

## INTERVIEW IX

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INTERVIEWEE: FRANK M. WOZENCRAFT

INTERVIEWER: T. H. Baker

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

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W: One of the most important and least solved areas of government lies in the interrelation of the federal government with the state and local governments on the one hand and with private enterprises on the other. Both of these problems necessarily evolve from our federal system and our free enterprise system. Since we have no intention or desire of giving up either of these, and, indeed, should not even remotely consider it in my view, it becomes important to make them work. Each was born in an era considerably different from today. Our federal system was the function, of course, of the Constitutional Convention of 1787, with the recent experience of the Articles of Confederation, with the recognition that a good deal of central government authority was necessary, but without the slightest notion that we would become as unitary a country as we now have. The role of the state government was still regarded as the critical role, and the Tenth Amendment to the Bill of Rights expressly precluded the federal government from undertaking any activity which had been reserved for the states. This resulted in a pattern limiting the federal government's initial operation to the areas almost limited, just to defense, foreign

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relations, post office, treasury, money and matters of clearly federal concerns such as those. In fact, President Madison vetoed a bill that would have paid for the Cumberland Road, through the Cumberland Gap across the Appalachians, on the ground that the federal government had no authority to spend money for public works under the Constitution; Madison, of course, was one of the fathers of the Constitution. This is a good example of early evolution, because it wasn't very long before the federal government not only was making money available for such projects, but, indeed, had begun to develop the now-famous pork barrel, which by the 1840s was in fairly full sway and which finds its echo today in a great many projects that are favored by congressmen because they happen to be built in that congressman's district.

But as the country evolved, the role of the states became considerably different, and the role of the cities became considerably different. Today we have, for instance, in the New York metropolitan area, as the most clear-cut example, situations where New York and Connecticut and New Jersey simply cannot act independently of each other if they are to achieve a desired result. One way of attacking this problem is for the federal government to come in and take a position. Another way of attacking it is what we called an interstate compact. Interstate compacts have been used very frequently on matters involving rivers and river basins. A fairly recent and quite significant example is the Delaware River Basin Interstate Compact, to which all of the states along the Delaware River are parties. There are other compacts between Oklahoma and Texas, between all sorts of states. As a protection against alliances of states developing into too factional an array, the Constitution provides that these compacts are permissible only with approval of

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the Congress, and therefore approving legislation is necessary before a compact can go into effect.

As these compacts have become more numerous with greater emphasis on things like water pollution, there has been a more acute need to evolve the role of the federal government in connection with these compacts. And almost instantly we find a dilemma inherent in the federal system. If you make the federal government a party to the compact just as if it were a state, then it can be outvoted by the majority of the states and, indeed, becomes subordinate, or subservient, to the will of various parts of its whole. On the other hand, if you permit the federal government to call the shots completely, you really don't have the states involved, and the governors certainly don't like it, and the congressmen, unless they happen to be rivals of the governor, don't like it either. There is an advantage to having the federal government come in as an observer with the right to make input, but not being bound by the interstate compacts' decisions and conclusions. Yet this, in itself, is a somewhat awkward role. Moreover, some of our departments, such as the Department of Interior, looking at matters from a national standpoint, are going to come out with different views than the states in that particular river basin may have. And they have to think about the rules applicable throughout the United States.

In the area of water pollution one pattern has evolved where the federal government is a party to the interstate compact with a right of veto of any decision that the states reach under that compact which it feels violate fundamental national policies. In terms of theory, this is fine; in terms of practice, it requires more guts than most administrations can be expected to muster to tell the sum of important states that the

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federal government rejects their considered decision. Moreover, anything like a river basin requires a consideration of an infinite number of federal programs. We're not dealing just with water pollution; we're dealing with agriculture, we're dealing with power supply by dams and things like that. We're dealing with a whole array of utilization of natural resources, of land policy, of cities, of navigation, of water drainage, of flood control, and no single federal voice can do a very good job of answering all these problems. Within the federal government, part of the answer here is coordination within the executive branch to be relayed to the representative on the commission. And this is done very frequently through the Bureau of the Budget [BOB] or independently by the departments involved. At the same time, it must be realized that the man who is there on the spot is going to be saying what he wants to say, and he may be from a department that doesn't really approve too much of the position of one of these other departments. It's a little difficult to expect him to be completely dispassionate on all counts.

As a result, this interstate compact situation has a great many problems from the standpoint of federalism and of the federal government. [But] if you avoid interstate compacts as being cumbersome, as being not really in keeping with our basic federal system, then what do you do instead? How do you get a local voice that is really important? How do you get these states to explore and exchange ideas and work together? The interstate compact is itself, in effect, a treaty among sovereign states; they're not really sovereign, because the sovereign United States has to then approve it, but as to each other, they're sovereign, and the tugs among their various legislatures and governors are not unaffected by politics. When one state feels that it is going to be

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outgunned by other states in the compact, they clamor to have the federal government join so that the federal government will be supporting their voice. This is also pretty logical; it isn't always what the federal government has in mind. And the result is that the political pressures build up very heavily.

