



HOME OFFICE
QUEEN ANNE'S GATE LONDON SW1H 9AT

1 March 1983

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Dear John

US GRAND JURY INVESTIGATION OF NORTH ATLANTIC AIR TRANSPORTATION

Sir Adam Thomson, Chairman of British Caledonian, called on the Home Secretary yesterday afternoon. He mentioned that Department of Trade Ministers had been unavailable to see him during the day.

Sir Adam explained the background to the Grand Jury investigation arising out of the charges raised by Laker Airways in the American Civil Courts. The consequences of the course of action being pursued by the Grand Jury for British Caledonian, other European airlines and European conglomerate companies in general were potentially very serious. It was therefore agreed between British Caledonian and the Department of Trade that everything possible should be done to transfer consideration of the Laker charges from the American courts to those in Britain.

Although British Caledonian had a high respect for the Department of Trade officials dealing with the matter, they were most concerned that if the talks being held with the US Justice Department today failed, little time would remain for the Secretary of State for Trade, the Attorney General or possibly even the Prime Minister to intercede with the US Government before the Grand Jury subpoena, expected to issue this coming Friday.

... Sir Adam handed the Home Secretary the attached documents concerning the case. The Home Secretary thanked him for explaining the background, and undertook to draw the matter to the attention of Lord Cockfield and the Attorney General as a matter of urgency.

I am copying this note and enclosures for information to Michael Scholar (10 Downing Street) and Jim Nursaw (Attorney General's Office).

C. J. Walters
C J WALTERS



U.S. Department of Justice

Washington, D.C. 20530

EMS:PBK
60-384-165

BY HAND

25 FEB 1937

British Caledonian Airways, Limited
c/o Leonard N. Bebhick, Esq.
Suite 1102
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

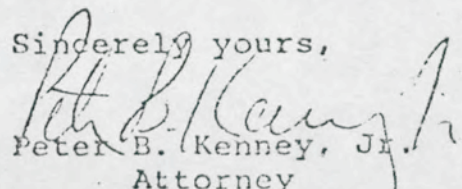
Re: Grand Jury Investigation of North Atlantic Air
Transportation

Dear Mr. Bebhick:

The Department of Justice has recently received inquiries regarding a grand jury investigation into alleged price fixing and other joint efforts to eliminate competition in the air transportation of passengers over the North Atlantic. In light of these inquiries, this letter is to confirm that such an investigation has been authorized and that the Department presently intends to issue a grand jury subpoena to British Caledonian Airways, Limited. As a courtesy to the company, I have enclosed an advance copy of the schedule of documents that we presently intend to subpoena. This schedule of documents should apprise the company of the nature of our grand jury investigation and the documents which the Department presently regards as relevant to the investigation. The company is not obligated to produce documents responsive to this schedule, or commence a search for such documents, until a subpoena is issued.

If you have any questions about this matter, feel free to contact me at 724-6473.

Sincerely yours,


Peter B. Kenney, Jr.
Attorney

Transportation Section
Antitrust Division

Enclosure

SCHEDULE OF DOCUMENTS

I.

DEFINITIONS

1. "Company" means British Caledonian Airways, Limited, its predecessors, affiliates, subsidiaries, and parent organization, and all present and former agents, employees, officers and directors thereof.

2. "Documents" means the originals of all writings of every kind, including but not limited to letters, telegrams, telexes, memoranda, notes, reports, studies, speeches, calendar or diary entries, travel records and vouchers, minutes of meetings, conferences, and telephone or other conversations or communications, promotional materials, pamphlets, charts, lists, directives, records, and drafts. The term "documents" also includes tape recordings of meetings, conferences and telephone or other conversations or communications, as well as data processing machine printouts and tapes, or any other mechanical means of storing or recording information, which are in the possession, custody or control of the Company. The term "documents" also includes copies, reproductions or film impressions of any of the aforementioned writings or documents the originals of which are not in the possession, custody or control of the Company. The term "documents" also includes copies, reproductions or film impressions which are not identical duplicates of the originals because of markings of

any kind which appear on the copies, reproductions or film impressions but not on the original.

3. "North Atlantic market" means the market for scheduled airline passenger service between any point in the United Kingdom and any point in the United States.

4. "Contact" means any meeting, conference, discussion, conversation, or communication, whether in person, by phone or otherwise, between or among any persons.

