

INTERVIEW I

DATE: October 21, 1968

INTERVIEWEE: FRANK M. WOZENCRAFT

INTERVIEWER: T. H. Baker

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

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B: This is an interview with Frank M. Wozencraft, assistant attorney general in charge of the Office of Legal Counsel of the Justice Department.

Mr. Wozencraft, if we may begin, do you recall when you had your first meeting with Mr. Johnson? Of any kind, political or social?

W: Well, I remember a couple of instances in which I met then-Senator Johnson when I was serving as law clerk for Justice [Hugo] Black on the Supreme Court. My parents were living in Washington at the time; my father was practicing law here. He had been a lifelong friend of Sam Rayburn's.

B: Your father had been?

W: Yes, my father had, and on the occasion of Mr. Rayburn's being speaker of the House for longer than any other Speaker, my mother and father gave a small party for the Speaker, which was attended by Senator and Mrs. Johnson in our apartment, I remember. That probably was the first time I actually met the Senator.

B: This would have been in 1949 or 1950?

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W: In 1949 or 1950, right.

B: Did he impress you any on that social occasion?

W: Oh, yes, I think I was pretty impressed by a good many people there, of course. Both Senator Johnson and Mrs. Johnson were obviously people of very great ability and presence. And I knew of the high regard of Speaker Rayburn for them.

B: Do you ever remember your father talking about the relationship between Mr. Rayburn and Mr. Johnson?

W: I've heard so much about it so many places that it's hard to remember exactly what I heard from my father. I knew, of course, that when Representative Johnson came to the Congress, the Speaker was particularly impressed with him then and regarded him as a man of exceptional promise. I'd known of the close relationship that continued between them through the years.

B: Did you have any further contact with then-Senator Johnson?

W: Well, at that time it was fairly peripheral; it may have been at other parties around Washington. The occasion I remember most specifically was this party in our apartment. I then remember one other occasion when Mr. Johnson was vice president. I happened to be in Washington from Houston where I was practicing law, simply on some sort of business or other, and my mother and father were invited to the home of the Johnsons for a quite large party which they gave for three new congressmen from Texas.

B: That would have been to the Ranch?

W: No, that was up here in the residence of the Vice President, at that time in Washington. It was then about 1961 or 1962--I believe it was 1961. The congressmen were Ray Roberts,

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Henry Gonzalez, and I think the other was Graham Purcell, I'm not certain of that. There were three new Congressmen. So on that occasion, I was a guest of the Johnsons, along with others and was again quite impressed, of course, with both the Vice President and Mrs. Johnson.

Meanwhile, in the campaign I had seen them when they came through Houston.

B: Were you politically active in those days; did you participate in political campaigns in 1960 or 1964?

W: I really never participated; I made relatively small contributions to the Democratic Party on both occasions, and I was one of the "Lawyers for Lyndon" in 1964. Really, this was about the high-water mark of my political activity.

B: What did the "Lawyers for Lyndon" Committee do?

W: We mainly just endorsed the re-election of President Johnson and urged the rest of the people to vote accordingly. And we made contributions to the ticket. But this was not a political thing in the sense of a party activity. It was more of a reassertion that the lawyers of the community supported the re-election of President Johnson. Of course, it happened that this was mainly Democratic lawyers, but that wasn't entirely true. There were Republican lawyers as well in favor of the President's re-election.

B: Was that confined to any particular area or was that a nationwide committee?

W: I don't know about the nationwide status of it. This particular emphasis was in Houston.

I might also add that I heard Mr. Johnson give a campaign address the day before the election in 1960 in the Rice Hotel in Houston. And I have really never been more

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impressed than I was on that occasion, with his strength, his presence, his ability, the soundness of his ideas--I thought it was a magnificent campaign speech.

B: Was the speech on any particular topic or just ranging--

W: On why the Kennedy-Johnson ticket should be elected in 1960 instead of the Nixon-Lodge ticket.

B: What kind of audience was it?

W: It was a mixed audience, primarily obviously of those who were interested in the election of this ticket. It was held in the Rice Hotel--a quite large group of rooms there. And it was, I am quite confident, televised, although I don't remember that specifically. But it was a really superb speech.