In 1967, the program of water pollution expanded into a program fighting air pollution, and this was a key part of the President's legislative program on our natural environment and protecting our heritage. Obviously, air pollution is greatly affected by particular factories, particular smokestacks, particular outputs. Yet so is employment affected by these factories. And one state may think it's a very bad thing to pollute air, but if that air pollution happens to come from key steel mills in Gary, Indiana, Illinois may not like the air pollution--Indiana doesn't either--but Indiana likes that employment, and they're not going to willingly adopt any program that will cut down on the steel industry measurably in Gary, Indiana.

When the President's legislation was at the task-force stage before it was submitted, even in his message to the Congress, much less to the Congress in bill form, it became very clear that there were very diverse views within the federal government of how this should be handled. HEW [Health, Education, and Welfare] had drafted the legislation. HEW, in fact, drafted a very large part of the legislative program that year, because there were many things involving health and education and welfare, as well as air pollution, which came under health. Water pollution had been under Interior, and Interior thought it would have been very nice if air pollution had come under Interior, too. HEW had only two legislative draftsmen of any real competence, and they were absolutely

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inundated by this flow of bills. As a result, some of the drafting left a great deal to be desired.

The Office of Legal Counsel came into this picture in two ways. First, their proposed legislation raised the questions of what the executive branch position should be on federal participation in interstate compacts which were called for by this legislation, indeed invited and approved if they met certain standards. But we also had a different role, in addition, that had started on February 10, 1967. On that day, I was called to [Joseph] Califano's office along with Wilfred Rommel, the assistant director of the Bureau of the Budget in charge of legislative reference. And we were told that the President was not at all pleased with the condition in which the legislation implementing his messages was being sent to the Hill. He assigned us, through Mr. Califano, the job of reviewing every item of legislation included in his legislative program to determine that it was legally sufficient and that it was in good shape and worthy of sending to the Hill. He was concerned about sloppiness as much as he was substance.

This was a completely new project for OLC. We had earlier reviewed bills that raised constitutional questions or executive branch legal position questions. We had made no effort, however, to review every bill. And with this particular invitation, we had to set up what we called, as a nickname, a "sloppiness control center," where all of the bills would come to us and be reviewed before they were released by the White House. I guess I can go into more detail on this later, but it's important here because it shows that we had two hats, both of which were fairly significant here.

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The meeting that the Bureau of the Budget called on the air pollution legislation probably was the largest meeting I have ever seen at the Bureau of the Budget. Almost every government department had some axe to grind or some concern. Transportation was concerned because, obviously, such items as muffler devices on automobile exhaust controls came under its jurisdiction. Interior was concerned partly because it thought it should have had the problem in the first place, but also because of its interrelation with water pollution. Defense was concerned because if you start cutting out production in Gary, Indiana steel plants, Defense needs to know whether it can afford to have that production cut down. Department of Justice was concerned because of this difficulty of ascertaining exactly how the federal government should participate. I think it's safe to say that almost everybody was concerned in some way or other. Commerce had concern of what happened to businesses, and so forth.

B: Were the regulatory agencies there, too?

W: No, regulatory agencies are not officially part of the executive branch. They are a fourth branch of government, and they really can't be invited too often into this kind of meeting. There have been meetings where they have been represented; for example, the Federal Trade Commission and Securities and Exchange Commission on consumer programs involving their activities would have been involved. But unless it directly involves the regulatory agency, they would not be included. The regulatory agency, on the other hand, remains free to submit to Congress whatever it wants. It doesn't have to do so as part of the administration program. I don't remember that any of those agencies were present at this meeting.

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At this particular meeting, everybody had some trouble of major import with the HEW bill. And the HEW representative was a deputy assistant secretary who hadn't drafted it and who, every time he was asked why a particular provision was in the bill, didn't know. So we asked him to get the drafter over there, but the drafter couldn't be located. Two or three hours later, we finally found the drafter, and he came over. And he didn't have any very good answers on most of these, either. By that time everybody was thoroughly indignant. It started at two o'clock; at five-thirty, I had to leave for a five o'clock meeting; I left a colleague there to carry the ball, but the meeting was still far from over.

The item of greatest significance here from our standpoint was an innovation that we really suggested. I think this was probably as much my idea as anybody else's. In an effort to try to avoid some of the complications of this interstate compact system which we have seen working elsewhere, we wanted direct federal control, because air travels so casually and frequently across state lines that it simply can't be compartmented, and we felt that if we were forced to abide by what the states decided by majority vote in each of these compact arrangements, that it would just be very difficult to really coordinate a national program. After all, a Republican administration in one state and a Democratic administration in another state may approach them completely differently; also, the states themselves may have different interests, one rural and one urban.

As a result, we came up with a suggestion that the secretary of HEW should appoint a regional council to handle the air pollution program in a particular region. He should appoint that council from candidates nominated by the governors of the states.