5. "Laker" means Laker Airways Limited.

6. "Laker's debt" means any debt or monies owed, whether secured or unsecured, by Laker. Laker's debt includes, but is not limited to, loans financing the purchase of McDonnell Douglas and Airbus Industrie aircraft, and any lines of credit available or held in reserve for Laker.

7. "Fare adjustment" means any change in fare or any material change in capacity, scheduling, services or conditions applicable to any fare.

8. "Removal" means the destruction or mutilation of documents previously in the possession, custody, or control of the Company, and the taking and carrying away, whether authorized or not, of documents from the possession, custody, or control of the Company.

9. "Alteration" means the alteration, modification, censorship, or the changing in any other manner, of documents which are or were in the possession, custody, or control of the Company.

10. "Person" means any individual, individual proprietorship, partnership, corporation, unincorporated association or other entity.

11. "Relate to" means refer to, show, discuss, describe, reflect, identify, explain, contain or in any way pertain to, in whole or in part, directly or indirectly.

12. All uses of the conjunctive should be interpreted to include the disjunctive and vice versa. Words in the singular should be read to include the plural and vice versa.

II.

TIME PERIOD

This Subpoena requires production of documents prepared, sent, received, dated or in effect at any time between January 1, 1977 and the date of service of this Subpoena.

III.

CLAIM OF PRIVILEGE

If any documents called for herein are withheld by reason of the assertion of any legally recognized privilege, furnish a list of such materials in which each document withheld is identified separately. For each document withheld, furnish the date of its preparation, the persons preparing, signing, and receiving it, the persons to whom copies were furnished, a general description of the contents of each document, and a brief statement of the specific reasons justifying the assertion of privilege.

IV.

INSTRUCTIONS

1. This Subpoena requires production only of documents located in the United States at the time of service of this Subpoena. To the extent the Company possesses documents responsive to this Subpoena but located outside of the United States at the time of service of this Subpoena, these documents need not be produced.

2. Production of documents responsive to Part V, paragraphs 3, 4, 5 and 12 is suspended at this time, but the documents must be preserved during the pendency of the investigation and be available for prompt production if requested by the Department of Justice.

3. The Company may elect, pursuant to arrangements made with the Department, to submit summaries or lists containing the information that would be disclosed in the documents required to be produced by Part V, paragraph 2. Such summaries or lists shall be in lieu of the documents specified in this paragraph and must be prepared under the personal direction of an officer or supervisory employee of the Company, and must be certified in writing by such officer or supervisory employee to be complete and accurate. Documents providing the basis for any such summaries or lists must be preserved during the pendency of the investigation and be available for prompt production if requested by the Department.

4. If any portion of a document is responsive to this Subpoena, the entire document must be produced.

5. Each document made available in compliance with this Subpoena should be marked or assembled so as to indicate the location and identity of the particular file in which it was found, and the name of the individual who was custodian of such file. Alternatively, the Company may prepare separate lists indicating, for each document made available, the location and identity of the particular file in which it was found and the name of the individual who was custodian of such file.

6. Documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in such form.

7. Each page produced should be marked with the initial "J" and numbered consecutively.

8. The Company may elect to send documents responsive to this Subpoena directly to the offices of the Department on or before the return date in lieu of personally producing the documents before the grand jury. If the Company elects to send documents directly to the Department, the officer(s) or director(s) responsible for complying with this Subpoena must execute the enclosed affidavit before a notary public. This affidavit must accompany the documents being sent. Documents should be mailed by registered mail to Peter B. Kenney, Jr., P.O. Box 481, Washington, D.C. 20044, or delivered prepaid to Mr. Kenney in Room 8115, Old Star Building, 414 Eleventh Street, N.W., Washington, D.C.

V.

DOCUMENTS TO BE PRODUCED

1. All documents which show the organization of the Company, including but not limited to organizational charts, employee directories, and company telephone directories.

2. Such documents as show the name, last known address (business and home), business telephone number(s) (direct, indirect or personal), home telephone number(s), positions, dates of service in each position, termination date (if any), and present business affiliation (if not with the Company) of:

(a) all officers and directors of the Company, with indication of all outside business affiliations of the officers and directors;

(b) each individual manager or supervisor within the Company whose duties include or included responsibility for:

(i) pricing, marketing, scheduling, or routing in the North Atlantic market;

(ii) contact with any person(s) employed by another airline regarding fares in the North Atlantic market;

(iii) approving, disapproving, or considering any purchase or lease of aircraft for use by the Company; or

(iv) contact with any person(s) employed by any manufacturer of aircraft or aircraft parts.

