INTERVIEW VIII

DATE: February 25 and 26, 1969

INTERVIEWEE: FRANK M. WOZENCRAFT

INTERVIEWER: T. H. Baker

PLACE: Mr. Wozencraft's office, Department of Justice, Washington, D.C.

Tape 1 of 1

B: You wanted to add something to the tail-end of tape number seven?

W: In discussing the Plan of Reorganization Number One and the floor fight in the House, I think it's important to know how you figure out where you are, going into a vote. You have to know pretty well in advance who is with you and who is against you, or you're in the middle of a dark tunnel with no flashlight. You need a hard count, stripped of wishful thinking.

By personal visits you can get a pretty good idea of who is with you. There are always some people that will make more favorable noises when you are there than after you have gone, and sometime[s] will not vote as you think they will. Anybody dealing often with Congress learns fairly quickly who these are. But with most people, they will give you a fairly definite answer on what they will do if you ever get to them. Some of them will say, "I can't commit myself, but I will certainly take your thoughts under advisement."

There are sheets that the leadership uses that list by state the Republicans on one

side and the Democrats on the other by delegation. The leadership has assistant whips for various regions and in an all-out battle, they will get the assistant regional whip to help them in determining how the people in that region will vote and rounding up those votes. The leadership expects support from its people unless there is a real reason why their people oppose it, either as a matter of principle or as a matter of their own constituency or district. By and large, however, the whole fabric of this party system is that the leadership assigns the positions on the various committees where the real work of the Congress is done, and they expect cooperation from their members. When this system breaks down, so does the effectiveness of the leadership.

In a properly run operation, by the day before a vote, you probably know within a very few congressmen how you're going to come out. In this particular case, on Plan of Reorganization Number One, because the vote came so soon after a weekend when so many people were gone, and because the importance of it had not been so great that the leadership had been willing to get to it earlier, we had an immense number of question marks. This was one reason why we were so uncertain the day before as to how we were going to come out, and the process of rounding up the vote was a good deal more cursory and precarious than would ordinarily be the case. In determining what vote you are going to get, you have to be a realist and you have to analyze quite carefully not only what someone says, but how you think he will really vote when the chips are down in the light of what you know about who is going to make floor speeches, how likely he is to be there, and what the pressures on him between then and the time of the vote will be. Many is the congressman who has conveniently been out of town, or at least out of pocket,

when the key vote has come up on which he does not want to take a stand. If he wants to take a stand and is going to be out of town, he can always pair with an opposing congressman who is going to vote the other way. So you usually work down to a pretty fine and hard count of the people you can really count on, and then you have the question marks you simply don't know about.

As of the afternoon before this vote, we had over eighty question marks, which shows how little we knew at that point about the eventual outcome.

B: Who did the actual counting, Speaker McCormack or--

W: This counting was done in the speaker's office with his assistants, with Barefoot Sanders, and with myself and one of my colleagues, those of us who had been talking to congressmen. We pooled our knowledge, and where we weren't sure, the speaker would try to place a call, or one of the others would undertake to get in touch with that particular congressman.

B: You all sat together and went down the list one by one?

W: Right down the list through that little folder, making checkmarks on our own copies as we went, of yes, no, or questionable. The term of art used when somebody is going to be with you on a bill is, "He's all right." That means you can count on him for this vote. These same techniques of headcounting deserve greater attention in international conferences, such as the United Nations Conference on the Law of Treaties that I attended. There are ballot sheets there, but there are fewer issues on which you actually keep a record of the vote. There are so many votes that you can't keep them all, and often they're not roll call votes. But where there is a roll call vote, it really pays you to make a

record and after a while begin to extrapolate who you can count on and who you cannot, making some informed guesses, but carefully avoiding wishful thinking like the plague.

B: You wanted to go into the CAB [Civil Aeronautics Board?] inclusive tour charter affair?

W: All right. This is an interesting situation because it brings to bear almost every part, every major branch, of our federal government. Back in the late 1950s and early 1960s, the airlines were in considerable need of financial assistance to pay for the heavy new load of equipment, of new jet planes that they had to acquire. The legislation and the CAB policy reflected this. Rate schedules were kept fairly high, competition was kept to a minimum, not too many airlines were certificated for particular runs, and only the scheduled airlines were given openings on most important routes.

