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EDWARD A. FRANKLE
INTERVIEWED BY SANDRA JOHNSON
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JOHNSON: Today is November 18th, 2003. This interview with Edward Frankle is being conducted in Williamsburg, Virginia, for the NASA Headquarters History Office Administrators Oral History Project. The interviewer is Sandra Johnson, assisted by Rebecca Wright.

I want to thank you again for agreeing to talk with us today.

FRANKLE: My pleasure.

JOHNSON: To begin, if you could talk to us about your beginning, as far as what you started out as, an aerospace engineer, and how you made the decision for moving from an aerospace engineer into law.

FRANKLE: Okay. I graduated from engineering school in 1968, and got a job working as an aerospace engineer with the Department of the Navy. I was down at the Naval Ordnance Station in Indianhead, Maryland, which is about thirty miles south of the Beltway. I was really happy to get finished with school and get out into the world. I was really getting tired of it. It was my senior year. I was not real thrilled with everything that was going on.

I've always been very sort of scientifically oriented, and I figured, using my analysis of the scientific method, there were three possible reasons for my dissatisfaction, the first of which,

I was just tired of school, and I was ready to go out and do something; the second of which was, I was just now learning enough to know how little I knew; and the third one was that I really didn't like what I was doing and learning.

So I figured the easiest way was to attack those in the order of least destruction to your lifestyle. So the first one is, you finish school and you go get a job. And so I did that, and really wasn't—I mean, it was fine. It was a fine enough job, but a working-level or entry-level engineering job, at least the one I had, wasn't very exciting or interesting. And so I decided, well, maybe it's the second one.

So I went back and got my master's degree. About near the end of that, when I took a course—actually, which is sort of ironic—called Guidance and Controls of Aerospace Vehicles, and I had to plot out a trajectory of a spacecraft from Earth to Mars, and I realized that you needed tensor calculus. And someone who was always very good at math was finally totally, totally stumped by tensor calculus. They actually offered me a fellowship for my doctorate, and I turned it down, because I just couldn't see myself doing that type of stuff for the rest of my life.

Meantime, I was really getting bored at work. I mean, the job I had was very routine and I was working on little rockets, mostly for ejection seats from airplanes. They're not very complicated, and once you get into them just a little bit, you can actually know everything there is to know on one of those rockets. One day I was just wanting something challenging, and I found myself hoping that somewhere, someplace, an airplane crashed and the escape system didn't work, so I'd have something to investigate. And I decided that was sick. [Laughs]

So, I wanted something that the facts kept changing and stuff like that, because I liked the learning parts. I liked the first part of a job, but you then have to go out and learn some more, and I found that when I got into something and just knew it, I wasn't challenged any more. And

so I just sort of looked around and decided that law would always keep giving me different sets of facts, and so I decided I would just take my law boards and see how I did. I did very well, and that set my course.

JOHNSON: After law school you moved on to work for the Navy in the Office of the General Counsel. Can you describe that experience and how that came about?

FRANKLE: Sure. I was looking, you know, interviewing. Since I had worked before and I was married, I wasn't one of the ones who wanted to go out and just work in the big law firms—we used to call them law factories—and work eighty-hour weeks and all that. I guess in September of the year that I graduated, my son was born, and so I had a baby, and I didn't want to miss the first few years of his life.

I knew I didn't want to work for a big law firm, and I saw that the Navy was interviewing, and so I went down. Since I had already worked for the Navy, I figured that's something interesting. And so I went down and interviewed with that, and it turns out that this guy was litigating a big case, a contract case that arose out of the Naval Ordnance Station at Indianhead, Maryland, and, in fact, his main witness was my first boss, who was there. So we spent the entire interview talking about nothing but the technical characteristics of the Mark 48 torpedo, because I ran into that. And he was thrilled, because he didn't understand some of the stuff which I was explaining to him, not anything to do with a lawyer, but as an engineer.

Then he asked me back to the places—their main offices were over in Crystal City [Arlington, Virginia], and so they invited me over there and I went and saw several different offices and basically I had my pick of offices I wanted to go to, and so I ended up there. I

wanted to go the litigating route, because, again, I figured I'd have new cases. You'd have to learn them, and then you'd be done with them. And so I did that. I did that for, I guess, about six years. And that was fun. That was a nice time.

JOHNSON: Did your position change while you were there?

FRANKLE: Yes. I went in as a brand-new lawyer out of law school, doing the smallest of small contract cases. You move up very fast in the federal government. I think that's true in every agency. And so as soon as you show you can handle the responsibility, you can get it, and especially in something which is as solo as being a trial lawyer. If you're a trial lawyer, you're the one. You're the one telling the witnesses and preparing them and writing it all and doing all that sort of stuff.

So, yes, I started off as a regular trial attorney, and I moved up to be a sort of a more senior trial attorney. I went over for a while to work just for the General Counsel. His office was in the Pentagon, but he had another office in a different building in Crystal City, and I went to that area. That was interesting, but I didn't like it as much as the litigation, so I went back to the litigation office, but then I was a supervisor and I was one of the assistant—what do they call it? Associate chief trial attorney, I guess.

There were four of us. We had teams of trial attorneys working for us, and we each had a hundred cases or something assigned to the team, and you doled them out and you did the supervisory stuff. You still had your own, but not as many. It was more supervisory. And I did that for a while.

One of the things, when I was in the General Counsel's Office, I had worked on the implementation of a couple new laws, and one of them was the Civil Service Reform Act of 1978. That's the one that eliminated the super-grade positions, the [General Schedule (GS)] 16, 17, 18; invented the Senior Executive Service (SES), and did a whole bunch of other stuff.

