

## INTERVIEW IV

DATE: January 22, 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: This is a continuation of the interview with Frank M. Wozencraft.

W: I mentioned yesterday that there were a good many interagency committees and panels where the members were designated as the secretaries in charge of the cabinet departments. In fact, the time of these cabinet officers would be wholly consumed if they attended even one-half of the meetings of the interagency groups and commissions of which they were *ex officio* members.

What happens, of course, is that they designate a representative to represent their department in whatever activities these agencies are carrying on. In practice, it's usually one department that carries the ball. I mentioned yesterday that in the case of the Interdepartmental Committee on the Status of Women, the Labor Department really carries the ball.

There is another kind of grouping that is related to this but different from it, and that is the organization where there are both public members and cabinet members, and I mentioned yesterday that the Commission on Human Rights Year 1968 was an example

Wozencraft -- IV -- 2

of this. The President follows the request of the U.N. in declaring 1968 as Human Rights Year. He then appoints a commission, of which the chairman is Averell Harriman, and he designates as the vice chairman Anna Roosevelt Halsted. He then designates several public members from different fields; in this case Bruno Bitker, Elinor Gordon [?], Ralph McGill, Maurice Templesman, and Governor Robert Meyner of New Jersey--former Governor Robert Meyner of New Jersey. He also puts on *ex officio* the Secretary of State, the Secretary of Health, Education and Welfare, the Secretary of Housing and Urban Development, and the Attorney General. The Attorney General asked me to represent him on this commission, and I did so.

The staff here was provided by the State Department and the real control, as one might expect from both its topic and the chairmanship of Ambassador Harriman, was State Department control; and they had a rather small staff. Obviously, the staff has on it a great pressure to produce tangible results which they can show to the world as the accomplishment of this commission. To the government members, this is one more of many duties that they must assume. To the public members, who come from civilian life, this may be the greatest thing happening to them all year. This isn't necessarily true, but it is the one opportunity perhaps that they have for public service, to serve their country during this period, and they therefore plunge in with great enthusiasm. The government people are not unenthusiastic; they're all in favor, for instance, of human rights, but they know that the business of government, day-in and day-out, is achieving human rights. At one meeting, for instance, I commented that every year was human rights year with the Department of Justice. And so there's a little different tempo in pace between the public

Wozencraft -- IV -- 3

members and the government members.

Sometimes tension can arise when the public members want to call for action; want to throw down the gauntlet to the Senate, other things that would make very nice sense if they would work, but which the government members know will not work. Then you have to see how you can persuade the public members that really the best interest of human rights is not served by angering the Senate. This isn't as easy as it might sound sometimes. And also the government members themselves have very differing views, again as in the veterans' task force situation. Each is approaching the problem of human rights from his own viewpoint more or less, and the viewpoint of his department, although he has an overall interest.

The State Department will be saying, "Well, now we really must not say anything here that causes bad international repercussions." The representative of Housing and Urban Development or of HEW will be saying, "We must acknowledge our inadequacies in human rights in the domestic field and do something about them." The public members are calling for action across the board, and the definition of human rights becomes broader and broader, as indeed it has in the United Nations and everywhere else, so that it no longer means first civil rights; it is used in the term of that kind of opportunity which it is hoped everybody in our country, and really the world, will have.

The result of all of this is sort of a burst of activity. Sometimes, as I indicated, you get in particular the public members anxious to do something to further the cause. There was one example where one very nice lady decided that she would sponsor a conference at her home in Martha's Vineyard, and she thought it would be nice to get

Wozencraft -- IV -- 4

everybody, all the intellectuals on Martha's Vineyard, to come and participate. I quietly suggested it might be a little more effective if she did not parochialize the conference to Martha's Vineyard, but in fact got a more representative group, which indeed she did. And the conference with a relatively small budget was probably a very useful thing. Kenneth Clarke [?] and others participated and made enough progress to where they wanted to come back and do it all over again later on.

There had been other efforts. One was to write a little treatise documenting the implementation to the universal declaration of rights since 1948. The initial instinct of the State Department was that this should be done in the government departments, preferably in large part by the Department of Justice. Frankly, my inclination was that if this was the best thing we could be doing with our time, we ought to be back in private life. It's very nice to do, but we aren't equipped to do it; we have the problems of the government and its day-to-day operation to deal with, and I suggested that we take some of the budget that was set aside for conferences and hire some writers to do a really professional job, if we wanted to publicize human rights. Well, this suggestion fell on very deaf ears and very infertile ground. We finally agreed to write one chapter for them, which I was very derelict in finally getting around to, although I finally did. And looking at the chapters they'd gotten from others convinced me that we had been right all along.

There was also a very interesting conference--two interesting conferences that were staged. One at Airlie House where I would say it was mainly an intellectual grouping of the human rights field. I missed that; I was out of town. Ramsey Clark went down and spoke to it; I understand that it was a considerable success, although how much

Wozencraft -- IV -- 5

really got accomplished by it is questionable. I'm not sure how much new knowledge was shed on human rights. In a way, it was everybody selling each other rather than getting the word out to new fields. This is a point that Cliff Alexander and I raised at an earlier meeting. We suggested that funds ought to be used instead for getting out conferees or exhibits to high schools where the high schools and local communities could learn about human rights instead of bringing people in here to Washington. Here again these suggestions were not adopted.

There was an additional conference here on December fourth, where a kaleidoscope of the human rights community, if we can use that phrase, were gathered together for a one-day session which had one magnificent distinction. I think it may be the only time that the chief justice has spoken in the morning and the president in the afternoon at the same conference. And in between, there were some panel discussions, probably a good deal of fairly articulate soul-searching, clear divisions of approach between the militants and the more old-fashioned liberals. And in the final session, a call by a black power group demanding that the President again issue to the Senate a demand to ratify the human rights conventions that remained there unratified instantly. This was never voted on and was ruled out of order by Governor Minor [Robert Meyner?], who was then the chairman, because it was a panel session and not a committee of the whole passing resolutions or voting.