By about 1962, however, these planes had been paid for, and the profits of the airlines began to soar. Second-hand equipment began to be more readily available in the form of Electras that had been replaced by jets or DC-7s. Into this vacuum, this opportunity, came a group of carriers that have been variously called the "non-scheds," or non-scheduled airlines, and more recently the "supplementals." This is a big, big business. It sounds small, but it is not. The area that they have entered, since they don't have scheduled service, has been primarily the charter area. The supplementals have concentrated on chartering their planes to particular groups like a Lions Club or a Harvard Club or an opera society. This is done also by regular airlines, but regular airlines have less equipment available for it. It's not their main line of business; they need their equipment to run their scheduled routes, whereas the supplementals make a business of these special trips.

Early in the game it became crucial to determine what kinds of groups the supplementals could carry. Legislation was introduced which would give the supplementals authority to not only charter their planes to regular bona fide groups, but also to organize something called inclusive tour charters. This was only partly by legislation; it was part by CAB regulation. I'm having a little trouble here remembering the exact order in which things went. I think the initial rules were by the CAB on applications, but then a holding by the CAB that existing legislation would permit this kind of charter was overturned by the courts as being in violation of the basic act. The result was corrective legislation which authorized the supplemental carriers to charter planes.

The issue that then came up, and it came up almost at the end of the congressional process on this legislation, was whether they could charter their planes to a travel agent who could then organize a tour from people who did not have the affinity of being all members of the Harvard Club or the Lions Club or the opera society. Obviously, this is a fantastically rich market, because there are a great many people who want their trip all planned; they want all arrangements made, but they don't belong to the particular club that is going to the particular place that they want to go. If you let a travel agent organize the tour, he can get a lot of business at rates which are phenomenally lower than the scheduled airline rates. The reason that they're so much lower is that the supplemental airline, when it rents a plane, charters the whole plane. It doesn't have to worry about running a flight that is only one-eighth full. The scheduled airline, on the other hand, has an obligation to fulfill its schedules whether there are customers there or not, to run at

times that may not be too popular in terms of the traveling public but are necessary for some portions of it, and to serve cities that need service even though there's added expense to them that is not offset by the traffic generated by those cities. So this became a very crucial issue.

In fact, the problem began in World War II and was significant from then on, because during World War II, these irregular carriers did a good bit of the large transport-type work of transporting personnel to various parts of the world. After the war, they had their transports and not much else. The board made an exemption for these non-certificated irregular carriers as long as they didn't offer individually ticketed service regularly or with a reasonable degree of regularity between specific points. From that point on, there was a shifting pattern of effort by the CAB to work out a viable, sensible solution that could utilize the capacities of these carriers without crippling the scheduled carriers.

They tried it a lot of different ways. They had, in 1951, something called the larger regular air carrier investigation to determine what ought to be done. In 1955, they issued findings that these carriers performed important supplementary services and that they should be authorized to offer unlimited charter service and also schedule individually ticketed service, as long as they didn't do it more than ten times a month in the same direction between any two points. This 1955 decision was upset by the Court of Appeals of the District of Columbia as being invalid, because the board did not have authority to put that kind of condition on the grant of any certificate that it issued. The result was a trip back to the Congress in an effort to spell out by legislation what authority the

supplemental carriers should have.

In 1962, this legislation was enacted. The Senate and the House versions were quite different in dealing with chartered service. The Senate committee actually defined charter service to include any transportation services that did not involve direct sale of tickets by the air carrier to individual members of the general public. The House bill was entirely silent on what comprised charter service. The effort of both houses was to avoid a direct competition of individually ticketed services by the irregular, or supplemental, carriers against the regular scheduled carriers. And so the bill, in its final enactment, was in many ways a triumph for the scheduled carriers, who have considerable political impetus and momentum.

However, it did also provide a charter under which the supplementals felt they could live very well, and, in fact, they have lived very well under it and have grown immensely since then. But it was in the conference committee, when these two bills were thrashed out, [that] the House version was accepted, and this left absolutely silent any definition of charter trips. The reason for this decision was given in the Conference Committee report: "Authority to define charter services should be left as at present with the Board, subject to the limitations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications."