B: Sir, if I may digress here, what's it like to be a law clerk to a chief justice, particularly to Chief Justice Black?

W: Well, Justice Black is not a chief justice; he's one of the associate justices. It's just as fascinating. I've been rather interested in the recent controversy on Justice [Abe] Fortas' appointment. So few people have realized that an associate justice has an equally substantial vote as the chief justice. There's a difference in terms of the prestige and overall significance in the roles, but in terms of the role on the Court, each justice has an equal vote.

Working for any justice on the Supreme Court is a fascinating experience.

Working for Justice Black was also an immensely pleasant experience.

B: Does Justice Black follow the custom of selecting a new man each year?

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W: He usually does. He now has two clerks, and he sometimes keeps one clerk for a second year. At the time that I was his clerk, I was his only law clerk.

B: That was in 1949 and 1950?

W: That was in the 1949 term, right. I had been editor-in-chief of the Yale Law Journal and had come down along with other candidates from all over to be interviewed and really didn't think I had much chance, because he had leaned toward people who really grew up in the South. While I came from Dallas originally, I had been away from there since I was about ten years old. Dean [Wesley] Sturges at Yale Law School insisted that I was only "Southern-tinged."

When I got there, however, and talked with Justice Black I liked him immensely and to my surprise and delight, I was selected to be his clerk. It was a really rich and rewarding experience.

B: I imagine you worked pretty hard during that year?

W: Yes, it was a rare night when I would get home before 8 o'clock. And in those days, the conferences with the Court were on Saturday, so Friday night--the night before the conferences--the law clerks would be down there burning the midnight oil trying to get opinions ready for consideration by the Court--*certiorari* petitions were all reviewed. And this was the night when everybody was having all the parties, so for a bachelor it was a fairly frustrating experience, but it was worth every minute of it.

B: Did the justices work that hard too?

W: The justices worked quite hard, yes, and Justice Black in particular does. I don't think I could have kept up with the work load of all of the *certiorari* petitions if it hadn't been for

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the fact that Justice Black, whenever he saw I was getting really overwhelmed, would come take a group of cases himself to read. He would insist that he enjoyed doing this because he liked to see what the Courts were saying and the lawyers were arguing without having it simply summarized for him, which was the main purpose of the law clerk in that connection.

The other main purpose of the law clerk was working with him on opinions, and his technique there was to dictate the draft himself of the opinion that he intended to give. He would then give that draft to the law clerk; the law clerk would review it, revise it, raise questions, do everything he could to improve it.

B: This included beyond just the routine matter of looking up the citations--

W: Oh, yes, this is the writing of the opinion.

B: But I mean--the law clerk was asked actually for his opinion on the validity of the opinion and its language and soon?

W: Yes. Of course, the Justice had already written his views in this first draft. He would dictate the first draft, and it would be typed up in fairly loose form, but giving you very clearly what he had in mind.

B: Sir, this may be an unfair, even unethical, question. In the give and take like that, did the Justice's mind ever get changed?

W: I don't really think so. I think that the one real purpose of it, from the standpoint of the Justice, was that it exposed his ideas and his phrasing to a testing, challenging process of the kind that the opinion would receive when it was published. This was a very useful thing, and it wasn't that the Justice would change his mind, but the Justice would very

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frequently change his words. In fact, if I raised a question or a doubt about a phrase and gave my reasons, Justice Black would usually change that phrase--not necessarily, and really not very frequently, to what I wanted, but at least he would figure if a fresh eye had seen a problem with the phrase, he should reconsider it. And so, it was a very workable process. There was no doubt about who was writing the opinions: it was the judge, not the law clerk. But the law clerk was able to help him make those opinions better opinions than if he hadn't been there.

B: Was anyone else ever admitted in this process of scrutiny and clarification?

W: No.

B: Just the justice and his clerk?

W: Yes. Well, the other justices are.

B: In the conferences.

W: Well, but not only in the conferences--I would say the other justices' law clerks also get a look at it too, usually. But there is a closed shop of just the justices and the law clerks.