As part of that, the Navy was actually the first agency to implement the SES, and my then boss was a steering committee member. She was the Deputy General Counsel at the time, and I was working on the next-level-down team that actually put the stuff together. We worked with a whole bunch of other folks, including a guy who was the Assistant Secretary of the Navy for Manpower and Reserve Affairs. His name was Bernie Rostker. We developed the whole thing and got it up and running and all, and then I went back to be the associate chief trial attorney.

Rostker then—this was under President [James Earl] Carter [Jr.]—got himself appointed to be the Director of Selective Service, which was not an obvious choice because Selective Service is a military support organization. He was an economist, but he knew a lot about manpower and military manpower, so I guess that's how he got chosen. Anyway, he called up the Deputy General Counsel and said he remembered working with me on that, thought I was good, and wanted to know if I'd be interested in this new job, which was going to be Associate Director for Policy at the Selective Service System.

I was interested in it, because it was just about the first group—it was an SES job, and I was a [GS] 15 at the time. I think I was in one of the very first groups that made it into the SES through the Qualifications Review Boards and all that sort of stuff, who weren't just sort of grandfathered in from 16s, 17s, and 18s before. And so I went over there for my SES.

JOHNSON: Can you tell us a little bit about your position there?

FRANKLE: Yes. My timing in my career has always been exquisite. You'll get more of that when we get into NASA. But I went over there and we were starting from absolutely nothing. They hadn't done anything. The organization was way, way out of—I don't want to say practice. It was out of date. They hadn't done anything since the Vietnam War, to be honest. They had some things that were still hanging on. They didn't have any real up-to-date regulations. They didn't have anyone who would be available to form local Selective Service Boards if they were needed or anything.

So we were supposed to spend the next few years pulling together regulations, getting something in order, and getting ready, if you had to do a registration and if you had to do a draft, how would you do it. Well, I got there, and I think within two months—and I may be wrong on the number of months, but it wasn't many—the Soviets invaded Afghanistan, and the President initiated draft registration, like immediately, and there wasn't a system to do it. And so we were, "Ack!" [Laughs]

And so to say we were playing this whole thing on the fly was putting it very mildly. We had to come up with everything, including how you identify people; how you notify them; how do you send out the notices; what do they do; who has the forms. You have to get the forms through the Paperwork Reduction Act with all the registration numbers and all that. So we were doing that, and meanwhile coming up with plans to reconstitute Selective Service Boards in every county of every state in the country. And that was my job, was how to go do that.

We put together a whole new set of regulations. We negotiated at great length with lots of different groups, from Military Reserve Officers Association-type groups that had interest on that side. We dealt with the conscientious objector groups, with the Mennonites, who were very

active in that. And we came up with a set of regulations that outlined very clearly what somebody's administrative due process would be, and what you had to prove in order to show you were a conscientious objector and what that meant, and all this kind of stuff.

We put those things out, and we went through a selection process where we selected people as standby board members. While we were doing that, we took the regulations we had written and we had to make up a training program for them, and we made that into training materials and a movie. Actually, if you ever find a copy of the movie, I am listed as the producer. [Laughs] I have a copy someplace. And I also have a copy of the training program and the regs [regulations] we put together.

But just as this was all coming into being—huge. We did this whole thing in like eighteen months. And just at that time, Jimmy Carter lost to Ronald Reagan, and they replaced the liberal—I think that's the only way to say it—liberal economist as the head, with an active duty major general who had a slightly different view of what policy should be. And so Selective Service ran a one-person RIF [Reduction in Force], and I was RIF'd out of the Selective Service system.

I designed that whole program of how we did that, entirely from scratch, with PERT [Program Evaluation and Review Technique] charts and all that stuff, and we got it done. We selected ten thousand people for boards. We trained them. We did it all in eighteen months, and we ended up with the most ethnically, sexually diverse sets of boards that ever existed in the history of the United States. And I was pretty proud of that. You know? But it did get me fired. [Laughs] So, whatever.

Turns out it was the best thing that ever happened to me. Back then—I don't actually even know what the rules are now. Back then, if you were RIF'd out of the Senior Executive

Service, first they give you this letter, which is really humbling. It starts out with, "You have been declared surplus." It's a real touchy-feely kind of thing. But they gave you 120 days—so, four months—to find another job. You had priority consideration for SES vacancies in other agencies for which you were qualified.

Now, as anyone who's ever been in the federal personnel system understands, there are rules, and there are rules, the way they're applied and the ways they're written, and they don't always hook right together. Basically, it was supposed to be that you were entitled to a job for which you were qualified, if it was there. What it actually meant is, if there was a job for which you were apparently qualified, and they didn't want to give it to you, they had to get the agency head to sign a letter saying why you weren't qualified. That's not as hard as it sounds, it turns out. [Laughs]

And I talked to a couple—there were a couple of jobs. There was one at Department of Energy, I think, and one at [Department of] Justice that I probably could have done. I'm not sure. But then when I was looking around, I saw a vacancy announcement for the Chief Counsel at [NASA] Goddard Space Flight Center [Greenbelt, Maryland], and I thought that sounded really cool. So without going through the OPM [Office of Personnel Management] system at all, I just applied for that job, and I wrote in and that sort of stuff. I did mention, but OPM was also working on that one. I had pointed it out to them and they said, "Oh, yeah, that sounds good, because it's contracts and it's all that kind of stuff that you were doing with Navy before," and that sort of stuff.

So I ended up getting an interview. First interview was with [John E.] Jack O'Brien, who was then the Deputy General Counsel to [S.] Neil Hosenball. Jack and I hit it off really very fast. Turns out we have an awful lot in common. We both grew up fairly close together in Upstate

New York. He was in Newburgh, New York, and I was just outside of Kingston, New York, which are two exits apart on the New York State Thruway.

