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# NOMINATION—CIVIL AERONAUTICS BOARD

GOVERNMENT

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## HEARING

BEFORE THE

### COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

### UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

NOMINATION OF  
MARVIN S. COHEN, TO BE A MEMBER,  
CIVIL AERONAUTICS BOARD

SEPTEMBER 26, 1978

Serial No. 95-116

Printed for the use of the  
Committee on Commerce, Science, and Transportation



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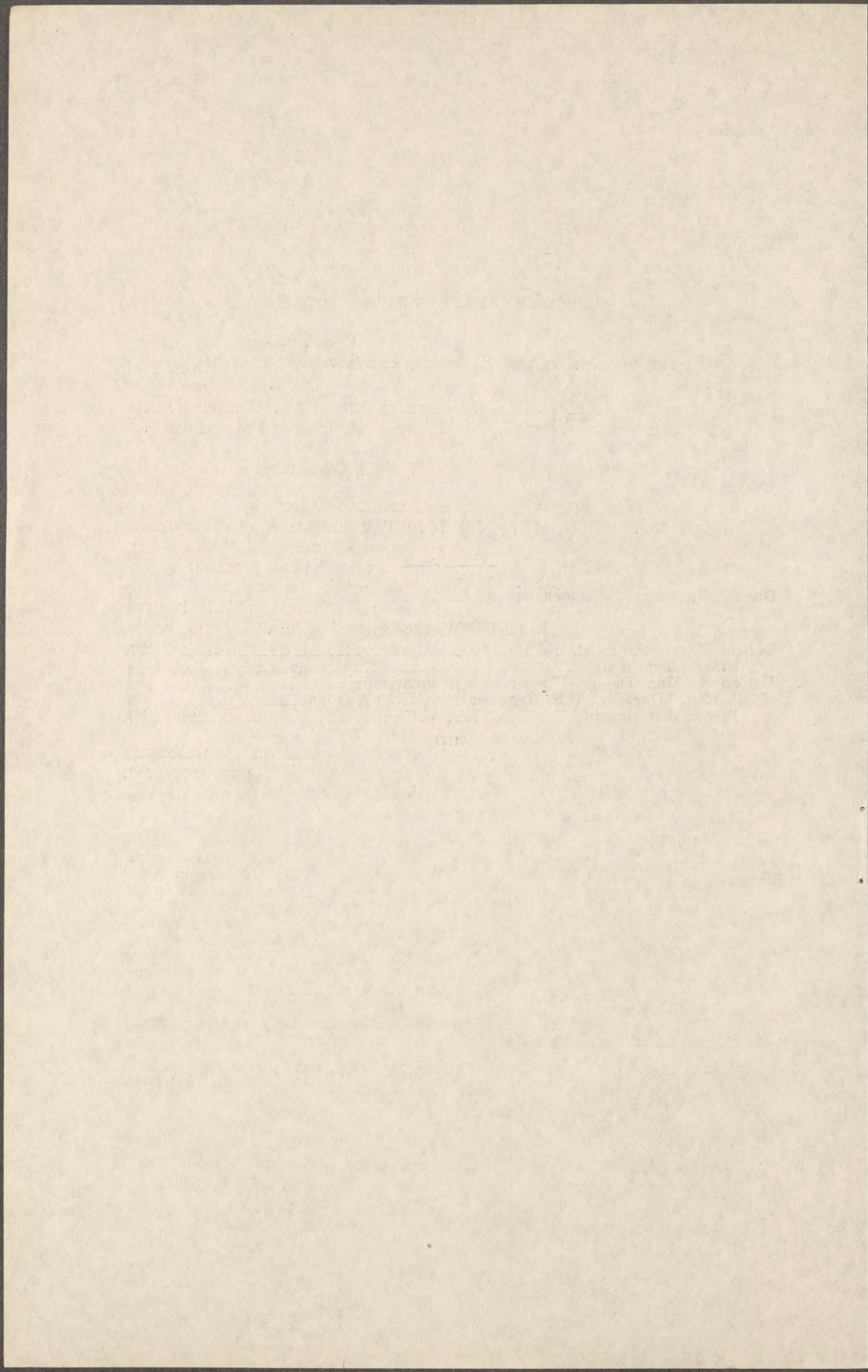
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(III)



## NOMINATION—CIVIL AERONAUTICS BOARD

TUESDAY, SEPTEMBER 26, 1978

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, D.C.*

The committee met at 10 a.m. in room 235 of the Russell Senate Office Building, Hon. Howard W. Cannon (chairman of the committee) presiding.

### OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order.

Today's hearing is on the President's nomination of Marvin S. Cohen, a Democrat from Arizona, to become a member of the CAB. Mr. Cohen is a resident of Tucson, Ariz., where he is a member of the law firm of Bilby, Shoenhair, Warnock & Dolph.

He has had a distinguished legal career, both in private practice and in the Government. Mr. Cohen submitted a financial disclosure form to the committee which will be available for public inspection in the committee's office and a biographical sketch which is available here today, which will be printed in the record.

The committee has also received written reports from the CAB Office of General Counsel and the Department of Justice.

We have some distinguished members of the Arizona congressional delegation who desired to be here and apparently they have not been able to catch up with us yet. I have been requested to read this statement from Senator Goldwater:

Mr. Chairman, last June 28, the Western Governors Conference passed a resolution asking the President to appoint a Westerner to the CAB. Today our committee is holding a nomination hearing of Mr. Marvin S. Cohen who is not only a Westerner, but also a distinguished resident of Tucson, Arizona. To my way of thinking, the President has scored 200 percent on geography.

In describing Marvin Cohen, the word "distinguished" is not overblown because that has been the hallmark of his career. The record fully justifies this statement. Marvin Cohen has served in positions of public trust at the national, state and local levels of government. Moreover, he has experience with regulatory problems from the viewpoints of industry and consumers alike. If confirmed, he should be a valuable addition to the CAB.

Mr. Chairman, I hope the committee will act unanimously on Mr. Cohen's nomination and that the Senate will act as soon as possible.

The CHAIRMAN. Mr. Cohen, coming from one of the ranking minority members on this committee, I am sure that is a very fine compliment for you.

[The biographical sketch follows:]

#### BIOGRAPHICAL SKETCH OF MARVIN S. COHEN

Name: Marvin S. Cohen.

Address: 4645 E. San Carlos Place, South Tucson, Ariz. 85712.

Date and Place of Birth: October 16, 1931, Akron, Ohio.

Marital status: Married to Frances Ethel Cohen nee Smith.

Names and ages of children: Samuel David Cohen, age 22; Jeffrey Lee Cohen, age 19; Rachel Ann Cohen, age 13.

Education: University of Arizona, 1949-53, B.A. June 1953. College of Law, University of Arizona, 1952-53, 1955-57, L.L.B., June, 1957.

Employment record since college:

a. August 1953 to September 1953. Bookkeeping for City Auditor, City of Tucson, City Hall, Tucson, Ariz.

b. October 1953 to September 1955. 2nd Lt. USAF, RADAR Controller. Capt. Frank Borneo, 616 A.C.&W. Squadron, Ulm, Germany.

c. October 1955 to September 1957. Bookkeeper, Snellers Draperies. Sam Sneller, N. Scott St., Tucson, Ariz.

d. September 1957 to December 1957, law clerk, Udall & Udall. Morris K. Udall, 222 N. Court, Tucson, Ariz.

e. January 1958 to December 1960, Lawyer Deputy, then Chief Civil Deputy, Pima County Attorney. Raul H. Castro, then Harry Ackerman, Courthouse, Tucson, Ariz.

f. January 1961 to February 1961, Lawyer. Assistant City Attorney, city of Tucson. Jack G. Marks, City Hall, Tucson, Ariz.

g. February 1961 to June 1963, Lawyer. Special Assistant to Solicitor U.S. Department of the Interior, Frank Barry, Washington, D.C.

h. July 1963 to Present, Lawyer, Bilby, Shoenhair, Warnock & Dolph, P.C. Harold C. Warnock, 9th Floor Valley National Building, Tucson, Ariz.

Government experience: See e, f, and g for Government Employment.

Other Government Experience:

a. Member, Arizona Commission on the Arts and Humanities, June 1975 to September 1978.

b. Member, Water Advisory Committee City of Tucson, October 1976 to September 1978.

c. Chairman, Rate Structure Subcommittee, Citizens Advisory Committee to Arizona Corporation Commission, 1975-78.