B: Actually, that closed shop is even more limited on conference days, isn't it? The justices--

W: Then, it's just the justices; no law clerks are ever permitted in the room. And in fact, as you probably know, the junior associate justice acts as doorman.

B: Handles the messages in and out?

W: That's right.

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B: To move on to your current job--do you recall the circumstances of your appointment to this position? Had you had any hint beforehand that you were being considered for the Office of Legal Counsel?

W: None whatever. In fact, I hadn't even remotely considered the possibility of government service at this time. I received a call from the Attorney General one Saturday morning down at the office when I was busily working on a proposed sale of a controlling interest in a business. I assumed it was probably the attorney general of Texas. Instead, on the phone came Nick [Nicholas de B.] Katzenbach, attorney general of the United States, and asked me to come up to discuss with him the possibility of taking this position, which he had originally held when he came to government. This was his first job in the government.

B: Had you known Mr. Katzenbach before?

W: Yes. Mr. Katzenbach was the editor-in-chief of *The Yale Law Journal* three semesters before I was its editor-in-chief. I had known him really rather slightly when I was a competitor for membership on the board of the *Law Journal*, of which he was the editor-elect, and I had seen him perhaps two or three times since, but really no more than that. I had visited him once in this office in, I believe, late 1961 and had hardly seen him since then.

B: These questions aren't designed to force you to be immodest. They're really just designed to answer this question of how government gets and attracts good men. If you had not had any particularly close relationship with the Attorney General since law school days,

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does this office keep sort of a file of promising young men, or is it done by word of mouth, or how exactly is the job-hunting done?

W: I really think that the key link in this is performed by John [W.] Macy [Jr., chairman, Civil Service Commission] and his executive selective people, who keep resumes on just about everybody that they hear about that they think has potential for Presidential-appointment level positions.

B: Does that office operate out of the President's staff or--

W: It operates out of the President's staff. Mr. Macy is also chairman of the Civil Service Commission, but this function is a White House function, and he is, I believe, a Special Assistant to the President for this purpose.

In this situation I was quite surprised at being asked to take this particular job, and asked the Attorney General how he had happened to think of me. His answer was that the particular status of this office--the Office of Legal Counsel--in relationship to both the Attorney General and the White House was such that he needed somebody in whom he had personal confidence, who would also be able to establish a relationship of confidence with the White House. He also was looking for academic credentials, preferably law review editor-in-chief status, and I am sure that the fact that I had been editor-in-chief of *The Yale Law Journal* and I had been a Supreme Court law clerk were two significant factors in his proposing my name to the President, if indeed he proposed it; I suppose he did. Someone did. And the President had approved his talking with me.

B: Before his call to you?

W: Before he called--yes. He told me that he had cleared it with the President.

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B: Then did you see the President after that call and before your formal appointment?

W: I came up about ten days later, really quite unclear as to whether I would take the job. I did not on that trip see the President. I did see the President on a later occasion before my appointment was officially announced.

B: May I ask, sir, the source of the uncertainty?

W: Well, it was strictly personal. I had three children, aged three, two, and less than one. We had literally within that month of Nick's call to me signed a contract to add onto the house and poured the slab. I was just reaching the point in my legal career when, after years of working my way up to partner status, I was beginning to make good money for the first time, so that I didn't have any real backlog of financial security. I had a young family that very much needed some such security.

There was one other factor that was really the most delicate, and that was that my three-year-old boy had just had a very rough six months of health, with his ears having to be punctured many times, adenoid trouble, and respiratory troubles of all kinds. I was worried about bringing him from Texas to Washington. I wanted to talk with doctors and see what they felt that situation would be like.

Also, of course, I had to talk it over with my wife and other people that I knew there in Houston, and my parents. I particularly wanted my father's advice, since he had been active in politics at one time and since I value his judgment immensely.

B: What finally decided you?

W: When I came up and saw what the job actually involved and that there was a real chance for service, then that really settled the question. From there on, it was simply a matter of

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being reassured by the doctors that there wasn't any reason to think that my child would be any worse off here than he was in Houston. And parenthetically, he has been a lot better off; whether it's because he's older or because the climate is better, I don't know; but he has been much healthier than he was during those few months.