As I indicated in connection with the legal rights of tenants conference, there are times when it's good not to have votes. I think this was probably one of them. At the same time, it did provide an opportunity for a lot of people to let off steam, and it helps

Wozencraft -- IV -- 6

you get the feel of what people around the country are thinking. And I learned and benefited from it more than I would have expected. I didn't learn as much as I would have or contribute as much as I would have because I was sick with the flu. I came in just long enough to sit on the panel that afternoon; I really missed most of the valuable discussions if there were any.

But anyway, this is the kind of thing that these groups have to do; you have to come up with a work product and show what you've done. And there is always the public member wanting to surge forward in his one opportunity for service; the government member wanting to keep this whole thing in perspective with the business of government. It's a rather interesting combination. Often a great deal of time gets wasted in the process. I think that this one turned out, again as in so many cases here, better than I would have expected when it started. But it took a fairly persuasive hand here and there to keep things from getting out of control.

Enough for human rights year. Let's turn to a completely different kind of commission, and that would be a statutory commission. Whoops--now before I do that, let me talk about another presidential panel that contains members of both the public and of the government, the Panel on Interchange of Executive Personnel.

First, on the whole question of these special panels, there are a couple of budgetary limitations that should be carefully noted, because they affect the whole course of conduct of them. When there's a statutory commission, the Congress appropriates money to carry on the commission's program. When the president appoints a commission, he has to find it somewhere. The favorite device for doing this used to be a

Wozencraft -- IV -- 7

statutory provision under which the budgets of any agency represented on, or participating in, the commission could be tapped for an appropriate share of the commission's costs. This encouraged representation of federal agencies on commissions where you really might not be all that interested in having a federal agency viewpoint. You might really want just public members, but you put the agencies on so that you could get some budget, and that was a pretty good reason. The Congress became perfectly aware of this when it saw its appropriations being spread out to spawn all these commissions that it really had had nothing to do with creating. And the result was a provision in the 1969 appropriations bill that no appropriations should be used for these interagency commissions, and this may dry up a lot of them.

Another limitation, even before that, was the "Russell Rider," which provided that no funds could be used for an executive-created commission for more than one year. This put a rather definitive point of one year on the life of these commissions. This became a real problem in several instances, one of which was the commission to study the selective service laws of which Burke Marshall was chairman. It had to complete its life within a year, and it really wasn't through. There was more that needed to be done, but it couldn't keep doing it. So it went ahead and put in its report. Then the question comes--can there be another commission, a follow-up commission, which does a different thing? And this is one that we never resolved, although I think it's entirely possible that it could be, but you have to be prepared for the congressional flak that really you've attempted to evade the Russell Rider limitations.

Another kind of commission, where you have both government and private

Wozencraft -- IV -- 8

participation and tensions, has been in the Kaiser Commission and in the Douglas Commission--Kaiser, to see what kind of ways business could participate in producing jobs in the communities and in the construction of housing, things like that. The Douglas Commission, to concentrate rather on the zoning laws, housing codes, building codes, and things like that.

B: Is that Kaiser of Kaiser Steel?

W: Yes. He was named chairman by the President, and in the other case, former Senator Paul Douglas, after his defeat for re-election, was named in charge of that commission. Here again, you have to provide the staffs, you have to provide the budget, and in both of those cases these logically come from HUD. Yet HUD, as I have indicated earlier, is very, very devoted to the concept that only HUD can solve the problems of the cities. It resents interference by anybody, and particularly a presidential commission that it's paying for. So you have more tensions there.

In the case of the Douglas Commission, there were some really fairly ridiculous arguments with prima donna clashes between the Secretary and his key assistants and staff men on the commission itself about who would pay for what, whether GSA [General Services Administration] would provide the housekeeping or whether HUD would provide the housekeeping; what kind of review HUD would be able to give. Problem after problem on what looks like a perfectly normal and easy little project.

Even in the Commission on the Selective Service, you had the Congress responding to this with a counter-commission, you remember, where General Mark Clark was designated as chairman to make out the Congress' views. So these commissions



Wozencraft -- IV -- 9

perform useful purposes, and yet it must be recognized that they are political tools, with which the support of certain groups, of certain people, is obtained, with which favors are given, with which work is gotten out of the private sector. And there are a host of problems that arise. I think on balance though, the development is an interesting one. It may have its problems and its successes; yet it does pull together segments of the private community and of the government. And if there are conflicts that have to be worked out, maybe that's the best place to work them out, instead of waiting until a statutory scheme is spawned full-blown in the administration and then founders on practical problems of how one really is to work this in with business.

B: Let me ask a question which I think is appropriate here. Does this kind of thing ever backfire in the sense that, say, some of this almost bickering you mentioned would put off people in the private sector from serving on this kind of commission?

W: Well, usually the bickering isn't publicized enough to let most of the private sector know what's happening.

B: No, but the individuals involved would--

W: Well, yes I think it--well, they stay on, because they're in it, and they don't want to give up. Really it doesn't involve too many of them. It's sort of an administrative bickering rather than the broader policy bickering. In the Human Rights Year Commission, for instance, I wouldn't call that bickering. That's just a difference in the idea of what you ought to do. In the HUD situation, it's bickering, but it is limited pretty much to the people actually involved with the logistics, so it doesn't hurt too much.

Now the main complaint of some of the public members who come in to work on

Wozencraft -- IV -- 10

these commissions is that they work hard, they spend a lot of time and trouble, they make their recommendations, and then nothing happens. This really upsets them. I have had complaints from a good many people about this. Another problem is that sometimes the panel, one might say, gets out of hand. It develops a life of its own; it comes out with criticisms of the administration. I think the Kerner Commission is an example of one where there must have been some times when at least some people in the White House were sorry they ever thought of the idea. That was a panel with no government participation. Where you have government members, the government members can have a little voice in keeping things on track. The question is what's the track, and there are sharp limits as to what the government member can do. He cannot tell the private members that they cannot do something because it would be politically inexpedient. He had to think in terms of the mission of the panel and of himself.