Memberships: Zeta Beta Tau, Phi Beta Kappa, Phi Kappa Phi, Arizona Civil Liberties Union; Anti-Defamation League (State Chairman); Arizona Civic Theater (President); Tucson Committee on Foreign Relations; Tucson Literary Club; United Way (Guidelines and Planning and Allocations Chmn.); Pima College Foundation Board; B'nai B'rith Lodge No. 763 (President); Tucson Regional Plan.

Political Affiliations and Activities:

a. Memberships and offices held:

1. Democratic Party: Precinct Committeeman, 1956-61, 1963-78. State Committeeman, 1956-61, 1963-78. Chairman, Pima County Democratic Central Committee, October 1960 to February 1961. Chairman, Arizona Democratic Telethon Committee 1974. Alternate Delegate Democratic National Convention, 1976.

2. Candidate committees: Pima County Chairman, Carter for President, 1976. Co-Chairman, Udall Election Committee, 1978.

b. Contributions to political parties or election committees—past 6 years (10 years not available):

November 3, 1972—Asta Campaign Committee.....	\$35
June 26, 1973—Pima County Democratic Committee.....	50
October 1, 1973—Bob Cauthorn Committee.....	100
October 25, 1973—Committee for a Democratic City Council.....	350
December 31, 1973—Udall Dinner Committee.....	100
January 25, 1974—Alfaro Dinner Committee.....	26
March 12, 1974—Castro Dinner Committee.....	140
July 20, 1974—Democratic National Committee.....	35
August 14, 1974—Jo Cauthorn Campaign Committee.....	75
August 23, 1974—Arizona Democratic Telethon Campaign (loan).....	5,000
September 9, 1974—Babbitt for Attorney General.....	50
October 8, 1974—Druke Campaign Committee.....	65
October 10, 1974—Babbitt for Attorney General.....	100
October 11, 1974—Castro Dinner Committee.....	100
October 21, 1974—Udall '76 Committee.....	500
November 4, 1974—Marshall for Senate Committee.....	35
April 9, 1975—Bruce Babbitt Dinner Committee.....	50
June 10, 1975—Pat Fullinwider for Congress.....	25
June 11, 1975—Gov. Raul Castro Testimonial Dinner.....	200

July 18, 1975—Prill Kuhn for Council.....	\$100
September 23, 1975—Udall '76 Committee.....	500
October 10, 1975—Douglas Kennedy Campaign Fund.....	100
October 29, 1975—Reuben Romero Campaign Committee.....	75
November 3, 1975—Corbett for Mayor.....	50
December 12, 1975—Democratic National Conference.....	50
March 5, 1976—McNulty Campaign Committee.....	100
April 7, 1976—DeConcini Campaign Committee.....	100
September 1, 1976—Steve Neely Campaign Committee.....	50
September 13, 1976—Udall '76 Committee.....	100
September 29, 1976—DeConcini for U.S. Senate Committee.....	250
October 26, 1976—Lucy Davidson Campaign Committee.....	35
October 26, 1976—Morris Farr Campaign Committee.....	40
October 29, 1976—Sue Dye Campaign Committee.....	35
October 29, 1976—Jo Cauthorn Campaign Committee.....	60
January 7, 1977—Committee for the Council.....	100
March 25, 1977—DeConcini for Senate.....	500
June 6, 1977—Democratic Party of Arizona.....	50
June 19, 1977—Udall Election Committee.....	100
September 30, 1977—Babbitt Campaign Committee.....	100
October 5, 1977—Miller for City Council Committee.....	100
November 4, 1977—Committee for a Democratic Majority.....	100
December 12, 1977—Carolyn Warner Dinner Committee.....	100
November 28, 1978—Sue Dye Committee.....	25
January 5, 1978—Bruce Babbitt Committee.....	15
January 31, 1978—Dino DeConcini Dinner.....	350
April 25, 1978—Pima County Democratic Committee.....	60
June 29, 1978—Udall Election Committee.....	100
July 1, 1978—Udall Election Committee.....	30
July 25, 1978—Udall Election Committee.....	200

Honors and awards: Phi Beta Kappa, Phi Kappa Phi, Sophos, Chain Gang, Blue Key, Thomas E. Campbell Memorial Award for Outstanding University of Arizona Freshman, 1950; at College of Law received Lawyers Title Award and Pima County Bar Auxiliary Scholarship; Young Man of the Year—Tucson Jewish Community Council, 1966.