But to me, I really approached it on a basis of service and with a rather deep sigh, because it meant leaving a lot of things that I had just getting under way in Houston--and the great burden of uprooting my wife and the children, to come to a new community where you had to work out everything anew and where you didn't have much money to do it with. I was making twice as much as the salary here, with prospects of more yet, so it was a quite considerable financial sacrifice with no particular financial backlog to fall back on.

B: You said that later, on a second visit, I assume after you had decided, you did speak to the President then?

W: Yes. I'll go through the selection process a little. I came up here on something like February 10, 1966--that might not be the exact date; it may have been a few days before that. After an hour or so with the Attorney General, I then talked with the Deputy Attorney General Ramsey Clark, whom I had also known slightly through knowing his father on the Supreme Court when I was a law clerk for Justice Black, and through the fact that our fathers had known each for a long time, I had met him before.

B: Were not you and Mr. Clark in law school together, too?

W: No. Mr. Clark went to [University of] Texas law school one year and the University of Chicago in his second and third years, whereas I went to Yale Law School. But I had

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known Ramsey very slightly, but very pleasantly. So I visited with him about what the job would actually involve.

Then I went to the White House and was interviewed by Lee White, who was then special counsel for the President; by Joe [Joseph A.] Califano; and by Marvin Watson. And it was Marvin Watson who told me that the President personally would like very much for me to take this position, because it was a position on which the President relied a great deal, and he had confidence in me and would feel--I think Marvin's exact words were "would be very comfortable about having you in the job," something like that. And I told Marvin that I was certainly giving it very serious consideration.

I didn't commit myself until I got back to talk with my parents and with Shirley [Mrs. Wozencraft]. I knew I was going to take it by that time really, because I knew what the job involved. But I didn't want to make a final commitment until I had talked with them. After I did, I promptly telephoned and told Nick that I would take the job.

To me the real keynote to it was what the job itself involved. The mere rank was not very impressive from any kind of prestige standpoint; the salary was really quite inadequate in comparison with private income--something I hope will be fixed, incidentally, when this new commission will recommend salaries in the executive branch; I really think it's important to raise these salaries.

But the actual content of the job itself, the kinds of things that I would be dealing with, were matters which I felt I could usefully handle and I really could make a contribution to our country by doing it.

B: In this process, did you ever see the President himself?

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W: At that point, no. The time I saw the President was when I came up later in February just before my appointment was announced.

B: This would have been late February of 1966?

W: Yes . I did visit personally with the President at that time. It was a rather short visit because it was already established that I would be appointed and accept the appointment.

B: Did he outline his concept of the relationship between your job and his?

W: Yes, he did, and in a quite brief summary fashion; obviously, it was one of those days when there were about twenty-five things waiting for him to do as is usually the case. He made the point that he really counted on me to be his lawyer, along with the Attorney General and Ramsey. But he recognized that the Office of Legal Counsel has a very direct role with the White House that no other part of the Department of Justice has, except for the attorney general and the deputy themselves.

B: I think the time has now come to ask you, if you can, to describe briefly before we get into the specific aspects, what in general the Office of Legal Counsel is and does.

W: Its main job is to assist the attorney general in his role as legal advisor to the president and the cabinet and the executive branch. This was the function that led to the inclusion of the attorney general in the original cabinet, even though there was no Department of Justice until 1870. So really, in a way, our office carries on a large part of the original role of the attorney general on behalf of the attorney general. Of course, he himself is the President's lawyer, but we are sometimes nicknamed "the attorney general's lawyer" or "the president's lawyer" or the "lawyers for the White House." I really think that the latter title, "lawyers for the White House," is pretty accurate. It's not fair to say that we're

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lawyers for the attorney general; he's a lawyer himself, and he has lawyers throughout the department. Similarly, the President's real lawyer is the attorney general.

B: May I ask how big the department is right now, how many attorneys?

W: Well, the Office of Legal Counsel at present has about twenty lawyers, which is just about right. We want to keep it fairly small because the assistant attorney general is really charged with giving his personal legal judgment on the questions that come through the office and are presented to him by the attorney general or the White House. And there are just so many lawyers that can really be overseen on that kind of a personal basis. The important thing is quality, not quantity, of lawyers. I would much rather have twenty good lawyers than forty that were not as good.