He had worked for Navy. He had worked with this woman, Pat Servo [phonetic], who was the Deputy General Counsel who I was working with there. So he knew her very well, because they had worked together, and so he talked to her, because she was obviously going to be one of my references, and got a good report from that. And so he thought that this looked like a pretty good fit.

Then I interviewed with Neil Hosenball. That was a fairly brief interview, to be honest. That wasn't a real long one, but that went real well. I didn't know Neil, but he had heard all the other stuff.

And then I got a call one day. I had hurt my knee playing basketball, and I was in one of those removable things, which is like a cast that you sort of wrap around with Velcro. I was sitting around. It was a Sunday afternoon, and I got a phone call at home, and it was, "Hi. This is [Dr.] Noel [W.] Hinners. I'm the Director of the Goddard Space Flight Center. I hear you're applying for the job as my lawyer, and I'd like to talk to you about it."

And my first reaction was, "Damn. This guy's working on Sunday afternoon." [Laughs] I was not.

So we had a very nice conversation. And I went in, I don't know if it was the next day, or certainly that week. It might have been just next day; might have been Monday. And I with my little cast on my leg, going in. Noel and I got along famously. I think I was his first senior direct-report hire when he was just coming into Goddard. And it worked out really well.

JOHNSON: Does the [Chief] Counsel at Goddard, at the facilities, do they report directly to the General Counsel at [NASA] Headquarters?

FRANKLE: No. No, the Chief Counsel at the Centers—this was different than in the Navy, and so I was a little surprised about this when I saw it. But the Chief Counsel at the Centers report directly to the Center Directors. At the same time, they were functionally responsible for the legal stuff to the General Counsel at Headquarters. So they're two-hatted. That's not really different from a lot of other jobs. It's just that in the legal area, there are a few more strictures that you have to have because of just the thing of practicing law and needing licenses to do that, and that kind of stuff.

But you still had to make both sides happy. You can't make the General Counsel at Headquarters just really, really happy, because the Center Director is your client. You're trying to do that, but at the same time, the General Counsel can't let the Centers go off on their own paths all the time, because you have to interpret statutes and regulations and stuff consistently, or else if someone challenges you will lose. It's almost to a point, you almost have to think of it as, you have to have a story and stick to it. And so once you've figured out how you want to interpret a statute, whether it means can you do this or can't you do this, usually it isn't just a yes or no; it's a, "Yes, you can do it, as long as these other things fits." And so once you've decided that it's important and you want to interpret it, or you think the best interpretation is you should do it, then you've got to do all those other things that go with it. And everybody has to do all those other things that go with it, and so you have to be able to disseminate that out to all the Centers, in whatever ways you choose to do it.

But at the same time, it's an awful lot of independence of a Chief Counsel. And as the top lawyer, there isn't anybody there in the Center who can really tell you that you're wrong, which I always found to be a wonderful thing. [Laughs] You know, you say, "Oh, no, you can't do that, because the law says you can't." And what's the Center Director going to do? I mean, he's not going to, generally—or if he's going to tell you about it, he's not going to go and violate the law. And so as long as you can work with a lot of different diverse groups and be reasonable about it, you can really be very independent and, I think, very effective.

Goddard was an eye-opener for me. It was the first time I was in a job like that. I had been supervisor of lawyers before and all that, but it was working with that broad of a set of issues and all, it was very eye opening. We were given all sorts of opportunities to excel.

TDRS [Tracking and Data Relay Satellite] was the big thing at Goddard back then. I mean, they were starting to work on Hubble [Space Telescope], on the instruments, but TDRS was the big issue, and that one was going south in a hurry. There actually are echoes of what happened in the Shuttle Program in the TDRS Program, because in order to get approval for it, they had to make compromises that really weren't good ones. One of the ones that they had to make in TDRS was it was a shared system, where it was partially owned by Western Union; at least it ended up being Western Union. It might have been somebody else in the very beginning. I think it was Western Union.

They had the commercial band transponders on the satellite, whereas the government band ones were—and so they were building these spacecraft where the government was essentially going to be a tenant on these spacecraft, but the clauses just weren't right, and nobody had experience with it. And right after it happened, they had to start doing—you know, the specs [specifications] kept changing. They decided they were going to use it for military purposes, too,

so it had to be encrypted in much more spectacular ways than just normal commercial encryption. And all these things had to go in.

Then there were penalties for outages, so that we were buying the services from—it ended up being SpaceCom [Systems, Inc.], who got it from Western Union. But NASA was buying the communications services. They weren't buying the satellites. But if they didn't provide service, they had to pay penalties. Well, after a while, some of the changes to the spacecraft, in order to meet the requirements, got to be so expensive, they realized it would be cheaper to pay the outage penalties than it would be to fix them. So there was this monumental game of chicken that was then going on, where the company said, "Well, we're just going to launch them, and, yeah, we know they don't work, but we'll pay you the penalties."

NASA wouldn't have gotten any services at all, after all the money that was in there, and so that wasn't going to work. And that was ridiculous, but that's the way the contract was written, because nobody had ever done a contract quite like that. So we had all these various claims. Even before we got to that point, there had been a whole series of claims. There had been a thing called a mini-trial before I got to NASA, and I came to NASA in [19]'82, in September of '82.

They had a mini-trial where they put on the case before the—I guess it was probably Associate Administrator at Headquarters. I don't think it was the Administrator. I think it was the Associate Administrator, and the president of the company, and they reached a settlement. And that got written up a lot.

When I got there, there was another whole series of claims that were called the Big Six at that time, and those were pretty contentious. They were worth several hundred million dollars, and a mini-trial wasn't going to work in this one, for various and sundry reasons. But again,

because we were so independent, we were able to do almost anything we want, as long as it's legal and it doesn't annoy anybody too much, and it works.