Published writings: None.

Speeches: None.

Qualifications: I have practiced law for 21 years. In the first few years, I served as counsel to the county government, city government, and Department of Interior in Washington. As counsel to Pima County, I was chief legal adviser to the Board of Supervisors, the planning commission and all county offices. As Special Assistant to the Solicitor in the Department of the Interior, I handled a number of Indian, public lands, reclamation and mining problems.

After entering private practice in Tucson, I concentrated on trial work and real estate in the 1960's. Since 1970, I have specialized in regulatory work, representing large industrial clients. On behalf of Duval, ASARCO, Cyprus Pima, Phelps-Dodge and Magma, I have appeared before the Arizona Corporation Commission in a number of electric utility rate cases, usually opposing rate increases and preparing and presenting extensive evidence on cost of service, rate of return and rate structure.

I have also attended a number of seminars on regulatory matters, including two NARUC conventions.

I have served during the past two years on the Water Advisory Committee of the City of Tucson, advising the City on water rate structure matters. During the past three years, as chairman of the Rate Structure Subcommittee of an advisory committee to the Arizona Corporation Commission, I have been immersed in such rate structure issues as time-of-day pricing, long run incremental costs, marginal costs, etc.

In the past few months, I have, on behalf of much of the business community of Tucson, served as a mediator in attempting to resolve a long-standing and complex dispute between the City of Tucson and Pima County concerning the financing and operation of the metropolitan sewer system.

While I have no experience in airline matter I have read extensively during the past few months in an effort to acquaint myself with the history of the CAB and the issues involved in airline regulation.

The CHAIRMAN. Senator DeConcini, we are happy to have you here today.

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM  
ARIZONA

Senator DeCONCINI. Thank you, Mr. Chairman. I am glad the committee knows Mr. Cohen.

He has been nominated by the President of the United States to the Civil Aeronautics Board. I can attest, Mr. Chairman, that in this instance, the President has responded to his own query "why not the best," by appointing the best.

I have known Marv since 1961 when both of us were much younger; he was chairman of the Pima County Democratic Party, and I served on his executive committee. I acquired a great deal of respect for Marv at that time and through the years my respect for him and his abilities has continuously increased.

Mr. Chairman, this committee has a résumé of Mr. Cohen's many accomplishments, but a list on paper does not nearly begin to tell how distinguished his accomplishments have been. Rarely have I seen, in one person, a better combination of integrity, intelligence, and industry.

In our hometown of Tucson, Ariz., Marv has gained the reputation as one of its most outstanding attorneys; a reputation that cannot be gained overnight, but one that has taken years and years to attain.

Marv will bring to the Civil Aeronautics Board all of these abilities, and with this outstanding combination of qualities, he will within a very short period of time make his presence and his abilities known.

Additionally, Marv Cohen will add to the Civil Aeronautics Board a dimension which is not there and is sorely needed. The Western part of the United States, which has its own diverse problems because of the long distances between communities, presently does not have a representative on the Civil Aeronautics Board. It is vitally important that there be a person with the knowledge and understanding of the special problems that exist in the Western part of the United States.

For this reason, the Western Governors Conference and the Western Conference of the Council of State Governments each passed resolutions requesting the President appoint someone from the West who knew and understood the unique problems of the West in order to add that dimension to the Civil Aeronautics Board which both groups felt was presently missing.

Marv Cohen has the knowledge and understanding to satisfy the concerns of the Western State governments—that someone on the Civil Aeronautics Board would be able to understand and address their problems.

Marv Cohen will, I am sure, prove the wisdom of the President in nominating him and this committee, and the full U.S. Senate in confirming him.

Mr. Chairman, committee members, it really is a pleasure to be here with an old friend, someone who is willing to devote some of his time to the service of his country in the prime of his life.

I commend to the Chair and the committee Mr. Cohen.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator DeConcini.

Mr. Cohen, do you have a statement you wish to make for the record?