It was on that basis that the bill passed both the House and the Senate. But in both chambers, and particularly the House, just before the final vote, the scheduled carriers became alarmed by a CAB-proposed regulation which would have given a definition to

the word "charter" that would, to them, have permitted, in effect, competition to the extent of individually ticketed services, at least through travel agents chartering a plane. The result was some language on the floor by the leaders, particularly in the House, that would have said, "We do not mean by this legislation to permit the charter of planes to a travel agent who is, in effect, marketing individually ticketed services." The Senate language was much less clear, and it was a perfect example of last-minute floor debate discussions to modify, in effect, the words of the statute and the committee report.

I will pause here to emphasize the significance of this as a question of legislative interpretation because in many, many statutes, you have the words of the statute on the one hand, the committee history on the other hand, and sometimes floor debate on the third hand. This is something that anybody interpreting the laws finds great difficulty with. The general rules of construction, from a legal standpoint, are that the words of the statute prevail, and you then go to the committee reports when there is some ambiguity or vagueness. Nobody that I know of ever has said that controlling authority should be given to floor statements. When one considers how few congressmen are on the floor when these statements are made, it becomes clear that this would be real folly. At the same time, some function is served by them, particularly when they come from the main pushers of legislation, the leaders who are the sponsors of a particular bill.

In this case, you had the words leaving to the CAB the authority to define charter; you had the Conference Committee Report saying that this was what you were doing. And as far as the CAB was concerned, a little bit of dicta to the contrary on the floor, even from leaders of the bill, did not impinge [on] its authority. Indeed, it's difficult for

me to see how it could have done so when you had a clear meaning coming out of the Conference Committee and no amendment or charge on the floor in either house. But this is where the crisis and major dispute arose, and you can see how it does arise. There are simply different canons of interpretation applied to different facts. It's a rare legislative process that doesn't have its ambiguities, and this one certainly had plenty of them.

B: Let me ask a question here. Does anything in this require the president's signature, as he is required to approve scheduled overseas routes?

W: Yes, it does. Any foreign permit requires the president's approval, and I'll come to that later as we go along here.

Under the authority of this bill, the CAB issued regulations which quite tightly restricted the supplemental carriers to be sure that they did not get into the individually ticketing business on their own. It did, however, permit inclusive tour charters, and that means a charter to a travel agent who will sell inclusive tours, meaning the air transportation plus certain ground facilities; it has to be at least something like a hotel. It can include guided tours of the cities, meals, and many other things. But there must be some ground services provided other than just the plane ticket. As far as the travel agents are concerned, this is a new kind of a commodity: a package plan, which serves a new transportation need, and they feel that it expands the traveling public by including people who wouldn't feel that they could venture forth on their own without some such prearrangement.

It also reduces the prices, as I mentioned earlier, very substantially and thereby

broadens the travel market. It's this price reduction, of course, to which the scheduled airlines object. And after the permits were actually granted to a number of supplemental carriers, the scheduled airlines brought suit in the Court of Appeals for the District of Columbia, challenging the validity of these orders and citing these floor statements in the House and Senate, and particularly the House, following the Conference Committee Report, as meaning that the CAB was, in fact, violating the intent of the Congress under this new act, even though no word in the statute would have taken away the pre-existing CAB authority to decide what a charter service was.

B: Had the airlines been active in lobbying before this court case?

W: I'm convinced that every statement made on the floor of the House and Senate was written by the airlines represented. The supplemental lawyers were not quite that diligent. They could have gotten some good statements in, too. This is another reason why floor statements are really very flimsy support. They usually are written by the supporters of a particular interpretation of the bill, and this is their last chance to manufacture some legislative history. I must confess that the government itself is at least as good at this as private industry. A lot of statements get provided by the departments and agencies to the congressmen. If they didn't, the congressmen wouldn't know what to say; they don't know enough about the subject, and this is, indeed, part of our real problem of our whole legislative system of government. I don't think it's necessarily bad to have the government or private enterprise doing this; I just think you ought to know what it is and not thereby assume a great congressional intent that does not exist beyond the pen of the lobbyists, and the one congressman who was willing to make the speech for

the lobbyist. Taken in proper perspective, it's a perfectly good part of our legislative process. The trouble is when it starts dominating over the committee reports, which are the considered product of an entire committee; at least in theory, and usually somewhat in practice, they get a lot more attention. Floor debates--somebody says it, and then it's voted. And, in fact, the *Congressional Record* the next day can be doctored for twenty-four hours to make it say something different, so that you really don't know what has been said by looking at the *Congressional Record*, and yet that's the only record you do have. This is another problem with attaching too much significance to this kind of legislative history.