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This was an effort to get the governor and the state government directly involved. And the secretary could also have invited mayors to designate representatives where he thought that was appropriate, as in the New York situation, for instance, it would clearly be. But these people would be responsive and responsible to the secretary. They would then come out, being familiar with the local regional situation, and they would all have to come from that region, live there, not just commute from Washington, and be able to come up with a program that would make sense for that area, which might be very different from what would make sense for another area. Yet that plan would be subject to veto by the secretary of HEW if, as a national matter, he found that it wouldn't work. This would give an opportunity for an input to him from the other federal agencies involved, such as Defense and Transportation and Interior.

I'm persuaded that this is an eminently workable idea. It will have a few political problems once it gets started, of course--all such plans do--but it does combine the local familiarity, it does combine the tie-in with the state government with federal responsibility for a program which is using federal funds and really almost entirely federal funds. The bill was drafted in this way, and I felt that we had really made a great breakthrough. I worked quite closely with Wilbur Cohen and Dean Coston, his deputy, on this. They were thoroughly in accord with the idea, and the deputy assistant secretary who had known so little at the meetings at Budget was more or less bypassed.

That was all very well for our program, and a really good bill was introduced into the Congress. The Congress voted it down, or amended it, and returned to the very interstate compact formula that we had been fighting. Part of this was "states' rights."

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Part of it was a reluctance to have any sort of real federal control, and part of it was just the politics of it. The governors came and talked to the representatives and said, "Look, we don't want to be just nominating people for somebody else to choose from; we want to control the situation. This is where the best interest of our state lies." After all, the congressmen come from these states, and they are representing their local constituents.

One of the real problems of the Congress is that when they get too parochial in their view, the national interest often suffers, because the sum of a majority of parochial interests does not necessarily equal a national interest. As a result, we now have, still, legislation which does call for and, indeed, invite interstate compacts, and the same problems have been up again: what role does the federal government play?

About a year later, in 1968, one of these interstate compacts between New York and New Jersey, into which Connecticut and, I think, some other states were being invited--I think Pennsylvania--came to the Congress in the form of a bill for their approval. This compact would have made the federal government a member, but enabled it to be outvoted. This again violated the fundamental precept of government that we had been fighting for in the Department of Justice, which is that the whole should not be subordinate to a minor portion of the parts on something like this. There may be other places where it can, but if it's going to be in it, it ought to have at least the right to veto if it can get the political gumption to exercise that right.

In this particular instance, it turned out that the Republican administration in New York hadn't wanted the federal government to be a party at all. The Democratic administration in New Jersey had insisted on getting the federal government into the act,

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and they thought they had an approval from this same deputy assistant secretary who had known so little about water pollution over in HEW. And a meeting was held again in BOB where he and we met.

B: I think we had better mention that man's name.

W: I can't remember it at the moment. It's a very long name, an unusual name. I just don't have it on the tip of my tongue. [John T. Grupenhoff]

BOB was thoroughly in sympathy with our position on this, but, in its role as mediator rather than arbitrator, was not really lowering the boom on the HEW position. I recognized fully the political problems and consequences, and I knew that if the political flak got too hot, that what happened in Congress would bear no relation to what we thought was important. But as long as we were having an opportunity to make our input, I felt it behooved us to go ahead and take as strong a position as we could. And if we then were overruled for political reasons, so be it; we'd done the best we could. In this instance, I went to Dean Coston, with whom I had worked on the other, and explained to him the precarious nature of letting the federal government get vetoed by the states, particularly in what was about to become a four- or five-state convention instead of just a two-state convention. So where we could be outvoted three to two, where it wouldn't be a one-to-one situation where we could maybe cast the tie-breaking vote.

Coston agreed thoroughly and issued instructions to his deputy assistant secretary to lay off. He told me later that he assuaged, if that's the word, his deputy assistant secretary by giving him a definition of the level of deputy assistant secretary, which is a

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level high enough to make policy, but low enough to get overruled. This also applies to assistant attorney generals and assistant secretaries. It's a pretty accurate definition.

I don't know right now what finally happened on that legislation. I think that what happened, if my recollection is correct, was that the federal government role was switched to that of observer. We gave them their choice of either that or with the federal veto. It could be one or the other, but not both. If we were going to be in it, we had to be backed. But then we had to have the right to veto. If we weren't going to be in it, we didn't deserve the right to veto, but we could figure out how we were going to give our money.

This is the kind of problem that you run into in federal-state relations. I've got more on this, of other kinds of problems, which I think I should get to later, but this is a start.

(Interruption)

B: This is a continuation of tape nine. This is one day later than the previous material in this tape.

W: While the air pollution and water pollution problems illustrate the kind of intricacy of meshing state and federal regulatory control, there is an area where their interrelation becomes equally significant in the important area of money. During the past few decades, the federal income tax has burgeoned to meet the rise in federal revenues, at least part way. The state revenues have traditionally been based upon such items as sales taxes, although supplemented by state income taxes now in most states, state inheritances taxes, and on a local and county level, *ad valorem* taxes. These sources of revenue have not

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kept pace with the state needs for money, and you have a very precarious financial situation in a good many states and even more cities. In Newark, for instance, at the time of the riots in 1968, Governor [Richard J.] Hughes told me that the city itself was very close to bankruptcy; they simply did not have the money from their tax revenues to undertake the projects that the situation following the riots required.

