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SAMUEL D. CHILCOTE, JR.
President

February 8, 1984

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MEMORANDUM

TO: THE MEMBERS OF THE EXECUTIVE COMMITTEE

FROM: SAMUEL D. CHILCOTE, JR. *Sam*

SUBJECT: STATUS OF CAB PROCEEDING

With oral argument scheduled February 14, 15 and 27, this is an interim report on The Institute's activities regarding the CAB proposals to prohibit smoking on shorter flights and smaller planes.

1. Oral argument: The Institute has been granted 20 minutes and we expect to allot our time among Richard Kingham of Covington & Burling, Judy Hope of Paul, Hastings, Janofsky & Walker, Dr. Theodor Sterling and Dr. Domingo Aviado (environmental smoke authorities). In addition, our fire safety consultant, Phil Schaenman, has been given 10 minutes.

CAB has published the argument schedule which is attached. It has granted time to ASH, GASP, Coalition on Smoking or Health, Aviation Consumers Action Project, Drs. Charles Tate and Alan Blum and the Association of Professional Flight Attendants, all of whom support additional regulations.

It will also hear arguments from opponents of further regulations including Air Transport Association, Regional Airlines Association, several individual airlines* (assembled at our request), the Bakery, Confectionery & Tobacco Workers Union (AFL-CIO), the AFL-CIO Food and Beverage Division and the National Association of Tobacco Distributors.

Furthermore, we have indications that at least 20 Members of Congress have been in touch with the CAB Chairman to request time to argue against the pending regulations at a later date, inasmuch as the February 14 event will occur midway in the Congressional Lincoln Day recess when few Members will be in Washington. This accounts for CAB's scheduling a third argument day February 27.

Among parties who have filed comments in the proceeding, the American Medical Association, the Air Line Pilots Association, the Department of Transportation and the voluntary health associations, all of whom favor the prohibitions, have not requested argument time.

* Air Florida, Air One, Piedmont, Southwest, TransAmerica and USAir.

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2. The record of the proceeding: The essential arguments now before the Board include pro-con, but inexpert, nonsmoker health claims; assertions of airline management prerogatives; forecasts of enforcement difficulties; expert claims of airliner ventilation adequacy and inexpert claims of its inadequacy.

Some 17,000 public comments in the docket run better than 2 to 1 against additional regulation. These include pro-prohibition letters from perhaps a half dozen Members of Congress and anti-prohibition letters from more than 50.

Let me emphasize that a cooperative effort of all The Institute divisions, three law firms and our member company employees has assured compilation of a record in this proceeding and the participation of non-tobacco entities (unions, airlines, associations, the public and Members of Congress) which more than justifies abandonment of the smoking prohibition proposals.

Despite this, we cannot at this time forecast success. Under the deregulation law, the Board is scheduled to "sunset" in ten months. Thus, its five members may be relatively insensitive to the record of the proceeding and more inclined to follow their personal views of smoking which, in each case, appear to be negative.

We believe we have overlooked no opportunity to lay the basis for a proper outcome of this proceeding in the public interest. We will provide a further report after the conclusion of the oral argument.

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Attachment

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