The Court of Appeals for the District of Columbia upheld the CAB on these particular permits, which involved domestic service on an inclusive tour charter basis, whereby supplemental carriers were authorized to charter their planes to travel agents who could collect groups. And as I say, there were a lot of rules, a lot of restrictions, to keep this from being in competition with individually ticketed services. The airlines themselves were not permitted to sell or organize their own groups under this particular concept, although they do do it as scheduled airlines under other provisions.

That took care of the domestic situation temporarily, but there were also foreign permits involved. These permits could not become effective until they were approved by the president, because under the Civil Aeronautics Act, since the international relations problems that these things occasion are very real, it is the law that the president must approve it. That approval process consists of the CAB sending recommendations to him through the Bureau of the Budget, which analyzes them for him, and when there's any

legal problem, refers them to the Office of Legal Counsel. These particular foreign permits did come through the Office of Legal Counsel, but the CAB decision had just been upheld in the Court of Appeals for the District of Columbia. So, in fact, it was no legal problem to lead us to advise the President accordingly.

The President duly issued his approval and authorized these foreign permits before the period of ninety days, within which the airlines could have sought *certiorari* from the Court of Appeals' decision, had expired. The scheduled airlines had learned their lesson in the domestic permit appeal, which they lost in the Court of Appeals for the District of Columbia, so they preferred another forum. Fortunately for them, the Civil Aeronautics Act provides that jurisdiction to handle an appeal from the CAB also lies in the circuit of residence of the airlines and their home domicile, their home office. Most of these airlines are headquartered in New York. The second circuit contains a bench which has always been much more sympathetic to the scheduled airlines and less sympathetic to the CAB.

As a result, the foreign permits were appealed not to the Court of Appeals for the District of Columbia, but to the Court of Appeals for the Second Circuit in New York. That court, in its infinite wisdom, decided precisely the opposite from the District of Columbia Circuit. It held that this language on the floor was entitled to great weight, and that the CAB had exceeded its jurisdiction. The CAB at first tried to get the Second Circuit not to take the case out of comity and just follow the rule on this issue that the D.C. Circuit had issued, but the Second Circuit does not acknowledge the presence of any court as an equal, except the Supreme Court, and it's not very sure about that sometimes.

In any event, they saw no reason why they should not go ahead and deal with this problem and come out with their answer just as well as the D.C. Circuit had.

From that decision, needless to say, the supplemental airlines and the CAB sought *certiorari* in the Supreme Court, and a direct conflict between the two circuits is almost an automatic case where *certiorari* is granted. The CAB regarded the case very seriously and wrote a letter to the solicitor general, who handles all government appeals to the Supreme Court. It asked that he personally argue the case because of its importance. This is in counterpoint to some agencies, which insist that their own general counsel argue the case in the Supreme Court and usually get their way. In this instance, the solicitor general had a quite heavy docket for around this period, and he also knew that I had had some experience with administrative law and jurisdiction and statutory interpretation. And this case had technically come through our office, although it didn't raise any real problem there. He asked me to argue the case on behalf of the CAB.

B: Is this [Erwin] Griswold's tenure?

W: This is Griswold, right. And I told him I'd be glad to do so, noting that I had been a Supreme Court law clerk for Justice [Hugo] Black and had been fascinated by the Court, and had argued a case before the Court *in forma pauperis* upon appointment of the Court in behalf of a convict in the state penitentiary in Huntsville, Texas. I was delighted to have what was really, in my view, a quite significant case to argue.

The most significant aspect of it was, in my view, the statutory interpretation techniques. But from the CAB standpoint, it was, of course, its authority to define the terms in its own statute, when the Congress has not done so. From the supplemental

carriers' standpoint, the question was solely one of money: "Can we get these very lush and high-paying opportunities to go to Europe?" And that's where the real money in the inclusive tour charter lies, because that's where, first, it costs more; second, you need more help in your arrangements. And both of these problems are reduced by the inclusive tour charter technique.