(c) all secretaries and executive assistants who worked under the immediate supervision of any of the persons named in response to subparagraphs (a) and (b) above.

3. All documents which show the transportation, hotel, entertainment and other expenses incurred on behalf of the Company by each person named in response to subparagraphs 2(a) and 2(b) above. (See Part IV, paragraph 2.)

4. All appointment records and books, reminders, note pads, telephone call books, calendars, diaries, day books, logs, visitors' registers, and similar documents made, kept and used in connection with Company business, by or for each person named in response to subparagraphs 2(a) and 2(b) above. (See Part IV, paragraph 2.)

5. All telephone records, toll records, telephone bills or receipts, and all other documents which relate to any telephone calls made or received by the Company. (See Part IV, paragraph 2.)

6. All documents which relate to Laker, including but not limited to documents which relate to:

- (a) Laker's actual or proposed air transport routes, services and fares;
- (b) competition between the Company and Laker;
- (c) competition between any airline and Laker;
- (d) the effect of Laker's actual or anticipated competition on the company or on any other

airline with regard to their air transport services, fares or profits;

- (e) Laker's debt;
- (f) the financial condition of Laker;
- (g) the marketability, saleability or fair market value of any aircraft or aircraft part known, believed or suspected to be owned, leased or operated by Laker.
- (h) any contact with any person(s) regarding Laker.

7. All documents (excluding invoices) which relate to purchases or leases, options to purchase or lease, proposals to purchase or lease, or orders to purchase or lease McDonnell Douglas or General Electric aircraft or aircraft parts which occurred or were pending at any time between June 1, 1981 and March 1, 1982.

8. All documents which relate to competition between or among any airlines in the North Atlantic market.

9. All documents which relate to any fare adjustment made by the Company or by any other airline in the North Atlantic market, including but not limited to documents which relate to:

- (a) the reason for the fare adjustment;
- (b) the anticipated and/or actual cost of service under the fare adjustment;
- (c) the anticipated and/or actual revenue earned under the fare adjustment;
- (d) the anticipated and/or actual profits earned under the fare adjustment;

- (e) the anticipated and/or actual market share achieved under the fare adjustment;
- (f) the anticipated and/or actual response of any airline to the fare adjustment;
- (g) the anticipated and/or actual effect of the fare adjustment on the Company or on any other airline;
- (h) instructions or notifications to tariff filing agents, travel agents, or advertisers regarding the fare adjustment; or
- (i) contact between or among any airlines regarding the fare adjustment.

10. All documents which relate to meetings of the International Air Transport Association (IATA) which took place on or around the following dates: July 11-15, 1977; July 22, 1977; August 10-12, 1977 (Geneva, Switzerland); and October 1977 (Cannes, France).

11. All documents which relate to a meeting of the North Atlantic Traffic Conference of IATA which took place in Hollywood, Florida in late 1981 or early 1982.

12. All documents not otherwise made available in compliance with this Subpoena which were produced or which were requested to be produced in Laker Airways Limited v. Pan American World Airways, Inc., et al., Civil Action No. 82-3362 (D.D.C.) as of the date of service of this Subpoena. (See Part IV, paragraph 2.)

13. All documents which relate to:

- (a) the method of filing documents in the possession, custody, or control of the Company, establishing or revising policies on the method of filing documents, or otherwise pertaining to the method of filing documents, including but not limited to any index of the Company's document filing system;
- (b) the retention of documents in the possession, custody, or control of the Company, establishing or revising policies on document retention, or otherwise pertaining to the retention of documents;
- (c) the removal of documents falling within the description of any paragraph of this Subpoena, including, but not limited to, the identity of the person or persons authorizing each such removal, the identity of the persons participating in the decision to effect each such removal, the means used to accomplish each such removal, and any other circumstances concerning each such removal; or
- (d) the alteration of documents falling within the description of any paragraph of this Subpoena, including, but not limited to, the identity of the person or persons participating in the decision to effect each such alteration, the date

of each such alteration, the identity of the persons carrying out each such alteration, and any other circumstances concerning each such alteration.