This becomes more serious as more people and more businesses and employers move from the cities to the suburbs. A consequence of this inadequacy of state and local revenues has been a yearning to tap the federal fountain. In a good many cases, the states and their congressmen have sought, therefore, to get money from the federal government, but they don't like to get it for specific programs where the federal government is looking over their shoulder at all times and telling them how to spend the money. For them the best of all worlds is to get the money from the federal government, but not the regulation or controls that accompany that money in most cases. This halcyon situation has been sought particularly by the Republicans in the last couple of years through a concept known as the "block grant." There have been other versions of this. Some people, for instance, have insisted that the state should automatically receive a portion of the federal tax revenues. The block grant does not go that far. It does apply to a particular kind of program. However, within the confines of a very broad area, the state is permitted to develop the program itself.

One area where this kind of grant has been sought by the states is in the law enforcement area, involving, for instance, the Law Enforcement Assistance Administration (LEAA), which was a feature of the administration's Crime Control and

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Safe Streets Bill, first proposed in 1967 and finally enacted in 1968. Under the administration's proposal, the Department of Justice would have had authority to make grants to states and to cities for particular projects that it felt were worthwhile and an innovative sense of developing new law enforcement techniques or, for that matter, funding training and other more traditional activities that would be useful in helping the states and the cities to meet their law enforcement responsibilities. In this connection, one thing that too many people failed to realize is that the basic responsibility for law enforcement rests with state and local governments. It is not a federal responsibility. Indeed, it could not be a federal responsibility unless we had a federal police force. I doubt that anybody who really is seeking restoration of law and order by the federal government would want to do it by a federal police force, and yet I can't see any other way where it could be achieved. We have investigative forces such as the FBI; we have specialized forces as in the Narcotics area. But to have an overall federal police force charged with keeping law and order in every city would make the Gestapo pale by comparison in its dimension.

B: Incidentally, philosophy aside about a federal police force, as a government lawyer in this matter, did you ever investigate the question of whether or not a federal police force would be constitutional?

W: We never reached that point really, because we thought it was so unwise. Whether it was constitutional or not, it should not be undertaken. Strictly off the cuff, I think that you could make a pretty good case for a federal police force that would at least have broad basic jurisdiction in terms of constitutionality. I think the constitutionality case is a lot

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easier than the wisdom case, although there are some areas of crime which are so local that you'd have to talk about their impact on interstate commerce and the general welfare of the country as a whole. I doubt that that's where your real barrier lies, however.

B: I was just idly curious about it.

W: The main point is that there is a quite limited sphere in which the federal government can act to control local crime. This was thoroughly recognized by the Department of Justice during President Johnson's administration. It was not recognized by at least two of the three major candidates for the presidency in the 1968 campaign. One of those candidates, however, had now been elected as president and his attorney general has emphasized again, as we knew all along, that after all law enforcement is basically a local problem. It can't be anything else under the system that we now have of our federal government.

The place that the federal government can and should help is by funding this kind of program. In other words, I regard the Law Enforcement Assistance Administration as precisely the kind of role that the federal government should undertake of trying to assist the states and the cities in meeting this problem, in getting the equipment that they need, the training they need, and then leave it to them to do the job. This sounds easier than it is. For one thing, we've been trying to do this for years, and we never got any success in the Congress on this until late 1968, and the very people that were calling upon the Department of Justice to stop crime were refusing to provide it with the funds to give to the cities and states to help them stop crime.

B: Was this the function of the Office of Law Enforcement Assistance previous to 1968--

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W: Yes, that was set up in something like 1965 to see what could be done about helping the states, but it had no real money of any sort. The big program was proposed in 1967, at least, in early 1967 as part of President Johnson's legislative program. It was not enacted until late in 1968. When it was enacted, the Congress was still very concerned that the Department of Justice might utilize these grants for political purposes or in some way be partisan in their disposition. Therefore, instead of accepting the administration's version of a bill that would have had a law enforcement administrator subject to the attorney general, they created in the bill a Law Enforcement Assistance Administration, which had three members of the administration, one of whom had to be from a minority party. And this administration received under the act the power to make these grants. The power of the attorney general was much more limited, and while the attorney general had overall authority, he had no grant-making authority.

This became particularly awkward in late 1968. The act was finally passed in late July; Congress adjourned in August for a month for the election campaigns. Before the adjournment, President Johnson submitted the names of his three nominees for the Law Enforcement Assistance Administration. The Senate took no action on these nominations. I'd better check my facts here. I'm not absolutely positive that they got in before that; I think they did. In any event, what is quite clear is that the Senate did not act upon those nominations. Since they had been submitted at a time when the Congress was in session, they could not be interim appointments with authority to act.