B: Do you know if the size, the twenty lawyers, has remained constant over the last several years, or is that--

W: No, it has been in a state of flux, sometimes because the missions of the office have been raised or reduced. For instance, this office had as part of it the conscientious objectors section, which coordinated the role of the Department of Justice under the old Selective Service Act. This act was amended effective June 30, 1967, to remove the Department from that process, and give us one year to finish up the process, which we did on June 30, 1968. So that section is now out. That section had about six or eight lawyers at various times.

B: Did that move to another part of the Justice Department?

W: No. As I say, the role of the Department of Justice in the Selective Service process on conscientious objectors was cancelled by that legislation. It still has the prosecuting role;

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until 1967, it also had the role of determining whether or not a conscientious objector was sincere and deserved to be classified as such. This included an FBI investigation, hearing by a volunteer hearing examiner, and review here in the department, and a recommendation to the Selective Service Board. This was terminated, and in a way, it was a good thing, because the number of cases that were coming in were not really something that this kind of hand-tailored process was very well suited to.

On the other hand, I think that our office was able to perform a very useful function in assuring fairness in the treatment of conscientious objectors. The problem was simply that relying on volunteer hearing officers in the field was not a way really to work it. But we got rid of that and thereby got rid of some lawyers.

We also used to handle gifts and bequests to the United States. I recommended that this be transferred to the Civil Division [of the Department of Justice], where it belonged, and it has been.

This office I try to keep streamlined to serve a staff function. In effect, we act, I think, as the outside law firm for the White House and really the whole executive branch.

We write the opinions of the attorney general, his formal opinions and also informal opinions, giving advice to the general counsels of other agencies and to members of the White House staff about legal questions.

We also review all of the executive orders and proclamations for form and legality. This can be rather insignificant in matters like Mothers' Day proclamations or very significant indeed when we're talking, for instance, about executive orders that put

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into effect capital outflow controls like the order of last January 1 [1968], where we worked integrally as part of the decision-making process.

B: In a case like that, to get down to specifics, how does this decision-making process work? If you wish, take the one you just mentioned; and exactly who talked to whom and at what stages?

W: I think that's a pretty interesting example of how some of these things work, but I think it must be remembered that each decision has its own framework of both timing and people so that you can't generalize too much. Would you like me to go into a little bit of detail about this?

B: Please.

W: It's probably worth preserving. It was the Saturday night before Christmas Eve when I received a telephone call from Joe Califano about 11 o'clock--

B: This would have been last year, 1967?

W: --last year, 1967--asking me to come down to the Department of the Treasury for a morning meeting on Christmas Eve morning, Sunday, December 24, to work on this executive order. He didn't really tell me much of what it was about; he communicated the idea to me, and I had a pretty good idea of what it was by then. But I hadn't really gotten into it in any detail. We started off full-blown on Christmas Eve morning.

We met with Undersecretary [for Monetary Affairs, Treasury Frederick L.] Deming, with representatives of the Federal Reserve Board, of the Department of Commerce, Office of Foreign Direct Investments.

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B: Sir, may I ask here, representatives of those departments--is that generally the departmental legal counsel?

W: Well, I think in this situation it was both. For instance, Undersecretary Deming chaired the meeting; Fred Smith, the legal counsel for the Treasury, was there. I don't remember whether the general counsel for Commerce was there; I don't think he was at that meeting. [Assistant Secretary for Economic Affairs] Bill [William H.] Shaw was the main Commerce representative that I remember. The assistant secretary of Treasury and his deputy assistant for foreign matters was [were] there. The State Department was represented by someone from Undersecretary [Eugene V.] Rostow's office. The Bureau of the Budget was represented, I think, by the Deputy Director [Phillip] Sam Hughes. It's hard to remember exactly who was at what meeting. But the point is, here were about five different departments represented at the general counsel and undersecretary or deputy director level, pretty much.

B: And a White House representative would be there?

W: A White House representative was there, too.

B: Do you recall who, in this case?

W: Ernest Goldstein. And I was the Department of Justice representative.