14. All documents which, but for alteration, would have been produced pursuant to any paragraph of this Subpoena.

15. All documents which relate to the legality or appropriateness, under the antitrust laws of the United States, of the activities of the Company with respect to the subject matter of any of the documents requested in this schedule.

US GRAND JURY INVESTIGATION INTO LAKER CHARGES
OF ALLEGED PRICE FIXING AND OTHER JOINT
EFFORTS TO ELIMINATE COMPETITION

On Friday last, BCAL's Washington counsel "as a courtesy to the Company" was served with an advance Schedule of the documents to be supplied in response to a Grand Jury subpoena which, we are told, will be issued this coming Friday. The Justice Department confirms that a Grand Jury investigation has been authorized to enquire into alleged price fixing and other joint efforts to eliminate competition in North Atlantic passenger transportation, principally the charges raised by Laker in its civil antitrust action against BCAL, BA and others in the Federal Court in Washington where it seeks over one thousand million dollars in damages from any one or more of the defendants.

Discussions between the Justice Department and Department of Trade officials on this subject are to be held in London on Tuesday. It is unlikely that the Americans will back off, and any hope of success in that regard requires direct intervention from the White House acting upon the advice of the State Department. Once a Grand Jury commences an investigation, it is virtually impossible to order a halt.

The Schedule of documents requires the production of all materials which relate to Laker (on a worldwide basis) including but not limited to Laker's actual or proposed air transport routes and services, competition between any airline and Laker, and Laker's indebtedness, equipment financing and overdraft and credit facilities (Item V.6). The Schedule also seeks all documents which relate to competition between or among airlines in the US-UK scheduled passenger market

or which relate to any changes in fares, capacity, schedules or the like in that market (Items V.8 and V.9). As a final fillip, the Schedule seeks all documents not otherwise specified therein which have been requested to be produced in discovery demands issued by Laker in its civil antitrust suit (Item V.12)! All documents in existence since 1 January 1977 are sought to the extent that they are located in the United States; as shown below, the latter limitation is more apparent than real.

The Grand Jury investigation thus appears to be inspired by the broad and vague allegations of Laker's civil action which charges that (a) certain defendants (including BCAL) acted to cause Laker's lenders to withhold their support for Laker's financial restructure, and (b) all defendant carriers engaged in predatory pricing practices which drove Laker from the marketplace.

On the latter count, allegations are made specific only as to Pan American, TWA and British Airways. In the recent Midland decision Mr Justice Parker characterised Laker's charges as ones "which savour of either fiction or journalism rather than legal exposition".

We agree. While Mr Justice Parker at Laker's insistence has barred BCAL from making its evidence public, our (and Laker's) response reveals that its charges against BCAL are wholly without substance. Yet, we are confronted with the heavy cost, inconvenience, disruption and risk of a US style far-ranging criminal investigation.

The impending criminal investigation, particularly when coupled with Laker's civil proceeding, stands as the most sweeping and serious assertion of extra-territorial jurisdiction even attempted by the US Government. As respects critical areas of British public policy, it not only enlarges upon but constitutes a more

fundamental intrusion upon British sovereignty than the Uranium Investigation, the North Atlantic Shipping Investigation or the recent Soviet Pipeline embargo. The United States here is convocating a court of criminal inquiry to review specific decisions of HMG respecting Laker and the relationships between BA/BCAL and Laker. The Americans seek to extend their criminal investigatory process into Britain's regulation of its flag carriers.

Laker's papers filed in its US civil lawsuit and the Schedule to the impending Grand Jury subpoena focus upon three events:

- 1 The effort to prevent the demise of Laker in which the Bank of England and particularly the Civil Aviation Authority played critical roles.
- 2 The introduction by British Airways and other carriers in September 1977 of Super Apex, Budget and Standby fares to meet the competitive entry of Laker's New York Skytrain service (Schedule, Item V.10), an action expressly approved by the CAA over Laker's protest. Indeed, the stated intention of the US Civil Aeronautic Board to reject these fares led HMG to despatch a strong diplomatic note (No 210) urging the Americans to allow them to come into effect. The result was that President Carter agreed with HMG and rejected the CAB recommendation. We are now faced with the spectacle of a US criminal Grand Jury undertaking effectively to review and second-guess the wisdom and legality of HMG's actions in this regard and British carrier actions consistent therewith.
- 3 In the Fall of 1981 the CAA permitted the London-New York carriers to match Laker's fare dollar for dollar. This decision was lauded by Mr Sproat as being in the public interest. Yet Laker challenges and the draft subpoena focuses upon this refusal (Item V.11) by the London-New

York carriers to permit Laker to continue to charge a differentially lower price. In particular, Laker in the civil suit adverts to the statements allegedly made by BCAL and BA at British carrier meetings convoked by a CAA official during IATA fare sessions in Hollywood, Florida. Again, determinations by this Government as to the propriety of pricing decisions between competing British carriers is to be reviewed by an American criminal Grand Jury.