## STATEMENT OF MARVIN S. COHEN

Mr. COHEN. I have no statement, Mr. Chairman. I am available for answering any questions you may have.

The CHAIRMAN. First, let me say Mr. Cohen comes from an outstanding law school. I am sure that it helps his background. It happens to be my alma mater.

Before we begin with the questions, though, I want to raise a point that gives me some concern. I have to confess that the critics of regulatory reform might be right after all. They have been telling us all along that all the new low fares were just temporary and pretty soon prices would start to rise again. There is recent evidence that that statement may be correct.

Last week Texas International introduced what most of us in Nevada thought to be a pretty reasonable fare between Dallas and Las Vegas, 39 cents one way. Now, that's a fare we can live with. We didn't even mind that they decided to charge 49 cents for the Houston to Las Vegas trip. After all, it is 225 miles longer and they do have to make a profit.

Just when we thought that really low fares were here to stay, however, the trend has now started in the other direction. Yesterday Braniff filed a fare in the Reno-Las Vegas market of a dollar each way for 10 passengers on each flight between the two cities. The Reno-Las Vegas route is a lot shorter than the Dallas-Las Vegas route, but Braniff wants to charge three times what TXI is charging.

I guess the critics are right.

This week a passenger can go from Houston to Reno for \$1.49; but it won't be long before the price goes up to \$2 and probably even higher than that. So I hope you are planning to do something about this if you are confirmed and that you will check into that particular matter.

Mr. COHEN. I certainly will, Mr. Chairman.

The CHAIRMAN. Mr. Cohen, on another note, the committee has been advised that the financial trust which you hold in your law firm includes some airline investments. I realize that you are probably not aware of the individual investments your firm was making with the trust, but that financial interest would violate section 1321, title 49 of the United States Code, if your active interests were to continue beyond the time of your appointment to the Board.

I believe the Justice Department has been in touch with you on this issue. I wonder if you have resolved that problem to the satisfaction of the Justice Department?

Mr. COHEN. Yes; Mr. Chairman. We have resolved to value the profit sharing fund as of September 30, 1978, so that I will have no interest in anything that happens after that date in the profit sharing fund. I will be cashed out of the fund just after January 1, on the basis of value set on September 30; and that was viewed by the Justice Department, Mr. Chairman, as satisfying the requirements of the law.

The CHAIRMAN. One of your primary qualifications for your experience in this position is your experience practicing before regulatory bodies in the State of Arizona. For the past 8 years you represented large industrial clients in regulatory matters. At the same time you come before us as a nominee very strongly committed to reform of the regulatory process.

Could you tell the committee how your experience in Arizona has shaped your views on the Government regulation issue?

Mr. COHEN. Yes; Mr. Chairman. I think I have learned firsthand that the marketplace is probably a better place to regulate the economy than any board of three or five or more members.

Having sat before two regulatory bodies in the West for many months of hearings over a period of some 7 years, I can attest to many of the problems and weaknesses of the system. I am rather excited with the idea of regulatory reform, of letting the marketplace do more and more, letting the forces of the marketplace be the forces that make the decisions about price and quality rather than individuals with the sometimes fallible judgments which unfortunately all of us have.

The CHAIRMAN. Of course, your previous experience in regulatory matters has been primarily in the area of public utilities. There you can't let the marketplace take over and set the price, because you have a noncompetitive environment. I think there's a certain amount of difference both legally and economically between public utility regulation and regulation of an industry which is inherently competitive. The capital mobility in the airline industry is extremely high; and barriers to entry are, of course, very, very low.

To what extent are your views on regulation based upon a public utility's perspective?

Mr. COHEN. Well, my background and experience is in public utility. I might give an example of where competition could have been of some help if people had realized its importance some years ago. In Arizona, two of the major utilities there have been permitted to have both the gas system and electric system. These are inherently competitive in many areas; and I think a great mistake was made many years ago in Arizona when they allowed this to happen. We could have had some of the benefits of competition by separating gas and electricity there.