My familiarity with a lot of these panels I've mentioned that I'm not serving on comes from the fact that the Office of Legal Counsel reviews all of the executive orders, and these panels are usually created by executive order. The executive order provides the sources of their funding, or sometimes it expressly omits any reference to funding. Now there are a couple of White House funds available for this. One of them is the President's emergency fund, and the other is the special projects fund. Both of these are badly overstretched for any substantial contribution to major commission programs. Kermit Gordon used to say that the only problem with the president's emergency fund was that nobody could persuade the president that he couldn't take it with him when he left office; therefore he never spent any of it. That was back in Kermit's days; since then,

Wozencraft -- IV -- 11

I think most of it has gotten spent pretty much. But it's true that that's the last source tapped. That is, say, for emergencies, and then you have the question of what is an emergency. And that has some rather interesting ramifications, usually that go along with the judgment of the Chief Executive. If he's willing to spend the money, it probably is an emergency.

B: I was going to say, surely the ultimate determiner there is the President himself.

W: Right.

B: With the Budget Bureau tugging closely at his sleeve.

W: Well, you have things like the Selective Service Commission--now is that an emergency? It's a little hard to say that something that has been building up over the years is, and yet, it is in the sense that you simply must review these laws and come forth with recommendations on a really basic problem.

So overall, I think there is, on balance, while there are some problems and some abuses and a lot of ways that the system may be refined, I think that the creation of this kind of interchange, interaction between the private sector and government is useful; and I think it's probably one of the more significant innovations in terms of governmental organization of the Johnson years. Now if it existed in this kind of degree before that, I hadn't heard about it. I'm sure there had been some in the Eisenhower years and back as far as the Truman and even Roosevelt years.

Roosevelt usually, though, called his people into the White House and got it done right there. He didn't bother naming them to any commission. Eisenhower had a few fairly major ones, perhaps, but there wasn't just a commission for everything. And

Wozencraft -- IV -- 12

frankly, in the past few years there has been a commission for almost everything.

B: I have a philosophical question here. I know you're going to go into the commissions that Congress sets up by statute, and this might serve as a nice bridge to it. In the long haul, is there any possibility that this phenomenon of all these executive panels, commissions, committees, task forces, is either usurping a function that Congress traditionally performs or is taking over a function the Congress has, in effect, abdicated?

W: I think you have to move backward into a much more basic question of the role of the executive and the role of the legislature. I think that probably there are other places to talk about this, but let me at this point lay a bit of a context of my personal philosophic view on this, which is quite fully developed, and I can expound it at length and indeed, have.

I think that the Congress has as its greatest mission being a blocking force against change that is too fast or sudden for the American people, or that too deeply offends some special group. The Congress represents the great gut reaction of the American people, and as such, it performs a useful service. With its present structure, with its present seniority system, with patronage as its hallmark, and the choice of its employees and its staff people, it is simply impossible for Congress to mount a cohesive effort in developing new legislative programs. These, I think, must be developed in the executive branch. They must be developed in cooperation with Congress. Congress gets its shot at them after they're developed. But I think that one of the things that the Johnson Administration has done most successfully is draft specific legislation which it has presented to the Hill for action. The Hill has turned down a lot of it, but a remarkable

Wozencraft -- IV -- 13

percentage of it has become law. And I think the initiative must properly remain in the executive branch. Now, basically, there must be initiative within the various departments. This must then be channeled through the Bureau of the Budget; it must be ruled upon by the White House, but the White House also provides the spur and the goad to create, or at least start this kind of initiative in the various departments.

So, to the extent that these task forces help develop laws, which the executive presents to the Hill--I think that's a function that the executive should be performing. You can have a lot of question about whether the task forces ought to be structured as they are. But I would argue strongly that the congressional role comes in then reviewing, modifying, balancing that which the executive introduces.

B: And, of course, Congress does have access to the formal reports of all these?

W: Yes. Now many congressmen take quite a different view on this. They feel that they have lost their power to initiate legislation. Every bit of legislation that I've seen Congress initiate--not all of it, but almost all of it--has been very badly drafted and not very well thought through. I think that this is a problem of their staff and seniority system.

B: Are you speaking from strictly the legal standpoint of drafting legislation?

W: Now, they have a very able legislative drafting office. No, I don't mean in terms of the choice of words. Probably they're better than the executive product on that. But in terms of thinking through what kind of problems you have to deal with and would have to be considered, that's where I think they fall short. And in some instances, particularly where a committee decides to create something, the draft can be just awful. It depends on who

Wozencraft -- IV -- 14

does the drafting, because their legislative drafting service is useful only as far as it can know what the sponsors want to say. And this is the hardest part. It's like writing a will. The main thing is to make the testator focus on what he ought to be thinking about. Then the drafting process isn't nearly as hard.

Well, back to panels and commissions. The statutory commission is spared the scratching around for funds that the executive commissions need in theory. In practice though, the Congress rarely adequately funds its own creations, and what happens is that its own creations come back to it and ask for more money.

A rather typical form of commission that has come up during the last few years is what I would call a tripartite commission. The best example of this is the Commission on Political Activity of Government Personnel, which was intended to review the Hatch Act and laws relating to such political activity. The statute creating it provided for four members to be named by the Vice President, four by the Speaker of the House, and four by the President. Of each four, two were to come from within government and two from outside government. Of each two, one was to be a Democrat and one was to be Republican. It's hard to be more bipartisan than this.