Not only is the scope of the Grand Jury investigation worldwide as to Laker's activities, but its document dragnet is also effectively cast on a worldwide basis. While the Schedule, directed to documents located within America, makes a bow to the RTZ decision proscribing the use of British judicial processes to produce evidence for use by an American antitrust Grand Jury, the pendency of the Laker civil proceeding in Washington provides an effective means for the Justice Department to reach British company documents wherever located.

Laker has already issued civil discovery demands upon BCAL and the other defendants for virtually all of the documents listed in the Schedule. When these documents (wherever located) are produced to Laker and the other parties to the civil suit, as they must be, they will upon being brought into the United States be caught up by the net of the Grand Jury subpoena being issued to numerous persons including all of the parties to the Laker civil suit. In short; the civil suit, unless restrained, will enable the Grand Jury to secure access to the documents called for which exist in the British files of BCAL and British Airways.

The Grand Jury investigation places BCAL in grave jeopardy if an indictment is returned, notwithstanding BCAL's ultimate vindication. The return of an

indictment will likely unleash a host of contingent fee treple action damage suits from classes of Laker's creditors and passengers who claim injury due to its demise.

WHAT MUST BE DONE

The Criminal Investigation

All possible steps must be taken forthwith to abort the Grand Jury investigation before it gets under way, at least as concerns the British airlines. No justification exists for permitting an American criminal investigation into allegations as to what one or more British carriers may or may not have done to a third British carrier (now in liquidation), particularly as to matters in which HMG played a significant oversight role in the exercise of its important public policy responsibilities for British civil aviation. Such a regrettable and unprecedented spectacle can be averted only by intervention at the highest levels of Government. We are advised that only President Regan can serve to forestall the scheduled commencement this week of the Grand Jury proceeding.

The Civil Suit

HMG should act to halt further action in Laker's civil antitrust suit which could serve to bankrupt BCAL and seriously injure British Airways and the British taxpayers. As noted above, the suit acts as a vehicle enabling the Americans effectively to bypass the barrier against Grand Jury subpoenae erected by the House of Lords in the RTZ decision. Moreover, the pendency of the criminal proceeding deprives BCAL of its ability effectively to defend the Laker civil suit. For as long as the criminal proceeding is continuing, the British courts will decline to enforce BCAL's requests for subpoenae for the appearance of

British nationals to give evidence at the American trial. The testimony of CAA and Bank of England officials is essential for BCAL to establish that Laker's failure to secure finance was attributable to factors other than the alleged intervention actions of BCAL and other airlines.

BCAL has applied to the High Court for an order restraining Laker from proceeding with the prosecution of his civil antitrust suit; the matter is to be heard on or about 21 March. We contend that an action by one British carrier against another in respect of matters arising and largely occurring in Britain should be tried here. That is particularly the case where the action abroad offends British public policy in a number of vital concerns - a determination that the Laker suit does just that was made by Mr Justice Parker in the recent Midland decision. Among the objectionable features of the Laker civil suit are these:

- a The award of punitive treble damages - an award over which the court or the plaintiff has no discretion.
- b The retention of Laker's counsel on a contingent fee basis.
- c The determination of the issues by a lay jury
- d The immunity of a losing plaintiff from liability for any of the defendant's costs; the converse is not true.
- e Sweeping and burdensome discovery concededly conducted as a fishing expedition.

As respects the civil suit, we ask that HMG instruct the Attorney-General to

appear before the High Court in support of our application to restrain further proceedings in America. Laker's complaint charges that the alleged acts of the defendants (all of whom are present in England) constitute a violation of the Sherman Antitrust Act as well as an intentional tort. Laker has been careful to assert only that it may not bring a Sherman Act antitrust suit in England; it has not foreclosed a tort remedy here, and that is where it should be required to seek its day in court.

28 February 1983

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