So, I had a really good time. We sat down with Noel Hinners and me and the Procurement Officer and the technical people, and I basically came up with a concept of how we could do a very accelerated litigation. For something that was this big, it would normally take years and years to litigate it. We came up with something where we had a very short—we agreed that within like thirty days, we would exchange papers on a certain thing, and then each side would have another thirty days.

We had a thing so that over about a year—it took about a year—we would exchange documents, requests, and then about a year from when we started, we would sit down in the conference room at Goddard and the lawyers from both sides would make presentations to Noel Hinners and the President/CEO of SpaceCom. And we did that. We started one morning at about nine o'clock in the morning, and we finished about four o'clock the next morning. We just went straight through. And when we finished, we had an outline of a settlement agreement that everyone initialed.

I don't even know, do I still have that in here? Bill Hashell [phonetic], who still is out at Goddard, was the contracting officer, and someplace in this drawer he gave me a crayon that had the signature block from that modification, and sort of wrapped around it. I still have it in here someplace. But that was probably the biggest single legal thing that happened under my watch out at Goddard, besides the regular running everything through, and that kind of regular, doing all the stuff you do at a Center; all the personnel stuff and the contract stuff and the other. But that was the biggest litigation or problem that we had while I was there. But that was fun. That was good; good time.

JOHNSON: About the same time that you started at Goddard, the consolidation with Wallops Island [NASA Wallops Flight Facility, Wallops Island, Virginia] was happening. Did you have anything to do with that, or any of the legal [issues].

FRANKLE: Yes, they decided they were going to do that. They were never able to close Wallops, and still aren't, I guess. Not that it doesn't do some good stuff. The question has always been, was it worth the extra money and the extra administrative stuff. So they decided to put it together, and there was a huge amount of resistance from the people on the Eastern Shore. But it happened, and it was going to happen.

We had to figure out how to provide support for it, and initially that was a little difficult, because, again, they were far enough away—it was about a hundred miles—and the people over there just had a different culture. It was a totally different culture than at Goddard. Goddard culture is much more of a campus. They always called it the campus. They had all these Ph.D.'s who were doing science and working with this university and that university.

The Goddard folks were much more technicians. There certainly were engineers there, too, but there were a lot of technicians. They had their own machine shops. They made things. They were doing the balloon programs and the airplane programs, and they would make their own stuff. They had model shops where they would do the stuff, and then just the old, you know, "I'm going to whip this thing up and see if it works, and if it doesn't work I'm going to change it and do it again." Just a different type of activity entirely, and they just didn't mesh very well.

From the legal point of view, they really didn't want an awful lot of legal advice. What I ended up doing on that is, we had a lawyer who was older, been around for a long time, named John Cowan [phonetic] was his name. John just had a more laid-back view of a lot of things, and he was perfect for going down to Wallops. He could talk to the people down there, and they would relate to him.

So he went down there once, like—I don't think it was every week, but I think it was every other week he would go down there for a couple of days and meet with them and schmooze and sort of ingratiate himself into the system. And that worked very well, so we did that. Plus the other stuff was just trying to get the administrative systems aligned, and I really didn't have a whole lot to do with that.

JOHNSON: Share with us how the Chief Counsel's Office at a Center such as Goddard is organized.

FRANKLE: Well, at Goddard it used to be—I think it's a mistake now, but one of the things that I was always very strong about when I was there, it had already happened at Goddard, is that, I believe that the Chief Counsel has to be a direct report to the Center Director. In some Centers—back then there were still quite a few, in the early eighties—that didn't always happen. Sometimes they reported to the person who basically ran the Center.

At Goddard it was Bob Cooper; I guess, Cooper—no, that was later. It was—who was—I don't remember. Bonita [A.] Cooper eventually ended up in that job, but it was like the Code 200 there. But it's the base operations one. It's the one that has all the buildings and all that

kind of stuff. They usually have personnel under them, and the Procurement Officer under them. They put all the business-side people, the business manager, I guess.

That deprives the Center Director, in my opinion, of a major check and balance. If the lawyer, who is the only one other than the Center Director who actually sees across all organizations, about all types of activity, from your personnel practices to your purchasing, to your—just everything; agreements, all that kind of stuff, if you have a very strong person who's in that business management position, and that person is being told, for instance, by the Procurement Officer or the Personnel Officer that, "Here's what I really want to do, " but he's being told by the lawyer, who also works for him, "I don't think that's a good choice, because of these reasons," the legal opinion in the analysis gets filtered before it gets up to the Center Director, and so the Center Director never gets the full view, or you could have a situation where that happens.

If the person just says, "Fine. You go talk to the Center Director," and passes it all on, it can work. But that's a lot to hope for, because this other person's whole organization could get screwed up or interfered with in ways they don't like to, for some silly legal reason, and you start learning who's the Center Director in that position. And so I've always thought that you had to have it report directly to the Center Director, and I did, with Noel Hinners, and there was no problem.

But once you get to that, then, back then especially, the Patent Office at Goddard was not under the Chief Counsel, which it can or cannot be, and it works both ways. As long as they can talk to each other, it doesn't really matter. They really do different kinds of things. There's only a little bit of overlap on contract reviews and stuff.

But once you get into that office, we had seven or eight people, or something like that. So, organization in a group of seven or eight is not a real difficult issue, in most cases. It's not like at Headquarters, where you have a division for contracts and a division for intellectual property, and a division for general law, and we had one, also, for commercial. But here you have seven people, and so nobody is limited to only one type of thing. Everyone's got to be a generalist.