Unfortunately, from my standpoint, the brief was pretty well shaped up before I got into the case. I read it and reviewed it, but I had no real opportunity to focus on it in the degree that I would have had if I had argued the case earlier or been in on its preparation from earlier stages.

B: These were prepared by the CAB's general counsel?

W: It was prepared there and then reshaped in the Solicitor General's office with help from a lawyer in our Antitrust Division. Our Antitrust people were also interested in this problem because it involved competition between the supplementals and the scheduled carriers. It was a perfectly good brief. It did not, however, succeed in really focusing the attention of the Court on the nature of this statutory interpretation problem as much as I would like to have done. I thought I could take care of this in oral argument, so it didn't worry me too much at the time.

As the time for the case approached, I could understand why not too many assistant attorneys general argue Supreme Court cases in abundance, because fitting in the preparation of this very intricate case with a fifteen-year history of background and a six-year history of the statute itself became a really burdensome undertaking. I spent nights, weekends, all sorts of time preparing for the argument, in conference with the

Solicitor General man who had worked on the brief and who was a very competent man, did a good job, and also with the CAB lawyers and with the supplemental airlines' lawyers.

We had one hour for the case on each side, but obviously, this time had to be shared between us and the supplementals. It was rather difficult to divide the argument, because the argument was all of one piece. We did manage to do so, and, in the process, the details of the legislative history logically fell to the supplemental airlines' lawyer, who had lived it.

When the actual oral argument came, I made the initial presentation, and then he followed me and then the respondent, who was represented by the TWA New York counsel, appeared, and then I was hoping to have ten or fifteen minutes for rebuttal. However, they questioned my colleague, the lawyer from the supplemental airlines, so much that it cut me down to seven minutes. In my own presentation, there were practically no questions. This may seem like a dream for a lawyer, but really, it's the reverse. Until you get the questions, you don't know where the judges' problems are.

In all candor, while this case was of great importance to the CAB and involved great principles of statutory interpretation, it was not the most important thing in the Court's mind on its docket that week. The Court has been much more focused on problems of civil rights and order and constitutional provisions, and this bit was just another statute with a bunch of airlines competing with each other, although they did acknowledge that the CAB was there, and that the public had an interest. I had a great deal of difficulty in focusing the attention of some of the justices on the crucial issues. A

couple of them were very well focused. Justice [Byron] White was very well focused in favor of the scheduled airlines position, and Justice [Potter] Stewart was very well focused on what I considered to be our position. Some of the other justices couldn't care less, and a couple of them seemed not too familiar with the record or the issues.

B: How about your old boss, Judge Black?

W: My old boss, Judge Black, didn't ask a question or say a word the whole time. It was very hard for me to judge what his position would be. The Court was minus one justice, Thurgood Marshall, because he had, as solicitor general, approved the filing of a petition for rehearing *en banc* in the Second Circuit. Obviously, this really gave him no familiarity with the case, but he leaned over backward and disqualified himself.

In my seven minutes for rebuttal, I tried valiantly to focus the Court on what I considered the basic issues and to correct what I thought were some real misconceptions and red herrings strewn along the path by the lawyers for the scheduled airlines. It was obvious that I was not entirely successful in this, because the Court, by a four-to-four vote, affirmed the split of the circuits. This is an almost unbelievable result. It left in full effect the District of Columbia decision on the domestic permits and the Second Circuit decision on the foreign permits, which went on completely different theories and made no sense at all. It also resulted in no opinions from any of the justices, so that, to this day, we can't really say who voted in what direction, another exceedingly frustrating thing for an advocate who has worked hard on a case and wants to see his arguments adopted.

B: Did you ever find out informally how the vote went?

W: No, I really have not made any particular efforts to do so. It's supposed to be a matter that

the Court keeps to itself, or it would announce it, and I haven't felt that it would be proper for me as a government official to go prying too deeply into their secrets, even though one of my employees is now a former law clerk, who was a law clerk with the Court when this case was argued. All I found out from him is he agrees with me [that] the Court never really understood the case, but I haven't asked him who didn't understand it or how the split went, and I wouldn't expect to do so.