We ended up with a very serious legal question as to what kind of grants could be made by the attorney general when there was no Law Enforcement Assistance



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Administration in office. This became very difficult, and we finally concluded that there were certain kinds of planning grants preliminary to the basic grant which at least all the homework could be done on, and the administrators, as soon as they were named, could then go ahead to the extent that they saw fit and expend the money. A case could have been made for letting the attorney general do it, but it would have been a difficult case from a legal standpoint.

On one point, however, we concluded that the attorney general could move ahead, and that was a particular group of grants for riot-control activity where the Congress set a deadline of August 31, if my recollection of the date is correct, by which these applications of the states had to be in. And it became very clear that unless the attorney general could do this, there would be no riot-control assistance during the whole summer of 1968. We couldn't believe that this was the intention of the Congress, and we read this deadline as an implied authorization to the attorney general to go ahead and make this kind of grant, but not the basic kind of grant which we felt Congress wanted a bipartisan administration to be making. This, incidentally, is an example of the kind of legal question that comes to Office of Legal Counsel, where we really have to tell the attorney general what the law says and what it can do when there are pressures that would obviously make it far preferable to go ahead and have him granting everything. On the planning grant basis, there was a more difficult question, and he did invite tenders on this, but the actual grants were not made until the administration was in office.

The Congress then came back and had its tag-end session of 1968, still without acting on the appointments of the Law Enforcement Assistance Administration. It then

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adjourned again *sine die*. At this point, the President, I think very correctly, appointed his three nominees as interim appointments. If he had not done that, the administration could not have gotten underway until 1969, and more months still would have been wasted in this very important step in the fight against crime. It's an example of the difficulty inherent in our separation of powers system, where the Congress will finally give you the money and then not give you the legal means for using the money, in this case.

Sometimes they give you the legal authority, but not the money. It works both ways.

Here the money was available, but not the legal authority. And only by that kind of interim appointment, which can validly be made by the president without Senate confirmation while the Congress is not in session, was it possible to get the program underway.

B: Of course, it should be pointed out that most of this was going on during a presidential campaign in which law and order and Ramsey Clark himself were major issues.

W: Right. And the very people, though, that were shouting that there should be more control, more law and order by the federal government, like Senator [John J.] McClellan, were the very people who were refusing to take action in their committee on the nominations for the Law Enforcement Assistance Administration.

Incidentally, while these members do serve at the pleasure of the president, and, in this particular case, there's no doubt that by new nominations being submitted by President Nixon, this supersedes the old interim appointments that President Johnson made, but at least the program is underway now, which it would not have been if he had not made that kind of appointment.

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Another feature of the act as finally adopted was that the basic controlling unit was to be the state government in requesting funds for various projects, and the money was to go to the state. In many instances, this works to the great detriment of the larger cities in the state, where the state government is controlled by largely rural areas, and the Justice Department would have infinitely preferred to have the authority to deal directly with cities. There was enough elbow room in the statute to enable them to have a pretty clear focus on what the state wanted to do with the money before they made the grant, because an application would have come in from the state describing what they had in mind. So this doesn't yet quite reach the block-grant technique that the states really seek. It approaches it, however, because the money has to come from the Department of Justice to the state and cannot be made by the Department of Justice to particular police forces or a particular programs.

There is a research program where the federal government has some capacity to make grants for research, but the funds there are not nearly as plentiful as the Department has felt would be required for the really full-fledged fight against crime. I think that this will work well enough, but I think it would have been better if the Department had more control over the disposition of the funds. The state governments largely would have preferred less control even than this bill gave to the Department of Justice. The governor of Nebraska, in fact, has already, during the last administration, written and complained that there was too much federal effort to govern the details of what would be done with these funds.

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I think we're clearly entering an area when the block grant will continue to be, and perhaps increasingly be, the goal of those who are trying to bolster our state governments. Personally, I think that this is a very unwise concept, and I know that the attorney general agreed with me on this, and I think the administration as a whole did. The reason it's unwise is that with money must go responsibility for its expenditure. And if you just turn over a large block of funds to a state government without knowing what they're going to do with it, with their considerably more limited resources in terms of able manpower and ability to plan these programs, you're going to get a less effective expenditure of those funds. Also, you're going to fail to have any real federal coordination in the program. I think you do have enough federal position in the LEAA to achieve a considerable amount of coordination. The out-and-out block grant would not permit this kind of coordination. Neighboring states could be going in exactly opposite directions.

My basic feeling is that the right answer is, as in the air pollution area, to have federal overall supervision, but have the local people, as in the regional councils that we had suggested there, responsive to local needs doing the planning for that area and simply running it by the federal government with a federal veto power, but not federal basic shaping. I don't think that the banks of the Potomac produce particularly wise decisions for the banks of the Mississippi, as such. I think that people that live on the Mississippi know a good deal more about their problems, and it gets a little ivory-towerish when people up here think they can plan for the whole country. Moreover, the diversity of our problems in America is so great that I think it's unwise to think that all wisdom resideth here on the Potomac.

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But anyway, we're moving into this larger problem of federal aid to the states.