I was chosen, quite to my surprise since I had never really been active in any sort of political activity before, by the President as the in-house Democrat. Arthur Fleming was chosen by the President as the out-house Republican and also as chairman of the commission and did a fine job. The first problem that we ran into was that the Speaker and the senators who were on the committee regarded this commission as another source of patronage rather than something where they would look around for the best possible

Wozencraft -- IV -- 15

men;, they said, "Here is a chance to pay off a political favor." And we had pressed upon us one thoroughly unqualified former English teacher in a high school in a small town to be the research director. It was really quite absurd, and only by the greatest effort on the part of our congressional members was this forestalled. The executive director was chosen by one of the senators who had been most active in setting up the commission and indeed came from his staff. I guess his wife worked for the senator. The general counsel was chosen by one of the House representatives from his committee staff. The entire function of personnel choice, as far as the congressional members were concerned, was how do we get our men in, and how do we pay off our debts.

To those from the executive branch, this was pretty appalling. Roger Jones, an exceedingly able gentleman who was the Republican in-government designee and worked for the Bureau of the Budget--a former chairman of the Civil Service Commission. Roger and I teamed up to do everything we could to forestall this, with all the help we could get from John Macy. And we got a couple of other good lawyers thrown in underneath, but it was very clear that the staff was really chosen by the congressional people. So it doesn't do you much good to get money from the Congress if you can't spend it on people who are up to doing the job.

The way we finally met this problem, and the only way I could find to meet it, was that one of my lawyers who was very interested in it--a fine career lawyer, Nathan Siegel--started coming to the meetings with me and got acquainted with the staff, and I made him available to work with the staff. And the drafting job that you see in the Hatch Act Commission's report is more his and mine than it is the commission staff's. Yet, we

Wozencraft -- IV -- 16

never really could get it our way because we were really working from their drafts. And so it was a matter of trying to accommodate and shift.

At least the staff again had a mission, though, and it, like the staff in the Human Rights Year Commission had to produce. The staff director, being a designee of Senator [Daniel] Brewster, was thoroughly aware that in Senator Brewster's campaign in 1968 he would need the support of the government employees and their political activities, and he approached the problem from a quite liberal viewpoint. The most active Republican was Anchor Nelsen, a very able fellow from Minnesota, who had been administrator of the REA [Rural Electrification Administration] under Eisenhower. He approached the whole problem from the standpoint of what kind of shenanigans had been going on in the REA and Agriculture, and can't we use this commission as an exposé technique, whereas its charter was not to expose anything, but to draft legislation.

We held a great many hearings. Incidentally the other public members included several political science professors--Austin Ranney from Minnesota; Charles Jones from Arizona--a highly competent group of people. And here again, the membership of the commission itself was really hard to improve on. I think that the members chosen from private life were exceptionally able, and they really set a great deal of the tone. A lot of them had had prior government experience.

Roger Jones and I teamed up early in the game, he as a Republican and myself as a Democrat, and neither of us with any political axes to grind, to try to hew a middle road between what we thought were the sometimes extreme liberal views of part of the staff and a couple of the congressional people and the exposé approach and overly



Wozencraft -- IV -- 17

conservative views of some of the others. There was another very dedicated member who was a public member--Bob Ramspeck, who is one of the grand old men of the Civil Service, both in the Congress and subsequently in. . . . So all in all, it was a very pleasant personal experience to meet with this quite well-blended group.

There were several meetings. Few of them were attended by everybody. One or two members rarely came. Senator [George] Murphy never came except for a few minutes at the first meeting, but he sent a representative of his office who sat in. And he, in effect, gave Ancher Nelson his proxy. Frank Pace rarely showed up, although he basically went along with Roger Jones.

But there emerged groupings within the commission. I would say that starting at the far left, and it wasn't immensely far left, but it was emphasizing the free speech right of the federal employee to do anything and not be too worried about the pressures that might be put on him as a result, you had Senator Brewster and Arnold Olsen and Austin Ranney. On the far right, not wanting to let the employees do anything except vote basically, were Ancher Nelson and Murphy by proxy. And Bob Ramspeck, who was very concerned that the pressures on the federal employee would destroy the merit system, and this was the keynote of his approach. You'll note that he was a Democrat. So this did not go by party lines particularly.

The middle group was composed of the rest of us: Roger Jones, Charles Jones, Malcolm Moos, Arthur Fleming, and myself in varying degrees, usually joined by Ranney, except on one or two points. We could also pull in the others at various points, but we tried to fashion a general compromise because we knew that without unanimity

Wozencraft -- IV -- 18

there would be no Hatch Act amendments. I won't go into detail of what the recommendations were; the basic concept was to tighten up on enforcement, put it in the Civil Service Commission instead of leaving it with the departments, and make it really tough on anybody who violates, but then let the employees do more things. And particularly on the state employee levels, leave more of that to the state, and keep the federal government from butting in quite as much there. Our basic concern there was that as federal aid to state programs continues, that it became more and more difficult to determine what state employees were doing what with federal funds or who was subject to what rules, and we just thought that that was better left to the state, as long as we protected what we considered the basic federal interest, which was not to use federal appropriations, federal offices, or association with federal programs for any political purposes.

So we set up two kinds of programs: one to deal with federal employees and one to deal with state employees, thereby making quite a difference from the present Hatch Act. This was basically the suggestion of this middle group. Our office had quite a bit to do with formulating it. It worked quite successfully. We got almost complete unanimity until we got down to the wire. This was after regional hearings that were held in about six different cities. I only attended one of them.