There were two hopes left at this point. Obviously, the existing situation, two utterly conflicting circuit court decisions being affirmed by this four to four split, was not tolerable on a permanent basis. There was another case that had been held in the Second Circuit with the recognition that its outcome would be governed by this case involving other carriers whose qualifications were not established until later. It was decided that the best thing to do was to try to bring this case up on the theory that Marshall's disqualification was probably technical, and he had not been technically involved in this other case, and we, therefore, might get a full court and get some kind of decision, because even if the decision opposes you, it's better to have a rule in this kind of case than to have chaos. Chaos, of course, rather favors the scheduled airlines, because they have their routes, and, as long as these companies are being blocked out of the European market, they don't really mind. But there had been a stay of the Second Circuit order, so that these carriers really were continuing to operate to Europe during all this interval, but without the landing rights and the organization and the panoply that they would have gotten if their right had become permanent.

So here you have, if I may recapitulate at this point: the regulatory process of the

CAB, an administrative agency in the so-called fourth branch of our government, had produced results which were upset by a court; a response to that upset was legislation which was interpreted by the CAB to give it authority to issue new permits; its authority was upheld by one court, rejected by another court, and left completely up in the air by the Supreme Court. So you already have the interrelations of the regulatory process, the legislative process, and the judicial process. And in a way, it's a little microcosm of government to show the interrelation even of the President getting in on the act with his approval of these permits; the Department of Justice getting in on it, first as clearing this approval and then defending the approval in the courts.

But here we were with chaos unrelieved. There were two feasible courses at this point. One was to seek new legislation. This is, at best, a cumbersome and precarious process, particularly starting in May of 1968, with the Congress very busy and about to adjourn that fall and with an election coming up. The other alternative was to try to bring up this Second Circuit case and move it along and get it accelerated to get it quickly to the Supreme Court. These called for some very difficult and intricate decisions. For one thing, you wanted to stay the effectiveness of the Second Circuit mandate, or the supplementals would have to terminate their present flights to Europe, including trips already planned for the summer of 1968 where the people had bought their tickets.

We went to the Supreme Court for a stay--at least that's what we started to do, but the Solicitor General was not willing to say that this motion for a stay and petition for a rehearing were not for the purposes of delay. As far as he was concerned, this was basically a fight between the supplementals and the scheduled airlines, and he didn't want

to get in the middle of who continued what flights or who got what money. He did not regard that a matter of proper governmental interest. The CAB very much regarded it as a matter of proper governmental interest because it was the outfit charged with regulating these flights; it had the regulations under which these tickets had been sold. It thought that every reasonable step ought to be taken to preserve that situation, pending a final decision on this second case.

We cut the Gordian knot by a very interesting procedural wrinkle, which took a bit of resourcefulness. The supplementals had no trouble with this; they just filed for a rehearing. But the government filed a petition for an extension of time within which to file the petition for a rehearing, pending the bringing up of the Second Circuit case, and that did not require any delay, and we did not ask for a stay. The Court did grant the stay at the behest of the private supplementals, and it granted our petition for an extension of time within which to file a petition. We sort of were going around the mulberry bush. The supplementals were a bit unhappy with this, but not very, because it was getting the job done, even though in a somewhat anomalous fashion.

Meanwhile back at the Second Circuit, the CAB handles its own litigation there. The Justice Department does not really come in on it. In this situation, however, I did consult with the CAB lawyers in considerable detail, and it was agreed that they would file a motion there to consent to the entry of judgment against them in the Second Circuit, without prejudice to their right to petition for *certiorari* of the Supreme Court, in the hope that they could get the case up quickly and get it on the docket this fall so that this dispute could be resolved one way or the other. This is not the easiest thing in the world to do,

because when you consent to a judgment against you, it's a little hard to preserve your position to ask the appellate court to upset it. However, we did enough research to be satisfied that that could be done, and we thought that the Court would be sympathetic enough with the chaos that this situation produced to let us do that.

The Second Circuit, however, is not one to rush for anyone any more than it is one to defer for anyone. As a result, there was really no action on this motion to enter judgment against us. So the focus shifted then to the congressional front. Here, the supplementals made up for all their inadequacies in the 1962 legislation, when, with a little good preparation, they could have avoided, or at least offset, these dicta by various congressmen and senators that caused them so much trouble.