That's not directly responsive to your question, Mr. Chairman. I think the utility background that I have had makes me familiar with the process of regulation; and I have developed this appreciation for the marketplace and for the uses of the marketplace and some understanding—I think more than the ordinary legal practitioner, of the economics of regulation. I have read Dr. Kahn's two-volume work in the course of my electric utility practice including the portions on airline regulation and the process is similar, I think, in all of the regulatory areas. The public utility work just gives me a framework, a frame of reference in which to learn a lot of new things now.

Admittedly I know very little about the airlines and the details of airline regulation other than what I have read over the past 6 months: some books, the committee reports of this committee with regard to regulatory reform legislation; the House committee reports, and a number of reports from the CAB.

What the public utility work has given me, I think, is a frame of reference in which to receive this new information and this new experience.

The CHAIRMAN. I note that our colleague from the House side has come in. We are delighted to have him here. Congressman Udall, if you have a comment to make, we would be delighted to hear from you at this time.

**STATEMENT OF HON. MORRIS K. UDALL, U.S. REPRESENTATIVE  
FROM ARIZONA**

Mr. UDALL. I regret I am late. I am widely known for my punctuality as you, the chairman, and Senator Ford know. I will not read this. I would like to submit it for the record.

The CHAIRMAN. It will be received for the record.

Mr. UDALL. The appointment certainly gives me satisfaction. It is good for Marvin Cohen; but, moreover, I think it is good for the country and good for aviation. I think the special strong support that he has suggests that he has three very special things going for him:

One, is he is an exceptionally well-qualified man and brings special talents. He's been talking about that.

He finally gives the West some representation as a voice who is sensitive to the particular needs of the West on the CAB. I think we all have been hoping for that one of these days.

Third, Marv's a broad-based individual who will not be parochial and will look out for the national interests. We need broad-based people on these regulatory commissions. I have known Marvin Cohen for more than 30 years, helped him get a start in the law practice a long time ago. He's an outstanding citizen of our community and State. He's a leader in civic affairs.

We are going to miss him in Tucson if you confirm him, and I hope you do. This is an appointment I can support with a great deal of enthusiasm and vigor. The committee will make no mistake in an early, prompt, and favorable consideration of this nomination.

I thank you very much.

[The statement follows:]

**STATEMENT OF HON. MORRIS K. UDALL, U.S. REPRESENTATIVE FROM ARIZONA**

Mr. Chairman, it is with special pride and satisfaction that I come today to urge the confirmation of an old and valued friend, Marvin Cohen. This appointment is no doubt good for him and his career. It certainly gives me satisfaction.

But I also happen to think that Marv Cohen's nomination to the Civil Aeronautics Board will be very good for this country and for aviation.

The enthusiasm that the Cohen appointment evokes from Senator DeConcini; our great senior senator, Barry Goldwater; and a wide spectrum of Arizona people is based on three factors:

1. He is an exceptionally well-qualified man who brings special talents to this job—thirty years as a brilliant attorney, government service in the Solicitor's Office at the Department of Interior, broad experience in regulatory and rate-setting policy before the Arizona Corporation Commission and other agencies.

2. All over the West, Members of Congress and government leaders have been anxious to see the appointment of a CAB member from our part of the country. We hoped for someone who could present a different point of view based on an understanding of the unique needs of the West—an area that has never had CAB representation and its special problems perhaps not fully considered. We have vast distances and scattered population, rugged terrain and uncertain weather that often have discouraged the airline industry from providing adequate service to our people.

In this connection, I want to commend Chairman Cannon and the members of the Committee for the terrific job you have done in shepherding through the airline deregulation bill—and we have finally passed it in the House—which will be so vital in promoting competition and improved service to the public.

Especially pertinent to our region and to Marv's appointment are the excellent provisions geared to the needs of small communities. You have made it possible, indeed mandated, that the CAB ensure that small communities will no longer be left out in the scramble for more profitable routes.

3. Marvin Cohen is a broad-based individual who will not be parochial and who will look out for the national interest. His point of view is fully consistent with the new ideas and approaches reflected in the legislation and in recent decisions of the Board under Chairman Kahn. To conclude on a more personal note, I've noted that Marv is an old friend, whom I've known for 30 years. In addition, he has been an active, committed, valuable citizen of our city and state—a leader in the Jewish community, in the arts, in a wide variety of civic affairs. We've fought many battles together, and I know you couldn't have a better ally. Tucson and Arizona will miss him, but Washington and the nation will gain from his presence here.