Now, you had concentrations, and so you knew that if you were going to have a major Source Evaluation Board, there were one or two people who you were going to assign to it, because they were the best procurement lawyers you had. There were other people who you knew, if you had a labor law question, these are the people you were going to use, most likely. The assignments, after you figure out who's going to do what areas, what the concentrations are, the assignments are almost routinely made by the Chief—in my case, it was by the Chief Counsel's secretary. She's the one who got the stuff when it came in. She knew who got that stuff. If somebody started feeling overloaded, it's a small enough organization, they walk in, they said, "Hey, I'm too busy for this one."

You say, "Okay," and then we'll change it. And so it was collegial, but in a friendly sort of way. Everyone did not a bit of everything, but nobody did only one thing. But you had to have something, so if someone got sick, or left, or went on vacation, or something like that, that you still had coverage. So that was sort of an issue of managing one of those offices.

JOHNSON: You mentioned Hubble a few minutes ago when you were talking about the TDRS, that Hubble, the planning stages, and, in fact, it was supposed to launch in [19]'86, shortly after

you left there. Were there any kind of legal issues, as far as telescopes such as Hubble, and being able to see what Hubble could see, that Goddard was involved in?

FRANKLE: No. The only thing I really remember about Hubble is I know that there were some issues about—because this was being part of the Management Council and hearing what the various organizations were talking about. There were issues about the specifications and the tradeoffs between spacecraft versus instrument, and payload versus shuttle. Goddard was doing a lot of the instruments. The spacecraft was being done by [NASA] Marshall [Space Flight Center, Huntsville, Alabama].

There was a fair amount of inter-center rivalry going on there, and there also was a manned versus unmanned space rivalry, that I am confident still exists. And so you'd hear things like that, about how, "Are these requirements that the Shuttle Program is now putting on?" All of a sudden they'd come up with new—according to the people I was talking to, which were the Goddard ones, they'd say all of a sudden they would get these new sets of requirements from the Shuttle Program about vibration or this or that or something, which would make them go back a long way and start requalifying and doing a whole bunch of stuff. And they just were very unhappy, from time to time, over that. But I don't think there were any big legal things that I remember. It's just something that I remember was a very active topic of discussion around the Center when I was there.

JOHNSON: Also during that time, the Solar Max [satellite] repair mission took place.

FRANKLE: Right. I do remember that.

JOHNSON: Were there any issues related to that?

FRANKLE: I remember when the mission took place, and I remember all the presentations and the results. I honestly don't recall. That's a long time ago. That has to have been, what, eighteen years ago.

JOHNSON: It's been a while.

FRANKLE: Yes, because I left in October of [19]'85.

JOHNSON: Do you feel like your aerospace background, as far as being an engineer, helped you in that position?

FRANKLE: Oh, absolutely. Yes. There's a way of communicating. I don't have any pure example from NASA, although I can tell you that it was absolutely true. It really helps if you can talk to technical people on their own level. You don't have to understand it completely. You don't have to be able to do it all. But you have to understand it.

When I was with Navy—a classic case—I was one of the attorneys assigned to a very, very large litigation involving shipbuilding. In the late seventies there was a crisis in the United States over the shipbuilding industry back then. There were literally billions of dollars of claims, and shipbuilders were claiming they were going to go under because all these things were happening.

There had been an earlier spate of claims, which resulted from cost overruns on ships, and so when Robert McNamara was Secretary of Defense, he decided he was going to eliminate claims or overruns by making the contracts fixed price. Well, that does prevent overruns. What it does do, though, is, you still have to build the same ships and adapt to the same things, but those overruns, instead of just being overruns, become claims. And so you end up with a lot more litigation with fixed-price contracts.

And so we ended up—it was a terrible thing. This was the LHA [amphibious assault] ships. And with the LHAs, they had gone from nine ships down to five, and for those five, it was almost double what the original cost of the contract was going to be, if you added all those claims. And it was just unbelievable how complicated this stuff was. There was all these—besides contract clause issues and stuff, just the technical stuff.

There were fifty-two major claim items on those ships, and I had responsibility for about a fourth of that, one of which was the system that allows ships to replenish at sea, to transfer fuel from one ship to the other, and all that sort of stuff. They have these pipes they go on and they hook together. And the contractor was claiming that the design provided by the government for this was defective.

I went and talked to the engineer and he said, "No, it's fine. It works fine, and they're just bad." And he was obviously trying to get rid of me. He had work to do, and he didn't want to look back at bad problems, which is what people do with lawyers, especially in the government, where the government's bottom line is not really at issue, but it is with the company. Companies' witnesses tend to be a little sharper on that point than government ones.

But anyway, so he said, "No. Go away." And he gave me some cock-and-bull story as to why it's right.

And I said, "Excuse me." I said, "Let me paraphrase what you're saying."

I said it, and he said, "Yeah, that's right."

And so I said, "Okay. So, if you have gravity and the force is here, and the weight is here, and the—." So I drew this diagram of all the forces, and I said, "So, in other words, the contractor's right."

And the guy looks at me and he says, "You're an engineer, aren't you?"

And I went, "Yeah."

And he goes, "Damn. I've got to talk to you." [Laughs] That's a classic example of just, you know, technical people, engineers, scientists, they like dealing with other engineers and scientists, and they don't like dealing—no one, generally, likes dealing with lawyers, especially when it's in problem areas, because these things are things that have happened in the past. They want to get it over with. And being able to talk to them and explain a little bit to them, better, it helps. And so, yes, it was very helpful. I think that one was the most explicit example I ever saw, but there were similar things, though not quite as blatant, at NASA.

JOHNSON: In 1985 you moved to the Deputy General Counsel position at NASA Headquarters. How did that opportunity come about?