[Senator A. S. "Mike"] Monroney had been a real supporter of theirs in the 1962 legislation; he just hadn't phrased himself as precisely as some of the people who were reading the speeches fed to them by others. And he instantly started hearings on new legislation to validate what he thought the 1962 legislation meant all along, which was exactly what the CAB thought it meant all along.

While the supplementals were at it, they thought it would be nice to get an amendment that would authorize them to sell individually ticketed services without going through the travel agents. In the bills that emerged from the two houses, the Senate bill would have permitted them to do that as well. The House bill would not. In the conference committee there, the House bill prevailed. The result was that with surprising speed, much quicker reaction to a court decision than I've ever seen the Congress succeed in taking, they passed legislation completely validating the position for which we had

been arguing in the Court. This rendered moot both the case in the Second Circuit and the case in the Supreme Court. Therefore, we won the day, but not in a fashion where the lawyers could get any credit. It was the lobbyists that charged the fees on that one. Of course, that didn't matter to us in the Department of Justice since we don't get fees for our services anyway; we just get our regular salary. It would have been nice to be the instrument by which virtue triumphed, but the ultimate result of having a triumph one way or another was thoroughly satisfactory and we were saved another lawsuit this fall.

So now you have the Congress again coming in on top of the judicial process, and you have the CAB validating these previous permits. One of the tricks here is that we had to keep alive the old permits so that the scheduled carriers could not claim, "Aha, you have to start all over." This took a considerable amount of technical carefulness, but this was achieved also.

There were little pitfalls like this all along the way. As a story of procedure, I think this petition for rehearing in particular is a classic. The choice of forum area, where the scheduled airlines ditch the court they don't like and go to the one they do like, the interaction of these courts, the Supreme Court's handling of it all give you about as much of a vignette of the way the process operates as I can imagine. It was particularly interesting to me to see this happen. I don't think there are many times in our history, or in the day-to-day work of our government, when the interrelation is this clear cut or this obvious.

B: Was this involved in any way with another issue that was pending at the same time, the question of the awarding of the scheduled airlines overseas routes, the award that was

finally made late in 1968?

W: Are you talking about the trans-Pacific awards?

B: Trans-Pacific.

W: That was a completely different project.

B: There was no administrative involvement with this other affair?

W: No. I don't think the two interlocked at all, except that the same airlines became involved in this, but sometimes with different hats. The one thing that is important to remember in any of these cases is that any delay favors the status quo. So your airlines that already had the permits regard delay as money in the bank, which it literally is to them. Not until the process gets all the way completed does the traveling public get any benefit from these additional routes, nor do the airlines that are seeking them.

B: Were you personally subjected to anything that could be construed as lobbying from the scheduled airlines?

W: No. They knew perfectly well that we were the enemy on this case and treated us as such.

End of Tape 1 of 1 and Interview VIII

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Legal Agreement Pertaining to the Oral History Interviews of

FRANK M. WOZENCRAFT

In accordance with the provisions of Chapter 21 of Title 44, United States Code, and subject to the terms and conditions hereinafter set forth, I, Shirley Ann Wozencraft of Houston, Texas do hereby give, donate and convey to the United States of America all my rights, title and interest in the tape recordings and transcripts of the personal interviews conducted with my late husband Frank M. Wozencraft in Washington, D.C. on October 21 and November 12, 1968; January 21 and 22, and February 24, 25, 26, and 27, 1969, and prepared for deposit in the Lyndon Baines Johnson Library.

This assignment is subject to the following terms and conditions:

(1) The transcripts shall be available for use by researchers as soon as they has been deposited in the Lyndon Baines Johnson Library.

(2) The tape recordings shall be available to those researchers who have access to the transcripts.

(3) I hereby assign to the United States Government all copyright I may have in the interview transcripts and tapes.

(4) Copies of the transcripts and the tape recordings may be provided by the Library to researchers upon request.

(5) Copies of the transcripts and tape recordings may be deposited in or loaned to institutions other than the Lyndon Baines Johnson Library.

Shirley C. Wozencraft
Donor

8-25-94
Date

Acting Archivist of the United States

12-22-94
Date