There are many peripheral consequences of this, and many peripheral problems. One kind of problem, for instance, is the Hatch Act. Any state employee who is participating in a program financed, even in part, by federal funds is subject to the federal Hatch Act.

Well, what employees are being assisted by federal funds where there's a block grant?

Probably most of them. And there are conflict-of-interest rules and all sorts of other problems that come in to play. But the basic problem is the lack of supervision and control.

B: Does the Hatch Act apply under those circumstances to municipal employees also?

W: Yes.

B: City policemen in a program receiving federal funds?

W: I would think so, because any municipality employee is a part of a subdivision of the state. It depends again on how directly the aid is given. Of course, policemen have no business being in politics anyway, as far as I am concerned, and I think they ought to be kept pretty far out of it. So that doesn't bother me particularly. There are cases, however, where state employees, as a matter of course, are expected to make contributions, for instance, to the state party campaign fund. And where you have five people working in an office, and two of them happen to be working with programs that have federal aid and three do not, you have a fairly bizarre and quite uncertain situation, which our proposed Hatch Act Commission Report would have sought to remedy.

Well, back to our block-grant situation. I think this is a basic concept of government and how the federal system should work. It has its manifestations in many

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kinds of problems. OEO is another example. The federal government funds the community action agency. It sets up a unit in a city which is not responsive to the mayors or the local government authorities of that city. It does this avowedly, because it says that the poor cannot expect to get a full hearing through the establishment, and that they need some non-establishment agency. This drives the mayors wild, as you can readily imagine. Efforts have been made to coordinate local city government with the OEO. If it gets too coordinated, the backers of the vocal interests of the poor complain. If it gets not coordinated enough, the mayors and those who insist on basic government channels of responsibility complain.

One of our basic principles of government in the Justice Department during my days there was that there must always be some force to whom an agency is accountable, to whom an expender of money is accountable. And this is why we've tried to fight the proliferation of new independent little agencies and pull them together into a more cohesive framework, where, in the final analysis, there is an elected official who bears the responsibility, or his deputy, in the form of a cabinet officer, for instance.

Ramsey Clark was particularly vehement on this subject. He felt that everything should channel up through the cabinet officers, who should have the basic responsibility. This is why he didn't like the idea of this separate administration for LEAA within the Department of Justice. He would much rather have had it completely responsive to the attorney general, and that includes a Republican attorney general as much as a Democratic attorney general. It's simply a matter of the structure of government.

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OEO poses a special set of structural problems, because part of its mission has been to attack the structure of the local establishment. I don't feel qualified to pass judgment on how well this has worked. Obviously, in some areas it has not worked well at all; in others, it may have really been useful in relieving tensions and providing avenues of communication. I do know that where OEO and the city authorities clash head-on, as they did in Chicago for example, the result is chaos.

OEO illustrates another point, which I will bring in here peripherally. It is a new agency, and it does not have the background of a corps of experienced federal employees on which to draw. Any new agency has this problem. The Department of Housing and Urban Development, the Department of Transportation, any newer department takes quite a time to shake down. And when you have a really new and separate outfit like OEO, the shakedown process is harder yet. The place it becomes hardest is in the supervision, and there have been cases in the field where, I think, OEO people freely admit that their supervision could have been improved. Some of these cases are places where the executive director who might have given this supervision could never be appointed, because the OEO was at loggerheads with the city officials who blocked the appointment. And I don't mean these statements critically as much as to simply expose the nature of the problem.

Another peripheral OEO problem is that it is an operating agency, and yet it operates within the Office of the President. From a structural government standpoint, I am convinced that it's not wise to have operating agencies in the Office of the President. There ought to be staff agencies, advisory agencies, counseling agencies like the Council

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of Economic Advisors, but not operating agencies. In the best of worlds, I would think that there would be a better place for OEO, perhaps independent. But that's neither here nor there, because it's a political imperative. It is where it is; it got greater stroke by being under the President directly, and I'm not saying it should have been done differently. I would hate to see the example followed with greater proliferation of operating agencies within the White House, however.

B: While we're on odds and ends, OEO included, among other things, a kind of community lawyer's aid program. Did you ever get involved in that?

W: Yes, a good deal. This is the Neighborhood Legal Services program, and has been one of the most successful programs of the OEO, the idea being to bring legal services to the ghetto dweller who otherwise would not be able to receive them. The real thrust for this has come from the American Bar Association and the National Legal Aid and Defenders Association, both of which have done a valiant service, I think, in manning these programs with exceedingly able lawyers on a volunteer basis. And I think that this program is going to continue in one fashion or another. I would think that with OEO now scheduled to continue, it will continue in OEO.

The whole problem of convincing the ghetto dweller that the law is his friend instead of his enemy is one of our basic problems of society. We have to have the people in our cities persuaded that the established procedures can enable them to satisfy their legitimate grievances, or they're going to leave those established procedures, and we have the kind of situation that we had in Detroit with riot and perhaps, eventually, even revolution or insurrection. If we're to keep people within orderly channels, we must be



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sure that those orderly channels give them a fair hearing. This is where the neighborhood legal service projects have been very important. They certainly haven't finished doing the job; there is a lot more to be done, but I think it has been an exceedingly good beginning and an exceedingly good program.