FRANKLE: In the short word, Jack O'Brien wouldn't take no for an answer. Neil Hosenball retired sometime around July, I think, of [19]'85. Jack O'Brien was moved up to be the General Counsel. I was fine. I had only been at Goddard three years. I was having a very good time. I had no real desire to go anywhere. And so Jack called. I think he called all of the chief counsel. Maybe not all of them, because some of them were nearing retirement and on their own. But I

think he called about half of the chief counsel, and just asked, (*A*), "Who do you think would be good to be Deputy?" And, (*B*), "If the conclusion was you, would you want/take the job?"

I said, "First, I'm not interested in the job. I'm still new to the agency. I've only been here three and half years." Actually a little less, a little bit over three years. "And I'm having a good time out here, but I still have a lot more to learn, and so I don't think I'm ready for that job yet." And I told him I really thought that Susan [M.] Smith down at Marshall was the best person. Turns out she was telling him pretty much the exact opposite. [Laughs] So he said, "Fine," and he went away.

About a month later I got a call back saying, "I'm still looking around and thinking about it."

And I said, "No, I really think that my position is out here, and I'm enjoying this and I don't want to come down to Headquarters yet."

And he said, "Yes, well, a lot of people have said they're not interested, and I really think you might be the right person for the job."

And I went, "You know, I don't know." What happens after a while, though, is it starts to work on your mind, you know. I still thought I needed more time at Goddard, but at the same time I was thinking—you know, because he was talking about some of the other people we've mentioned. And sometimes I'd think, you know, "I'd be better than them." [Laughs] "No, that doesn't sound right to me. I like what I'm doing." And all of a sudden it just sort of works on you. So the third time he asked, I said yes. But he had to ask three times.

JOHNSON: He wore you down?

FRANKLE: He wore me down.

JOHNSON: Can you describe what the duties or responsibilities of the Deputy General Counsel is at NASA Headquarters?

FRANKLE: It's to do anything the General Counsel doesn't want to do. [Laughs] You stand in for the General Counsel when he's not there, sort of like a vice president. You do what the big guy doesn't want to do, or wants you to do, and you do specific projects for him, and you tend to do more of the administrative side of the stuff, the personnel-related things, when you're dealing with, "We're nearing performance appraisal time," it's the Deputy who pulls all the stuff together and gets it up to the head of the office for whatever, and if there's a problem, it's generally the Deputy who pulls the stuff together first, or with other people working with him, but is in charge of that effort to keep the General Counsel out there as the ultimate decision maker. So you act sort of as a screen.

At NASA Headquarters, there also are a whole bunch of boards and organizations and stuff, where the various deputies in the office are the designated members—Performance Evaluation Board for SES, Performance Review Board, where you go in and you check about all the Centers, and you help figure out who's getting what bonuses and all that sort of stuff. That falls on the Deputy every year. Things having to do with equal opportunity and some of the other ones, all fall to the deputies. And so, you have to work on that kind of stuff.

I got down there and Jack did have one thing for me which was different, and I think is one of the reasons why he wanted me there. When I first came to NASA, most of the Chief Counsel and many, if not most—it might even be most there—of the lawyers at Headquarters

were all veterans of the Apollo Program, and they were nearing retirement age. There hadn't been, just as there never seems to be, enough hiring at any time, there hadn't been any hiring in a long time, because the budgets had been slashed after Apollo went off, and that stuff.

So you had all these people who had been there for—I think I figured out, and I'm not going to remember the numbers correctly, but when I first got down to Headquarters, there were about, I'm going to say twenty-three or -four attorneys there, counting myself, who had three years of NASA experience, and counting me, there were someplace in excess of—you know, it was between five and six hundred years of NASA legal experience. The average was over twenty.

JOHNSON: Goodness.

FRANKLE: And these people had worked together as a group for twenty-some years. And so Jack says, "Come up with a strategy to turn the generations over, because these people can't stay here forever, and we're going to have to start doing something if we're not going to just lose all of our collective knowledge at one fell swoop, and become totally non-operational."

So we just started working at it piece by piece, one organization at a time, bringing people in, giving us extra assignments, training assignments, getting people to put down some more stuff of what they had done, or something like that. And it took about five or six years, but we actually did it. We actually brought in new people, very good new people, who took over the mantles, and so when those other people started to get to retire, they had a couple years' overlap and they could move up and do that.

One of the things at the end, one of my most significant accomplishments, and administratively I think it was that, it was coming up with the plan and then implementing it, that turned the generations of NASA counsel over, because it was not only at Headquarters; it was also all the ones at the Centers. While I was Deputy or General Counsel, and mostly while I was General Counsel, we changed every SES lawyer in the agency. So I selected them all. At the Centers it was in conjunction with the Center Directors, but I had a say in all of them. I selected all of them at Headquarters.

When I left at the end of 2001—actually, the very beginning of 2002—there was only one lawyer left at Headquarters who was there when I got there. We had 98 percent turnover. She's now left, so now there are none that were there before I was there.

JOHNSON: Also, shortly after you went to Headquarters, the *Challenger* [Space Shuttle] accident happened in January of [19]'86.

FRANKLE: Yes, I am aware of that.

JOHNSON: Yes, I'll bet you are. Maybe you could share with us some of the experiences in dealing with the legal aspects of an accident like that at someplace like NASA.

FRANKLE: Let me start a little bit before that. I came down there in October. I think it was in the twenties of October. And, you know, you're brand new, you're looking around, you're trying to find out who's who and what all the letters mean and the codes and all that sort of stuff at Headquarters. So that's the end of October.

After that you have the month of November. Then the first week of December of [19]'85 is the first time my boss, Jack O'Brien, is leaving. He's leaving on a foreign trip. He's going over to Europe for a week, and so I'm going to be the Acting General Counsel for the first time since I've been there.