But here again your public members had a lot of fun going to these various meetings and I think performed a useful function. The congressmen--they went to nice places, Boston, Atlanta, Dallas, San Francisco, Chicago; I got only to the Boston meeting. We put in enough of a compromise on every point to where we thought we had absolute

Wozencraft -- IV -- 19

unanimity, until we foundered on one silly little nit: whether a federal employee could be a precinct chairman or not. Everybody had different views on this, depending on what the precinct chairman did where he lived. Those who regarded precinct chairmen as ward heelers felt one way about it; those who thought of the precinct chairman as the public-spirited businessman or union man who comes home to help his neighbors decide what to do thought the other way about it. Ranney felt very strongly that anybody ought to be able to be a precinct chairman; Ramspeck thought it was horrendous to merely consider the possibility of a federal employee being a precinct chairman. We had a little more argument about the county chairman level, where Brewster thought it would be even nice to have federal employees being county chairmen, but he got pretty well cowed down by the rest of us on that, because that's a basic political building block.

Well, Roger Jones and I think we could have worked out this too, but before we were able to, the report not yet completed was leaked to the press. And we think we know who did it, and we think it was a gentleman from Congress, but we can't prove it. In any event--

B: A gentleman from Congress on the committee?

W: On the committee. In any event, once the publicity came, there was no more chance of healing this division. Ancher Nelson was thoroughly indignant at this; it was certainly not Ancher who leaked it, and who, in fact, was very concerned about it. But everybody's position hardened, and the report, as it came out, was unanimous except for these little points, but you then did have dissenting and concurring opinions. The result was that it was a political football; the Democrats got on one side, and the Republicans got on the

Wozencraft -- IV -- 20

other, within the Congress, not the rest of us.

And so the President simply could not be asked to support legislation where there was that kind of argument. Brewster and Olson put bills in the hopper, but nothing happened on them. The Civil Service Commission was secretly fairly glad because it had been worried all along.

B: Was the leak, incidentally, a deliberate attempt to block?

W: No. The leak was, in my view, a deliberate attempt to curry favor with the reporter to whom it was leaked, which is often the case with leaks.

(Interruption)

After the Congress adjourned and President Johnson invited the departments to submit recommendations for legislation to be sent up to the Hill during the first days by the administration, the Justice Department again considered the desirability of a bill which would implement the Hatch Act Commission's findings. I talked about this with both John Macy and Roger Jones; all three of us agreed that it would be definitely desirable to do so. We did make a few changes, cutting out particular provisions that had been thrown in to satisfy Senator Brewster, for instance, in one situation and others that other panel members felt strongly about that we felt would--not felt strongly about, but had wanted included and had been part of a sort of package, but that we didn't think were very integral parts of the bill itself. So we cut back to what we thought would be a more basic bill, and we also allowed a little more room for exemptions. For instance, the FBI had raised the point that its agents simply could not be associated with any form of political activity under any circumstances, and that their rights in this respect simply had

Wozencraft -- IV -- 21

to be less than that of other government officials.

We proposed an additional subsection that would have authorized the head of an agency by regulation to prohibit or limit specific categories of employees, after consultation with the chairman of the Civil Service Commission, from particular activities that the head felt should reasonably be prohibited or limited in the light of the nature of their duties. I think this is really an improvement because it provides more flexibility, and the heat would be on to keep the agency head and the Civil Service Commission chairman from getting too unreasonable about it.

We resolved the tie on the precinct committee chairmen in favor of saying that the party member should not be permitted to serve as precinct committee chairman, because the Civil Service Commission felt this quite strongly, and their support would be necessary to the enactment of any bill.

The Justice Department sent over this proposed version, and it went to the Bureau of the Budget with no problem. At that point, we learned for the first time that the Civil Service Commission last July had written a comment to the Bureau of the Budget on the bills submitted by Brewster and Olsen, which, in fact, opposed not only those bills but also a good many provisions in the Hatch Act Commission's unanimous recommendations. As a result of this, we had another meeting at the Civil Service Commission, and at that time, I became convinced that there was enough foot-dragging and opposition within the commission itself to make it unlikely that we could get clear sailing on what had to be a very limited administration legislative program. I didn't see too much point in pressing hard for its inclusion beyond what we had done already, which

Wozencraft -- IV -- 22

was submit the legislation to Budget.

The subsequent outcome of this was that apparently the White House saw the Justice Department recommendation, liked it, and asked the Civil Service Commission to draft a bill, which the Civil Service Commission would back, in this area. As I understand it, I haven't analyzed it in detail, but I gather that the bill they drafted is, in substance, quite similar to that of the commission report and proposed statute.

It's interesting that these problems that get deferred somehow don't go away, and at some point, I think some court decision may very well force a new consideration of the Act. Some of its provisions raise constitutional problems on free speech and so forth, which we didn't really want to highlight as long as the present act was all we had, but which certainly could be improved by the revisions. It was my personal conviction that the revision would vastly improve the Hatch Act, even though the report obviously is a compromise between the various positions. I don't regard this as all bad, because that same compromise has to be achieved in the Congress, and if you can get it first among twelve reasonable men equally divided in their persuasion, you have a lot better chance when you go into the cauldron of the Congress.

Congress really is a cauldron on things like this because you're playing with their crown jewels. You're playing with the political activity of people who vote for them, who campaign for them. And it's too much to expect from congressmen the detachment which one gets from professors of political science and even from officials like myself in the executive branch. We just have a different set of problems than they do, and that was why I felt a unanimous report was really the only hope in the first place. I would still be

Wozencraft -- IV -- 23

rather surprised if action is taken any time in the near future; there are just too many hot potatoes floating around, but I hope it will be.

B: May I clarify what may be just an inconsistency that I've inferred? You mentioned that after the report you and John Macy got together to see if you could work out some legislation, and then found that the Civil Service Commission was presumably separately working on this--but John Macy is head of the Civil Service Commission.