All of Marv's qualities—intelligence and foresight and enthusiasm and honesty—make him a first-rate choice. I urge the members of this committee and the Senate to confirm Marv's appointment as soon as possible so that the last vacancy on the Board can be promptly filled.

Thank you.

The CHAIRMAN. Thank you very much, Congressman Udall.

Mr. Cohen, one of the most refreshing aspects of Chairman Kahn's tenure at the Board has been the decrease of an emphasis on formal evidentiary procedures of the Board. I think you will find in any given CAB proceeding, there are very few disputes of fact since most of the factual data is merely historical traffic figures which are beyond dispute.

The difference between parties almost always is one of judgment about how to apply and use those figures. Very rarely does this require the trial type procedures historically used by the Board.

Over the years, in the name of due process, thousands of people have received no process at all since the process of handling applications was so slow that only a very small percentage of the applicants could be heard.

You may be surprised to know that the much-maligned Arizona service investigation was processed far more quickly than most CAB route cases.

From my own point of view, I can assure you that people in Nevada have suffered great inconvenience as well because of the delays at the Board.

Now all this is background to a question concerning your attitude toward administrative procedures. I am concerned that after years of representing clients who may have had an interest in delaying the administrative process and loading the record with volumes of evidence, your perspective as to the value of the formal hearing process may be somewhat clouded.

What are your views on this subject? And I want to first warn you if you tell me your clients were always interested in fast procedures and manageable records, your credibility will be seriously in doubt.

Mr. COHEN. Mr. Chairman, I was going to skip to answering the question and not comment on my clients and their procedures.

I have read the study on procedural reform that was conducted, I think, 3 years ago and read with particular interest the provisions of the regulatory reform bill as passed by the Senate and read with a great deal of pleasure Chairman Kahn's speech to the ABA committee last summer in New York.

I have some concerns in this area of due process and procedure; but I think I would come down on that probably more on Chairman Kahn's side than what is traditionally thought of to be the position of the aviation bar.

I think the important thing in due process is to find those facts which are material to the resolution of the issue at hand; and if evidence is required to establish those facts, to make sure that there is a full opportunity for cross-examination with regard to those facts. The crucial point is limiting all of this to facts that are material to the question at hand. Often what happens, I think, in hearings is—as the chairman pointed out—that all sorts of facts and all sorts of evidence comes in that is not particularly material or that already can be established without question.

I think as a trial lawyer, with 20 years of trial practice—I continue to believe that the right of cross-examination is a very important element in trying to arrive at as close as possible to what is truth.

But that right of cross-examination is important when you are dealing with contested facts and facts that are important, relevant, material to the issue at hand. I think that the language of the regulatory reform bill as passed by the Senate deals with that quite well. It gives plenty of opportunity for due process where it is required and does away with a lot of extra trappings that are not necessary.

The CHAIRMAN. The Board is currently faced with a number of merger applications. I would like to hear your views on airline mergers and see how they may differ or agree with my own.

I am concerned about what may be a good deal of prejudice at the Board with respect to those prospective mergers. After several years of studying this industry, it is clear to me that the absolute number of carriers with certificates tells nothing about the competitive conditions in the industry.

For years we have had about 35 certificated carriers, but in all except a very few markets we have had no competition between any two of them. If the industry consisted of five carriers, all with the authority and ability to enter any market in the country, you'd have a system almost five times as competitive as it has been historically.

In my opinion, mergers are not per se undesirable. Each must be regarded with respect to its potential for increasing competition.

Furthermore, the standards applied by the Board should be no more burdensome than those which would be applied in the absence of regulation under the applicable antitrust laws. I would like to have you state what your philosophy on mergers is and see how it may differ or agree with what I have just indicated.

Mr. COHEN. Mr. Chairman, from what I have read, at least—the history of mergers in the airline industry has been sort of a failing airline philosophy: The only mergers that were permitted occurred when one airline was failing or going into bankruptcy and another had to acquire it. We are apparently faced with a new problem with the current mergers which appear to be a reaction to the more competitive opening up of the airline industry.

My initial reaction was that perhaps some new guidelines ought to be set down to address this—in this new environment. The more I read about it, thought about it, the more I thought we really had to look at each individual case separately; from the standpoint of whether or not competition would be impaired or might be enhanced by the particular facts of that particular application.