Monday morning comes along, the first day of the first time that I'm doing that, and we have this whole set of meetings. [James M.] Jim Beggs is the Administrator. We have this whole set of meetings, and I'm going to be in the meetings with the Administrator the entire day. We start out with the management status review meetings, and then there were some other things having to do with I don't even know what anymore. But it was, "Oh my god, I've never seen this much face time with the Administrator before."

Before the first meeting, so first thing when I get in in the morning, I get a note, "The Administrator would like to see you in his office right now." First day, first thing in the morning.

I'm feeling like, "Oh, my god." You know? [Laughs] I knew I couldn't have done anything yet.

So I walk into the Administrator's office. He has me sit down, and he says, "By the way, later on this morning they're going to announce that I'm being indicted."

And I'm sitting there going, "Oh, god." Quietly, I hope.

And he says, "Then so I'm just going to need some advice on how to respond and what to do."

I said, "Sure." And I said, "We'll work with the Public Affairs Office and we'll do what has to be done, and make the statements. An indictment isn't a conviction." And I'm thinking, "Oh, my god." And that was just sort of like the thing with Afghanistan being invaded when I

first got to Selective Service. That was my first day acting as General Counsel at Headquarters. So that sort of set the tone. I went crazy after that. Weird things were going on.

There obviously were huge problems between the Reagan administration and Jim Beggs. To this day I've never seen anything that explained it, and I don't understand it, but I know that the Attorney General, [Edwin] Ed Meese [III], was informed. He knew what was going on about with this indictment. The indictment, in my view as a procurement lawyer—that's just looking at it as a pure procurement lawyer—never made any sense. The stuff they were accusing him of is, you know, it was, "Huh?" You know, it just didn't make sense.

After he got indicted—if a contractor gets indicted, he normally will get suspended from government contracts while this is pending. He can't do it. Well, the Navy Department proposed suspending the Administrator from federal procurement. And I said, "Wait a minute." I said, "Are you out of your mind? You can't. He is serving. He's constitutionally required to serve. You can't suspend a government official."

And it was, "Well, I don't know about that."

So we went back and forth and around. At that time I still knew everybody who was over at Navy, because it was not that long since I had been there. And so we went around and around and around, and finally they agreed, no, they couldn't. And then we got that. And then things were happening. But the pressure, they kept cranking the pressure from December, I think it was like 5th or something, up on Mr. Beggs. And so just in the middle of January, he said he was going to take a leave of absence while this worked its way out.

And then on the 28th, they attempted to launch *Challenger*. But they had brought in [Dr. William R.] Bill Graham from the military, and he was from the black side. Everything he had always worked on, or at least that I knew of that he worked on, had been in the super highly

classified areas. I don't even know in what, but I just know that's what he worked on. And he was not anywhere near as—I think partially for that reason—as communicative, and you didn't really know what he was thinking about. It was difficult dealing with him. It was hard to get to see him, and you didn't hear much when you talked to him. You didn't really know what he was thinking or what he wanted. But he didn't go down to the launch because he was up working the [Capitol] Hill for something that morning, and that was a bad thing.

I watched it from the Administrator's—it had a conference room attached to the lunchroom in the old Headquarters building, and so we had gone up there for a fairly early lunch, and figured we'd watch the launch first and then go eat. It became pretty obvious pretty quick what happened. I mean, not exactly what happened, but the ultimate result. And so we went right back down the hall to the office, pulled out the contingency plans and all the charters for the boards and stuff that had to get put together.

Jack O'Brien ended up flying down that day, I think with the Vice President, to Florida. So I stayed at Headquarters and handled the at-home part of this. But Bill Graham, since I wasn't dealing with him, he just sort of went into seclusion, as far as I could tell, and he absolutely refused to name a board. They had given him the thing like that, and in the vacuum they went along and the President named the Rogers Commission.

I still think that was a very bad thing for NASA. I think that if the Administrator had stepped up and said, "We're going to investigate this. We have plans. We're going to go do it," the results could have been—they would have found the same things, I'm sure, but it would have been done in a less catastrophic fashion. But he didn't, and the Rogers Commission came through, and it was pretty bloody, and very, very nasty and hostile.

There was a great attempt on the part of some folks in the media and on the Hill to really find fault with individuals, and look for culpability in lots of different ways. The accusations were really, really nasty. The press was publicly talking about whether the people who launched it should be tried for manslaughter, then if not that, then negligent homicide. Anytime there was even a slight difference of opinion as to what had been said or something, it wasn't, "Oh, that's an interesting difference of opinion." It was, "Well, which one of them is committing perjury?"

I had one of the not upper-upper level, but higher-level people who had briefed the Associate Administrator, had gotten a briefing on the rings, and then had briefed the Associate Administrator on the rings, had testified that he had briefed the Associate Administrator on the rings, the O-rings. And then the Associate Administrator had testified that he hadn't really heard about this before, and so they took the fact that one guy said he had been briefed and the other guy said he hadn't, as perjury. That's pretty tough stuff, you know.

And what it turns out was it was a difference of what you mean by the term *briefed*. The one guy thought he had given his boss a heads-up, but he just sort of flipped through something really quickly. The other guy hadn't gotten through everything and seen the whole stuff, so he said he hadn't been briefed. But it got really hostile, down to the point that they were talking about they were going to issue subpoenas. And finally they insisted that this one person who said he had briefed the Associate Administrator, they insisted that he go up to be interviewed by the committee staff without counsel; couldn't bring counsel with him. And I said no. I just refused. And I told him, "I can't keep you from going, but don't, because you can see what they're doing. So anything you say, they're going to twist it, and it's going to come out and it's going to get worse and worse. If they want to do that, make them do it in public. Make them do it." And so I said no, I wouldn't let him go up like that. I told that to the Hill.