By that afternoon we worked out a draft of an executive order. I would say the people that really worked on that most directly were Fred Smith and Ernest Goldstein and Gene Rostow and myself. And we moved over from Treasury to State to Rostow's office and really finished the drafting in Rostow's office. That was--

B: You mean the smaller group--the four of you?

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W: Yes, the four of us. And this was--we finished that up about 5:30 Christmas Eve. No, I guess it was later than that: between 6:30 and 7:00 by the time we actually got away.

There were some pretty indignant wives by that time. I had been very lucky. Shirley figures that if I'm going to be making all these sacrifices to come to government, that the government ought to get full benefit of my time, so she doesn't really mind as long as she knows it's something important. The only time she complains is when she thinks that I'm called up for something that isn't important. So I had no trouble with Shirley at all.

B: May I ask here, was there an element of emergency or speed in this, or is working on Christmas Eve standard operating procedure?

W: It's not standard operating procedure, but neither is it particularly sacrosanct. I think I had worked a little the previous Christmas Eve, as well.

But this was a matter of high emergency and secrecy. It was imperative not to let this decision leak, and with the number of people working on it, this was a real problem. We had to coordinate with the Federal Reserve Board on the special role that the banking institutions ought to play; with the Commerce Department on how to phase out the voluntary program into a compulsory program; we had to start working on regulations that could go into effect. There was just an immense amount of work to be done and an immense number of decisions to be made.

Now, at this point on Christmas Eve, what we were doing was preparing a draft of an order, but there had been no decision yet to issue the order. The real problem was, "What will it look like if we do it? What are the actual decisions that have to be made?"

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And my job was basically that of the legal technician charged with making sure that the order was unchallengeable in the courts, or, if challenged, would prevail.

And there was some question about the President's authority to issue this kind of a sweeping mandate without some sort of new legislative action. We concluded, I am quite confident correctly, that he did have this legal authority under existing law; and gratifyingly enough, there has never been a challenge to this legal authority.

B: In a matter like that where both speed and secrecy are an element, can you, or do you, get assistance from your staff in doing the research to test its validity?

W: Yes, you have to. And one of the things that our law office is proudest of is its record for maintaining secrecy and confidentiality on matters that come to us. There has never been a leak that has come out of this office that I know of on anything of this nature.

B: Again, in this particular case, what was the next step after the draft on Christmas Eve?

W: Well, then everybody looked at it over Christmas, and we had a few phone calls on Christmas and then got together the morning after Christmas at the White House, really, in Ernest Goldstein's office. And the main scene of the conference shifted there. But meanwhile, I had my people here doing the research and working on several aspects of it. And I worked out of my office except when I would go over to the White House for conferences. I pulled into the picture very quickly my first assistant, Marty [Martin F.] Richman, and my second assistant, Leon Ulman.

Marty I brought into government with me when I started looking for the best man available to be my right-hand man. Marty himself was a former Supreme Court law clerk, a former case-note editor of the *Harvard Law Review*, also a clerk for Judge

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[Calvert] Magruder on the Court of Appeals for the First Circuit. Leon Ulman is a career government lawyer who has been with this office for many, many years, and has a vast and invaluable store of information on how things have been handled in the past.

Between the two, I think I have top-notch help.

We called in other lawyers in the office, but not many of them, on a very closely held basis to look into the specific legal problems. I think they got probably two other lawyers to work with them, but on something of this magnitude I get personally very directly involved. And I participated with Goldstein at White House conferences where we tried to shape the order.

Then there was a meeting in the Cabinet Room where Secretary [of the Treasury Henry H.] Fowler presided until the President came and joined us, which he did. Here most of the top-level people to make the decision were present. These included Undersecretary Rostow, Director [Charles] Schultze of the Bureau of the Budget--let's see, who else. Well, the foreign aid people were there; [Federal Reserve System Board of Governors chair] William McChesney Martin [Jr.] was there. It was quite a large group around the Cabinet Room table. And the President got the views of everybody there in one form or another. The Attorney General also attended this meeting.

B: And you and your drafting group were there, too?

