curry to FAA, May 10, 1973, Docket 21866-5, vol. 1B, Box 1138, RG 197.

²⁹⁴ "Common Sense Loses Again," *Detroit Free Press*, May 16, 1973, 6A.

²⁹⁵ Howard J. Taubenfeld, SMU law professor, to Rep. Alan Steelman, July 2, 1973, Docket 21866-5, vol. 1B, Box 1138, RG 197.

²⁹⁶ John H. Tucker, Rhodes, Hieronymous, Holloway & Wilson, Tulsa, OK, to CAB, May 8, 1973, Docket 21866-5, vol. 1B, Box 1138, RG 197.

²⁹⁷ "Youth Fare Follies," *NYT*, June 4, 1973, 35; "Misuse of Power," *Boston Globe*, May 15, 1973, 14.

²⁹⁸ Peter K. Dallo, President, TourService Inc., Dec. 18, 1972, to Sen. Javits, Docket 21866-5, vol. 1A, Box 1138, RG 197.

²⁹⁹ John D. Morris, "Students Lobby on Air Discounts," *NYT*, Jan. 28, 1973, 105; *Aviation Daily*, Feb. 5, 1973,

whomever makes the most noise.”³⁰⁰ In January 1973, the NSL joined with the Continental Marketing Corporation (which sold youth fare cards) to start the Coalition to Retain Air Discount Fares (CRADF), to lobby Congress for legal change. CRADF representatives urged students to write to Congress for action; “No one else can touch a CAB decision,” said one representative, ‘But Congress can.’”³⁰¹ Rep. Charles Percy (R-IL) encouraged *Seventeen* readers to write to their representatives in support.³⁰² CRADF created a hotline for people to call for information, and widely distributed a form response for student newspapers to distribute. Hundreds of student newspapers printed a CRADF form letter for people to sign and send, and thousands of responses were returned.³⁰³ The coalition included groups like the American Association of Retired Persons and the National Association of Retired Federal Employees; CRADF touted this as a “generation gap” coalition calling for discounted standby fares for younger and older travelers alike.³⁰⁴ For all these groups, NSL representatives argued, standby fares made sense; their lower income offered a rational basis for treating them differently.

None of these efforts worked, however, and airlines phased out their targeted discount fares by June 1, 1974. As the deadline approached, some students rushed home from college at the end of spring semester, following “orders from their parents to beat the deadline” and fly home for cheap one last time.³⁰⁵ Although the CAB had earlier suggested that eliminating youth and family fares would make it possible to reduce all fares, by 1974, this was impossible. Inflation, and the 1973 oil embargo, only made the economic conditions of the airlines more perilous.³⁰⁶

- Conclusion

By the mid-1970s, the CAB had frustrated a lot of Americans. Promotional fare

189; “Youths to Lobby Discounts,” *Atlanta Constitution*, Feb. 23, 1973, 12D.

³⁰⁰ Melinda Hickman, “Ruling Affects Youth Fare,” *Daily Tar Heel*, Jan. 11, 1973, 2.

³⁰¹ Russell Lehrman, Continental Marketing, quoted in “It’s the Only Way to Fly,” *El Tiempo Pasando* (Glendale, AZ, community college), Feb. 9, 1973, 4.

³⁰² Sen. Charles Percy, “Let’s Keep Youth Fares!” *Seventeen Magazine*, Nov. 1973.

³⁰³ NSL Press Release, Aug. 14, 1973, Folder: Press Releases 1973-1975, Box 12, National Student Lobby Papers (hereafter NSL Papers).

³⁰⁴ “Student Support Sought To Retain Youth Fares,” Jacksonville State University *Chanticleer*, Jan. 15, 1973, 3; NSL Press Release, Oct. 12, 1973, Folder: Press Releases 1973-1975, Box 12, NSL Papers.

³⁰⁵ Robert Lindsey, “Thousands Beat Youth Fare’s End,” *NYT*, June 1, 1974, 58.

³⁰⁶ Order 73-5-2, DPFI p. 334, May 1, 1973; Robert Lindsey, “Youth and Family Air Discounts to be Phased Out from June 1,” *NYT*, May 3, 1973, 8. See Stein, *Pivotal Decade*; Meg Jacobs, *Panic at the Pump: The Energy Crisis and the Transformation of American Politics in the 1970s* (Macmillan University Press, 2017).

passengers felt that they'd lost something they were entitled to. Passengers who resented the promotional fares still had to pay high fares once those promotions ended. Critics of the CAB thought the Board couldn't be trusted to regulate the airline industry. As subsequent chapters will describe, other groups also became frustrated with the CAB when they couldn't convince the Board to respond to their demands. These frustrations mounted throughout the 1970s; while the chapters are more focused on the way people mobilized at the CAB than on the story of deregulation, they do also demonstrate why there was so little support for continued regulation.