OEO has some other excellent programs; the Head Start Program has been its best, I think. The main problem with education in our underprivileged communities has been that the children with no home environment to teach them come to school with less knowledge and less capacity, and [they] therefore, fall steadily behind from there on. If you can get them coming along more quickly, then you can get hopefully a better educational product at the other end of the line.

But these whole problems of federal structure and the relation between the private enterprise and the public enterprise are as difficult to draw as the lines between the federal enterprise and the state and local enterprise. As I mentioned earlier in connection with pollution, our federal system simply wasn't created at a time when this kind of nexus existed and the kinds of problems that we face today. I don't think we can afford at this point to try to tamper too seriously with the basic makeup of the federal system. If we were to start all over again, I would think that regional governments might be better than state governments and independent city governments. You would get a lot more coordination that way. Here you have an overlap and confusion between county government structures, city government structures, and state government structures that are very difficult to deal with, and in some instances, really block progress.

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There is a Council on Intergovernmental Relations that attacks these problems, and the Department of Justice has been represented by my office on that council. In a way this is a sort of debating society, however. There isn't any real authority in that group. It simply is an exchange of views.

B: Who headed that in the Johnson Administration?

W: The Council elects its own head and officials from among the governors and so forth. Our top representative in governmental affairs was the director of the Office of Emergency Planning, Buford Ellington, Farris Bryant, and then Price Daniel. Daniel, I think, was particularly effective in coordinating the governors and trying to get the governors to understand better the programs of the federal government.

I'll inject another parenthesis while I'm being parenthetic.

B: While we're wandering--

W: While we're wandering. Have I mentioned yet the federal executive boards in various cities? I think I mentioned it a little in connection with the Veterans Administration, the Veterans Service Center. Our own federal agencies in various cities don't coordinate. Their lines of communication come back to Washington instead of moving between each other in the city or the region. This makes it even more difficult for the state government or the city government to know who it should talk to about a problem that affects maybe three different agencies. It's a rare city problem that doesn't have some aspect of interest in HEW, to Labor, to Housing and Urban Development, and perhaps OEO. And you can throw in Transportation with the urban mass transit problem. The cities really need a better input into the federal government than they now have, and so do the states. And I

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don't think that these advisory councils do the job very well. I would think it preferable to have a really effective federal executive board of the kind that the Civil Service Commission has started, but which have not become much more than debating societies, where there is a local focus of the federal presence and where you have one federal man, for instance, who is in charge of all federal activities for that city and can at least coordinate there, even though each department will keep coming up to its Washington office on its own programs. This has been proposed from time to time informally within the Johnson Administration. It has been rejected because of the political opposition of mayors to a counter poll [?] of importance in their cities. This is understandable from the standpoint of the mayors, but from the standpoint of good government, I think it would be very important to achieve. I think some day we're going to have to achieve it, and we have an immense loss of efficiency by lack of coordination in this massive federal machine. If you have to solve problems in San Francisco or Phoenix by way of Washington, you have, at best, a time lag and at worst, a failure of understanding and coordination, even in the Washington level.

At the Washington level, this coordination is rather well provided by the Bureau of the Budget, by the White House staff, on legal matters by the Office of Legal Counsel; but in the field, there is nobody to coordinate. There is nobody to knock heads together, and everybody is concentrating on serving the best interest of his own department and being loyal to his superiors in Washington. This is also understandable, but I think now that it can be improved on and should be improved on. This is one area in the whole

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question of intergovernmental relations where I think a good deal of attention is necessary.

B: You were also going to mention the relationship between the national government and private enterprise?

W: Yes, that's the next point I want to get to. I think that everybody has become persuaded, at least since Detroit and Newark, if not earlier, that there must be an involvement of the private sector in the problems of our cities. This means an involvement with the city governments and also with the federal government.

The basic problem is that the private sector operates on the profit motive. A lot of the things that are needed in the cities don't have much, if any, profit in them. The public sector has a quite stringent budget, be it at the state, local, or federal level. Moreover, it has no real access to the dimension of talent and business participation and opportunity that our private sector has. If we try to fight the battle of our cities without involving the private sector, we've lost the battle before we start. As long as we're going to have a free enterprise system, we have to be using that system to attack the problems of our country when they become really big. It's also true that since private industry pays more money to its employees than the federal government, they usually manage to get better ones. I say usually; I think there are many exceptions to this. There are devoted public servants who are in government because of the satisfaction that they achieve, because of the importance they can achieve, in shaping policies in the course of our country. On the other hand, let's face it, when the private sector can outpay the federal sector three to one, it's a little hard

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to get that dedicated man in the federal sector, and if he isn't that dedicated, he doesn't come.

One way of approaching this is to get the corporations of our country to realize that it is in their own long-range enlightened self-interest to solve these problems. If we don't have a city that is stable, if we don't have a basic community, they don't have a place to do business. Since Detroit, I think they have taken vast strides toward realizing the significance of this problem.