W: No. I was the only--Well, it was more a departmental representation than a drafting group representation at that point. I believe that of those that worked on the actual draft, Rostow and Ernest Goldstein were both there; I don't think that Fred Smith of Treasury was, although he may have been. I just don't remember that.

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B: In a meeting like that, does the President ask specific legal questions?

W: Well, he asks--really, everybody for their various views and somebody at some point says, "Is this legal? Does the President have legal authority to do this?" and we say, "Yes." If we say, "No," then obviously we have to go back to the old drawing board.

But we give them orally at that point the legal assurance that this can be done. Later on, we confirmed this in writing. Ordinarily, the executive order draft would have gone over to the White House with a letter signed by me to the President, saying that this executive order was approved as to form and legality. In this case, that letter followed the issuance of the order itself. That's one of the few occasions when that has happened. But since we were working directly on the order and orally approving the form and legality of it, it really would have been a bit surplus, as it was more important to work out the order.

The order went through several transmutations. Well, that may be too strong a word, but anyway, shifts and modifications, particularly with respect to the banks and the Federal Reserve Board, to try to get the right note that would leave the Federal Reserve Board with authority to take steps, if their voluntary program didn't work, without requiring them to take those steps.

At the same time, there had to be mandatory controls put in right away with a freeze in order to keep capital from immediately flying out. Then you could relax that by regulation.

The order itself was issued on January 1; it was issued from the Ranch. The President was at the Ranch by that time. A group of us came over to the Cabinet Room to hear a closed-wire press conference held at the Ranch with Mr. Califano and others

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presenting it, and the President himself made some remarks then. It was, I think, a really great success, because there on January 1 with the markets closed, the order was issued. And when business opened for the next fiscal year, it was in effect. There were real wails of anguish from people who had been waiting until the next year to close their transactions. But that's exactly why the order had to be issued before the marts [markets?] opened again, because something like this has got to be issued before the very flight which you were seeking to prevent takes place.

B: In other words, the holiday timing was deliberate?

W: An imperative part of it, really. We learned later that there were a good many people that had been expecting the President to do something like this in his State of the Union Message, and they were quite surprised to have it take place three weeks earlier. Again, I think--all our weekend and holiday work was an imperative. It had to be done that way, and I don't think anybody who understood it failed to agree to that. We still kid about it, and when I see some of these gentlemen with whom we labored over that full week--it really was a full week because we were still making small changes in the order near the end of the next week.

B: May I ask, the President has been accused at times of enjoying surprise for surprise's sake, but in this particular case that was not necessarily involved?

W: Well, this is precisely the opposite here. Let me digress a moment onto one other thing. I think that this is one of the real problems in our present system of capacity to take economic action in terms of controls. Let's take as an example price and wage controls. These are not the kind of controls that you can plan in advance and have a great big batch

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of Congressional hearings on. You have to be able to impose them and then adjust to prevent unfairness. There are many areas where this is true.

I think it is too bad that the same thing isn't true in the tax area. For instance, if the President had been able to restore the taxes that had been cut out by the tax cut earlier without having to go to the Congress for it, it would have been infinitely more successful. I think that our whole fiscal approach in policy depends upon flexibility and capacity for executive action.

Now the Federal Reserve Board has this in its monetary situation and uses this very well. The President needs the same kind of authority and flexibility in other fiscal areas that are not under the control of the Federal Reserve Board. So I think it is something that is a matter of good government and is something to be really kept in mind.

This was a case where fortunately we had in the Trading with the Enemy Act, Section 5(b), all the authority we needed for the President to put on these controls. But even there, the name of the act, the Trading with the Enemy Act, was unfortunate. We low-keyed the name, but the press later picked it up. But the act had a lot of aspects to it that were not part of trading with the enemy *per se*.

B: Does that act--does the legal authority you found there give the president additional authority to do the kind of thing you were just talking about?

W: Well, one thing I don't want to do is express legal opinions in this kind of an interview. I think that would be very unwise, because one of my major principles is that there is nothing more dangerous than naked legal advice. Legal advice must be given in the context of that actual situation and not in the abstract.

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End of Tape 1 of 1 and Interview I

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FRANK M. WOZENCRAFT

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