W: That's correct. John and I talked about this at a time when we were having lunch together. He brought it up in context of another conversation, and Roger Jones was also someone with whom we discussed this. And I don't think that John Macy realized that the commission had made this adverse report the previous July, even though he had undoubtedly cleared the report at the time. It's just impossible to remember everything that you sign on something like this. And Macy, when he found that there was a good deal of opposition within the commission, backed off of his support because he did not feel that, in the closing days of the administration, it would be desirable to come up with that kind of controversial effort. And I deferred to that; as I say, to me the way of getting it done would be as part of larger package on election reform. If you're going to change a lot of other election laws, maybe you can glide this in as part of it. But this was a case where John's personal convictions were not necessarily shared by a majority of the commission or by his staff.

B: That's the point that--

W: I might point out here that I have an exceedingly high regard for John Macy. I think of all of the public servants that I have met, he has performed as valiantly as anyone. His major

Wozencraft -- IV -- 24

role is one that, of necessity, is a bit unsung, and that is his role in appointments. Not to these part-time panels and commissions very much, although his office got into that a bit, but in the overall process of appointing people to presidential appointments in the government, his shop has played an invaluable role, and he has held the line time after time against pressures that might have resulted in less competent men taking office. He has always really fought the fight for excellence and I think with remarkable success.

B: Would it be appropriate to move into the Committee on the Interchange of Government?

W: Yes, this is another example of, not a statutory commission because this was strictly created by the President, but a presidential panel that blends members of the public and government officials. Here again there was a considerable joint effort between John Macy and myself, and also Harry McPherson of the White House staff. Back in January 1967, John Macy held a meeting at the Sky Club in New York with Alexander Trowbridge, then undersecretary of commerce, I believe, and some leaders of the business community, headed by Sidney Weinberg and Charles Stoffaker [Stauffacher?]. The effort was to see what could be done about working out a program where business people could come to government, and government people could go to business, in immersion experiences at a working level. I didn't know anything about these efforts; there was nothing in the nature of my duties to call them to my attention.

After the American Bar Association meeting in Honolulu in August 1967, I had an opportunity to--

(Interruption)

The week after that meeting I went to the island of Maui and spent about four or five days



Wozencraft -- IV -- 25

of fairly concentrated thinking--the meditating kind of thing where you read and think. And one of the things that really struck me as serious was that there was so little interchange between the private sector and the government. I had just finished seeing so many lawyers in the ABA that didn't understand about government, and there were so many lawyers and other people I'd known in government that didn't understand very much about the private sector that I thought it was really important to see what we could do about increasing the flow. Because, after all, our whole country is in competition with countries where the government employs everybody and has first call on the services of everybody.

When I got back to Washington, I talked to Harry McPherson, the President's special counsel, about this. Harry leapt at the idea because he had been actively pressing the same kind of thought himself, and he asked me to talk to John Macy in connection with John's Sky Club visit of the previous January. He said he understood that that program had ground to a halt and for me to talk with Macy about it. I did and found that the main thing that had ground it to a halt was allegedly the conflict of interest laws and the difficulty of the tax laws in making employees of corporations surrender their stock options and pension plans and things like that, which they could not reasonably do for a short period of service in anything less than an exceedingly important and earth-shaking position.

Frankly, I think an additional reason was a considerable amount of concern maybe among a good many of the career government people that this wasn't too good a thing to encourage. Also within the companies, people were not sure exactly how it would work.

Wozencraft -- IV -- 26

But everybody agreed with the concept, yet nobody could get together on what to do about it.

Well, it seemed to us that the first thing we could do, and this did fit within the jurisdiction of the Office of Legal Counsel, was to clarify the conflict of interest law requirements, not to change them, but there had been a lot of marshy confusion about just what the laws meant and what their applicability would be. There indeed was a statute that authorized people coming into government from business to keep the pension plans and stock options and other fringe benefit kind of things when they came to government that their former employer had given them. One question that some people were raising was whether you could treat the employer as a former employer if, in fact, there was just a leave of absence. We decided that this was a difference of form instead of substance. We didn't think it really amounted to anything, and I talked with lawyers who had worked on the drafting of those conflict of interest laws in 1962 and had commented on them, and it was the unanimous feeling that this indeed was the kind of thing that the laws were intended to permit.

There remained the IRS hurdles, and here there was a 1959 ruling in the case of Neil McElroy, which was favorable to the retention of stock options from the standpoint of the Internal Revenue Code Favorable Tax Provisions, quite a different question from the conflict of interest laws. However, in 1964 the code had been amended, and since that time, Treasury had taken the position, off the record and without amending the McElroy ruling, that really these stock options could no longer be held through a period of government service. It took quite a bit of energy indeed to clarify this with IRS. The

Wozencraft -- IV -- 27

culmination was a Saturday morning meeting in Commissioner Sheldon Cohen's office; Mitch Rogovin of our Tax Division acted as my lawyer, and Sheldon impressed the importance of it on his people by calling all his people down for this Saturday meeting, because we were hoping to get something ready for the President's legislative program. We did come out with a favorable ruling from IRS, and, in fact, their regulations have now been amended to reflect the McElroy situation, so that if we do nothing else, we've at least accomplished that.

Now I don't mean to imply that stock options have no conflict of interest relevance. They do. They have the same relevance as stock ownership has, and where one must dispose of stock, one must dispose of a stock option. We saw no public purpose, however, to be served by disposing of one and not the other. We think the two should be treated the same. Our rulings on the conflict of interest laws were set forth in a letter from me to Sheldon Cohen, and Sheldon Cohen replied to me, setting forth his views on the tax laws. And this package gave us the first real path through the thicket of how one can properly and in conformity with the federal laws go from business to government for a while.

B: Was there anything involved here in the time of anticipated service?