One manifestation of this, and this was another of President Johnson's programs, was the National Alliance of Businessmen. This is a private organization. It has been chaired by Henry Ford, and one of his vice presidents, Leo Beebe, became its executive director. Beebe started chapters of the NAB in most of the major cities. And the main purpose of the NAB was to obtain jobs for people in the underprivileged areas. Obviously, in some cities this has worked better than it has in others. I understand that in Houston, for example, it has worked quite well.

One of the initial problems that came up when NAB was being organized was whether it should be a federal commission or a private organization. Even if it had been a federal commission, it would have been composed of businessmen. But as to key people like Beebe, its executive director, it would have been necessary to put these people on federal salary. The federal salary was vastly lower than what they were getting from their own companies. The conflict of interest laws provide that no one can obtain money for his services to the federal government from any but a governmental source. It can be state or local government, anomalously, but it cannot be a private company or a

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foundation. This has caused problems before, when Congress held up the OEO payroll by refusing to renew its appropriations at one point. The Ford Foundation was willing to step in and compensate the employees until the act got passed. This would have violated the conflict of interest laws directly. People were surprised to learn this, and there's this kind of sleeper tucked along in the law. Neither the OEO people nor the Ford people really knew about it. Yet it's something that must be dealt with. And in the National Alliance of Businessmen situation, it became critically important.

I was called by the White House staff, I think it was Jim Gaither--somebody in Califano's office--asking if there was any problem about appointing this board of directors of the NAB as a commission. I told them there certainly was, and explained the conflict of interest laws situation. They asked then, "Well, how do we handle it?" Our answer was [that] you incorporate in the District of Columbia a non-profit corporation, which is handled entirely by these private people. There's nothing to say that the government cannot then provide facilities to this private corporation for financial grants of assistance, but the people working for it cannot be governmental employees." This enabled Leo Beebe to continue to receive his ample Ford salary instead of coming down to the Civil Service level, or even the presidential appointee level, which isn't measurably better, or wasn't, at least, last year.

This is another example, I think, of what OLC does. We are charged with finding resourceful ways to do things that need to be done, as well as saying what cannot be done. And in this instance, it worked beautifully. We urged them to get a private lawyer; they did, a very able one, Marx Leva. We started them off and gave them our blessing, and off

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they went. This was infinitely better than having them checking with us all the time. I don't think that many of the NAB even realize that OLC exists, much less that it had any hand in it, and yet we were the ones that really were responsible for their not having a serious pay problem on the conflict of interest front. The NAB has worked closely with the Labor Department and the U.S. Employment Services in various states. I'm confident it also has worked with the OEO and similar organizations.

Another area where private participation became absolutely imperative was the housing area. There were two commissions appointed by the President to review this problem. One of them was headed by Edgar Kaiser, and the program that this commission suggested included a proposal for housing partnerships in various cities to build low-cost housing. A federal corporation was authorized in order to provide a limited partner, or, in some cases, a managing partner, for these various enterprises. Here again, we followed the pattern of the NAB. When the legislation came to us for review, we changed it from being an absolutely federal enterprise to a D.C. corporation, authorized by this statute, but not federal in its scope. Yet this outfit then can move into these various cities and try to start specific programs with local investors, people familiar with the local situation.

It's this kind of framework for bringing the private business community in to attack societal problems that I think is essential if we are to survive as a free enterprise system. I think the Johnson Administration took major steps in building these frameworks. Now, they still have to hang the houses on the frameworks in a lot of cases; the building isn't completed, but the interrelations between the private sector and the

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government sector have burgeoned in the last few years, and there's a better understanding now that the problem is so serious that everybody has to get involved. And only when we bring our economic power to bear full force on the problem can there be any hope for its solution.

The new administration is talking in terms of black capitalism, subsidizing new businesses in the ghetto area. This has been looked into also by such organizations as the Small Business Administration under the Johnson Administration. It has its problems, as well as its promises. I think that both administrations would agree that it is important, no matter how you do it, to bring the ghetto dweller into a feeling of belonging and a sense that he has a vested interest in the established system of free enterprise and of law. If you can't do this, then you're going to lose him, if you haven't already. And this is what everybody is aiming at, and there are many different approaches to this.

Another approach, of course, is the tax incentive. It's true that the saving of the tax dollar somehow has an appeal to a businessman that is considerably in excess of its economic value. It's still dollars, though. If you cut off a dollar that comes into the Treasury that would otherwise go into the Treasury, that has the same fiscal impact as bringing the dollar in and then spending it. And this is something that not everyone continues to be aware of. Also, these tax incentives have the problem that they are less of a rifle shot and more of a shotgun blast, covering a little broader and more indiscriminate area, leading to the possibility of loopholes and abuses. That doesn't mean they shouldn't be used, but they ought to be used carefully. Nobody ought to think that a tax saving is a net monetary saving to the government, because it isn't.



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End of Tape 1 of 1 and Interview IX

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FRANK M. WOZENCRAFT

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