I am not predisposed in favor of mergers. I am not predisposed particularly against them, although I must admit I start with the idea that a merger might tend to diminish competition.

I can envision instances in which mergers could enhance competition, particularly in the state of the industry where we apparently—potentially at least—are going to have some new entrants for the first time in many, many years, and in particular instances, mergers might enhance competition.

My own view is to judge them in relationship to what they will do to competition; I don't have any background or practice in the antitrust field, but I have read quite a little bit of material in the last few weeks. I think I am very comfortable with the chairman's thought of judging them the way a court would judge an antitrust case, although I have a reservation about that as to whether it is necessary to be that strict or not; and I am waiting to find out more about it—if the committee and the Senate confirm me, as I get some experience in the field.

I think I need some time for my views on that to ripen.

The CHAIRMAN. In any event, you would not go into this with the preconceived idea that mergers are per se either undesirable or per se anticompetitive just because they are a merger?

Mr. COHEN. No. No; Mr. Chairman. I would want to judge—on the basis of the evidence and the facts in each case as to its effect on competition.

The CHAIRMAN. Chairman Kahn stated to this committee that it was his goal to work himself out of a job. What is your goal?

Mr. COHEN. I am rather intrigued by that. I think it would be a great distinction, if it is possible, in the public interest to be a part of an effort to self-destruct a regulatory body if it is in the public interest to do so. It may well be.

I am not inimical to the idea, Mr. Chairman.

The CHAIRMAN. The civic parties in my State were among the first in the country to recognize the value to the public of multiple permissive awards. How do you feel about that concept?

Mr. COHEN. I was studying the Oakland opinion, the preliminary opinion that set the Oakland case and was quite taken with the discussion of the philosophy. My initial reaction was favorable to the idea.

I must admit I didn't understand it very well. Reading the Oakland opinion—

The CHAIRMAN. I don't think that's a prerequisite.

Mr. COHEN. Reading the Oakland opinion was very helpful. Yes, I rather liked the idea. I see no reason why it shouldn't work quite well.

In Midway, Oakland, perhaps in a number of other markets.

The CHAIRMAN. Senator Ford?

Senator FORD. Mr. Chairman, I think you have covered most of the questions that I really wanted to ask Mr. Cohen.

One question I want to maybe just extend a point. I think you made it very well. If airline deregulation works, and I put this in maybe a little more confined area, would you be willing to vote yourself out of a job or recommend to this committee that we abolish the Board?

Mr. COHEN. Yes. Senator Ford, I certainly would. I am not looking for job security here.

Senator FORD. Well, some want it and can't get it. That does turn the coin the other way.

Mr. Chairman, I have had the opportunity of visiting with Mr. Cohen from time to time since he is a good friend of my good friend from Arizona, Senator DeConcini. We have chatted on various occasions, I have nothing but admiration for him.

I would like to say at this time I am very hopeful that the committee will approve him and send him to the Senate floor as expeditiously as possible.

The CHAIRMAN. Thank you very much.

Senator Zorinsky?

Senator ZORINSKY. Yes; Mr. Cohen, you may have answered this question prior to my arrival but do you have any feelings with regard to airline service under the new regulatory process to small communities and States that are not main generators of traffic?

Mr. COHEN. Yes, Senator; I share, I think, what I read to be the public policy position of the Congress. Initially in the current law, and particularly in the new airline regulatory reform bill as passed by the Senate, I view airline service to small—and isolated—communities as a matter of public policy; that ought to be encouraged and where necessary, subsidized as a matter of public policy rather than just as a matter of economics.

I am pleased to see that that's the policy which the law expresses. I share it. I will be happy to implement it to the best of my ability.

Senator ZORINSKY. That's an excellent answer. That's all I have.

I am glad to hear your feelings on the subject.

Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Cohen, We have no further questions for you.

Gentlemen, we are delighted to have you both here.

Senator DECONCINI. Thank you, Mr. Chairman.

Mr. UDALL. Thank you, Mr. Chairman.

Mr. COHEN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

That concludes the hearing this morning.

[Whereupon, at 10:30 a.m., the hearing was adjourned.]