W: Well, we were talking in terms of a two-year period; however, the principles that we were enunciating are equally applicable to longer periods and indeed are being used by this new administration under President Nixon. They have copies of our letters to help guide them, which we're delighted with because that's a part of what we had in mind. It wasn't that the laws could be changed, but this marshy lack of clarity was keeping people from

Wozencraft -- IV -- 28

taking a firm stand or a firm course of action because somebody might bring up an argument. So what you needed was to tell people pretty squarely what they could or could not do. There were some things that they were doing that we told them we didn't think they should do. For instance, there had been in some cases a practice of a corporation making a large payment to a government employee--just to somebody going to government just before he went to government and really intended to compensate him for the difference between his government salary and his business salary. We felt that this was the equivalent of compensation for service to government and was prohibited by the statute, and my letter so states. On the other hand, a regular termination or withdrawal agreement that he had already entered into, a normal bonus that anybody got on leaving, we saw no trouble with that.

Well, this all took many more months than ever seems reasonable, because we kept running into inertia, which is an immense force in government as it is elsewhere. We finally got this tax thing catalyzed by that meeting in Commissioner Cohen's office. From there on everything was downhill in that area. And we had our conflict of interest laws fairly straight.

We still did not have a program, and we still did not have [a] carefully worked out Civil Service Commission approach toward it, although they, at this time, were thoroughly supporting it as well. So there was another meeting, this time in Sidney Weinberg's apartment in New York, arranged by John Macy, with Trowbridge and Macy and myself and some of Weinberg's colleagues, where we talked through the general project. Carl Stover of the National Institute of Public Affairs was also there and agreed

Wozencraft -- IV -- 29

to run a pilot study to see if we could actually take real people in private industry and in government and trade them off; see if we could get the real names for real jobs. This was a great idea, but it again took more time. The purpose was to be sure that we didn't just come out with something that would look political and sound great and then wouldn't work. We wanted to be sure that we had something that would work.

The study showed us quite definitely that there was a potential for achieving this, but that there would be a lot of difficult matching to be done between the man and the job if it was to be a really challenging job. Also, we had an increasing awareness of the fact that there was an awful lot of education that needed to be done. The business people tended to sort of look down their nose at government employees who had not had good educational backgrounds at Ivy League schools or other well-known schools, at least it seemed that way to us. On the other hand, government people were not too sure that they could put the people from industry to work in useful jobs that would not involve a conflict of interest.

Let me pause here to mention, as I should have earlier, that the key to this whole program was to put these people in challenging assignments that would not involve a conflict of interest; in other words, we would take a defense contractor and put his employee not in defense but in something like HUD or OEO [Office of Economic Opportunity] or HEW or Interior, and vice versa. Our theory was that there was plenty of work to go around in our government and there were plenty of assignments that could be challenging and worthwhile.

The matching process did show us that this wasn't easy, and it really wasn't

Wozencraft -- IV -- 30

completed until about March or April, much too late for the President's legislative program, and at that point, things sort of began to sag a bit.

(Interruption)

It's amazing how much difference a head of steam makes in something like this. When you are aiming for a particular deadline on a legislative program for the president, everybody pitches in and gets to work. The minute the deadline passes, they turn to other projects, other priorities. So it became very difficult at this point to keep this thing afloat. People tended to think it was too late in the year; too late in the administration--we ought to wait until later.

McPherson and I felt quite strongly that if we didn't do it now, the next administration would have the same trouble in getting it started that we had had, because it simply didn't have the kind of dominant priority quality to it that tends to take over from all other programs. It was particularly interesting, when I was investigating these conflict of interest questions, to talk to Roswell Perkins, who had been assistant secretary of health, education and welfare under the Eisenhower Administration. He is one of the real authorities on the conflict of interest laws, had a lot to do with writing them, and wrote a commentary on them in 1962.

Back in 1956, he had proposed a program remarkably like this on the aspect of bringing people from business into government. He had not gone into the reverse flow aspect. Yet even that business into government aspect had foundered because he had left government, and there was nobody else to follow through. And it just died. I could see us twelve years later with the whole thing still undone if we didn't really follow through.

Wozencraft -- IV -- 31

So I made it my business to work with John Macy and Harry McPherson to keep the thing afloat.

As a result, we wrote up a joint memorandum, the three of us, to the President, suggesting that he appoint an advisory panel to look into this question and advise him concerning what ought to be done, and that this panel include government officials of departments and agencies which could be useful in working on the program and also chief executive officers of businesses that would be participating. One of the things that we had found was that only with the top-level support of the chief executive officer can this kind of program work. We were aiming at the promising young executive on his way up: the man in his high twenties, his young thirties, certainly no higher than his young forties, who would be heading for a top executive position. We had the feeling that he should be exposed to the other sector as part of his career development, whether he was in business or in government.

Macy felt particularly strongly on the career development aspect of this, and so the panel was named and appointed in September. It was announced at the Ranch in a press conference where Alan Boyd, secretary of transportation, the chairman of the panel, really held the briefing. And his participation here is very interesting and really arose as much as anything else from a chat that he and I had at a cocktail party, when I was telling him about the program and about what we were trying to achieve. He expressed immediate interest; he, too, separately had had the same kind of concern. It's interesting how many people in government seeing the same problem, all knowing that something needs to be done about it, still have to find some way of getting together and establishing some nexus

Wozencraft -- IV -- 32

before the answer can be developed.

Well, Alan Boyd's interest was exactly what we needed, that of a really top government executive who was on good terms with both business and government, who nobody thought of as being soft on business and who yet had the confidence of business. So his appointment as chairman was a very useful thing indeed. The membership of the panel grew a bit like Topsy even after it had had its first meeting as the President thought of additional people that he would like to name on it, and in fact, the release of the names on the panel did not occur until after the first meeting.

At the first meeting, there was a very good, hard-nosed evaluation of the dimension of the problems that we faced, and these should not be underrated. It's not going to be easy to get the really topflight people to make what they will fear is a detour from their career into the other sector. The answer is, in our view, the encouragement of the chief executive that this will make them more promising in their future in that company or in that agency in the government, as we think it will. We think that the well-rounded man in our economy has to know a little about how to deal with both government and business. I think there is a lot more awareness of this arising now in both government and business, and a lot of the suspicions that were present before are not as acute at the moment.

As some of the new appointees of the new administration come in, there have been some conflict of interest problems raised. I think that the kind of interchange program we have here is completely different from this, because we are talking about job assignments in areas where there are no conceivable conflicts of interest. But I think the



Wozencraft -- IV -- 33

problems of people like Dave Packard are a good example of why we simply have to rethink this whole conflict of interest problem. We simply cannot afford to cross off of the list of public servants people who have been so successful that they cannot afford to give up what they have. There has got to be some better answer to that consistent with our democratic traditions.

Now, this panel starts out concentrating on business. It does so because that's what the Sky Club meeting started out on and because business is itself a rather separate entity. In this connection, we did meet with the Business Council and received considerable encouragement from them that business will cooperate on its side of this program, as well as from the actual panel members. We hope that the program in due course can be extended to the academic community, to labor unions, to the professions, to other areas in the private sector. We recognize that we have to take one step at a time; you can't run until you crawl, and this whole problem of temporary interchange is not something that our economy or our institutions are as well adjusted to as we would like it to be.

Business though is the hardest of all. There is a lot more interchange in the professions than there is in business, because you do not have these fringe benefits or this definite ladder where there are only a certain declining number of vacancies with each step upward. Similarly, the academic community has worked out a pretty good method of living with government, sending people on two- and sometimes three-year leaves. I might add there that I think that anything less than two years is just a beginning, and three years really does the job better than two. For the interchange program though, we were

Wozencraft -- IV -- 34

convinced by the business people that they were just simply not going to spare their top people, in many cases, for more than a year, so we set a year as a minimum.

B: Has there anything been done on the other side of this, of government people going to business?

W: Oh yes, that's part of the same coin.

B: Have you run across the same similar kind of reluctance of government careerists to take the detour?

W: Yes, and there is also a very sharp concern there on the part of some people that the cream of the government civil servants would be picked off by this, because they will go to business, they will find they can get much greater rewards, and they will never come back to government.

Our panel report was finally completed and delivered to the President. We had hoped to do it in December. The President was at the Ranch; the opening of the new session came along. We wanted to do it in person and visit with him about the program. This proved absolutely impossible. It ended up with our getting the program over to him in writing along with a proposed executive order that he could issue that would create the commission, but not appoint its members. The theory was that the new administration would have to appoint the members, but that if they had to create the commission in the first place, they just probably never have the chance to get around to it. So here again we were trying to wrap up with a pink ribbon the aspects that this administration could properly do, while leaving for the next administration the things that it could better do. I think we achieved that. We did it by running out the clock in real [Johnny] Unitas

Wozencraft -- IV -- 35

fashion, because it was just like the last two minutes of a pro football game, passing for the sidelines. The order actually got signed by the President the day before he left office, January 19. In order to achieve this, several emergency efforts had to be taken.

Normally, a report to the president would never be shown to anyone else before it is released to the president, except the members of the panel itself. In this instance, with Harry McPherson's blessing, I took a copy to Bob Elsworth of President-elect Nixon's staff and reviewed it with him, and he had earlier heard about it from others. We had been knowing that Republicans had to be informed about this, too, and he had heard about it. Also Roswell Perkins, who had been a member of the panel, went to John Ehrlichman, the president's special counsel, in New York. And both Ehrlichman and Elsworth agreed that it would be entirely appropriate for President Johnson to issue this executive order, so that it was not trying to steal the thunder from the new administration. And goodness knows, it was no thunder; it was not even a press conference. It was a squeaker rather than a thundering success. I think its future will create a little more attention than its announcement. But the report does exist, and you may want to read it into the record at this point.

Of course, as panels go, this panel worked rather quickly. It was first appointed in September, and its report was actually implemented by executive order in January. This was possible for several reasons. One was that we already had a program pretty well in mind; we simply didn't have the bugs worked out, and we hadn't tested it in the crucible of the opinion of the people that would have to make it work. The commission provided an excellent opportunity for that kind of crucible and so did meetings with the Business

Wozencraft -- IV -- 36

Council, where corporate executives focused their attention on it and gave us about half an hour of really quite intelligent evaluation of the program and its problems.

B: This was the Business Council that met in Hot Springs?

W: That met in Hot Springs. And it was at that meeting in October when we took it to them. But the one thing that slowed us down the worst was that there was no executive director of this panel. The result was that it still was Boyd, McPherson, Macy and Wozencraft working individually, each with other responsibilities much more demanding, and much more preoccupying. The only way that the job finally got done was that my special assistant, Benno Schmidt, and I really worked it up and then would clear things with the others of the group that I just mentioned; and that was the foursome that really did the clearing. And all of those four were cleared with it all the time.

The panel itself met twice; there was simply no time for a third meeting. At each of those two meetings a different panel showed up. There were very few who appeared at both meetings, other than the few of us, but at least it gave us the double insight from the two sessions, and new ideas came out of each session. In the best of all worlds, I would have preferred a third session with everybody there; I think we would have gotten a good deal more out of it. Yet even this pair of meetings did provide the interplay that was needed to test ideas, that we within government could have come out with. It would have been a program, and we could have said, "Here it is." It would not have been as sophisticated a program; it would not have been as pragmatically adjusted to the realities of the business world as it is with the assistance of those people in the business community who participated on the panel and who met with us on the side. I think this is

Wozencraft -- IV -- 37

a very good example, therefore, of two things: one, that you really need an executive director; and the other is that there is a great benefit to government to be found in exposure to those outside of government of the problems to which government may feel it has the answers, but where maybe it has a few things it can learn, too.

End of Tape 1 of 1 and Interview IV

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

LYNDON BAINES JOHNSON LIBRARY

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

Arudy Huckamp Peterson  
Acting Archivist of the United States

12-22-94  
Date