And they said, "Well, we'll subpoena him when we have the hearing."

And I said, "Fine. Let's have a hearing. We'll show up at the hearing. We'll answer the questions. But he'll have his lawyer with him at the hearing. And you're not going to single him out and just crucify him." Because that's what was going to happen. And they never subpoenaed him. I don't think he ever even testified after that. But it was very, very ugly. It was just all these accusations day in and day out.

Challenger was on the front page of the *Washington Post* for something like 186 consecutive days. Consecutive days. And there isn't that much to any story. And so they're always looking for something. They always have to have something spectacular to put it on the front page, and so it was day after day after day. It was really, really very tough.

JOHNSON: Did your office deal with the press during that time?

FRANKLE: Some. Yes, some. We were not the point in the press. There also were a series of small and not-so-small claims for damages, which O'Brien just turned over to me, and so I handled those.

JOHNSON: Personal claims as far as—

FRANKLE: Well, the families all made claims, which were the only ones that were—I think the only ones that got paid in any amount, and those were handled more by Department of Justice than us. We knew what was going on, but we didn't know the amounts, and we don't know. But the real negotiations were done by the Aviation Torts Section over at Department of Justice, a

guy by the name of Gary Allen. He's still there. He's looking to see if he thinks there's going to be anything coming out of *Columbia* [Space Shuttle Accident].

There also were a series of small claims that verge from just stupid; somebody claiming that a piece of something had hit their swimming pool, I think, to ones that were just bizarre. There was a guy by the name of Capallni [phonetic] who claimed that he was sailing his fishing boat up from Colombia [South America], and that it got hit by the *Challenger*, and it sank his boat and killed his son. He knew it was the *Challenger* because there were bodies floating around him, and naked torsos, and it was on and on.

And he got to land and floated in to land, and somehow they got taken to a place on Route 95, "South of the Border." You know that? If you go up and down Route 95, just as you get into South Carolina there's an absolutely huge tourist trap called "South of the Border," "Pedro says," and everything. It's just huge.

And he said that he got put up in a motel there, and a big black limo filled with NASA executives came and tried to buy him off. And he was going on and on and on with this kind of stuff, just unbelievable.

And there's somebody who actually made a claim, and this one I just thought was in bad taste. He was a friend of one of the astronauts, and in the personal preference kits that the astronauts take stuff up, this guy had a cigarette lighter, and he made a claim for the value of the lighter. You just sit back and you say, "Okay. I'm going to be calm." [Laughs] We denied it. It was things like that. You had a lot of that.

JOHNSON: Well, you said you wanted to have your job be different and diverse.

FRANKLE: And it was definitely different and diverse. It was quite a thing.

JOHNSON: Were there any issues with the Freedom of Information Act [FOIA] during that time period?

FRANKLE: Oh yes. Yes, there was a big one, as a matter of fact. The *Challenger* accident introduced everybody to the concept of the critical items lists, they're called, which I had never heard of before. But I think fairly understandably, people tended to believe that if you had a critical items list, there actually was a list, you know, and they wanted to see what the list was. I guess they would see something like "wings," "engine," "cockpit." If it falls off, you lose. Crit 1 [criticality one] was you lose mission or vehicle. And they wanted to see what the list was.

In fact, the list, it turns out, is much more than that. They certainly have all these items, but then it's a very detailed analysis of why the thing is Crit 1, why it would cause it, and then what has been done, technically, to keep the thing from happening, an analysis, so that people can look at it and say, "Okay, you've mitigated that risk as much as you can." A lot of that information, or at least some of that information, was quite possibly still export-controlled and very sensitive technical data, I mean just in terms of you didn't want everyone knowing how to do all some of this stuff.

Well, we had a request for the critical items lists, and we finally decided that there wasn't a whole lot we could do about it, because they weren't classified. We did have the ability to release that data if we wanted to, and the Freedom of Information Act said that if you have any discretion to release something, you have to release it. But Bill Graham didn't want to release it, and so he actually refused to comply for about probably a couple of months.

Eventually we put a stamp on it that just said, "These documents could contain information controlled by the International Traffic and Arms Regulation, and cannot be released to any foreign individuals without receiving export licenses from the [U.S.] Department of State." The problem is, is that's not an effective label, because you can't ask in a FOIA context if the person is foreign or domestic. And if, in fact, we've already released it to a foreign person, we've already exported it and it undercuts the whole argument. But that was the best we could do, and that's what we did.

The other one, which, actually, this one went all the way to the Supreme Court, was the *New York Times* wanted not the transcript of the cockpit tapes, but they wanted the actual tape. And we refused. We actually made law on this one, and I was pretty proud of this one, from a legal point of view, because it was not at all clear what the—first it wasn't clear that if you released a transcript, there is any further interest in a tape; it just says the same thing. And second, the people who were doing the talking were all dead, and it wasn't at all clear that there were family privacy interests that survived.

But we decided that we were going to make them fight for that, because what I didn't want to see, again, in the context of 186 consecutive days on the front of the *Washington Post*, and I told this to anyone who would sit still long enough, "You know that the first time that we release this, someone is going to match that tape up with that picture you saw of it going up and then exploding, and the families will absolutely not be able to avoid seeing that, and that's going to make it even worse. And so if there is any case ever for a familial right to privacy for something like that, this has got to be it." And we went all the way up to the Supreme Court, and won. So I was pleased. That was a pretty good accomplishment, I thought.

JOHNSON: In 1987, while you were still Deputy General Counsel, you attended a hearing before the U.S. [United States] Senate Subcommittee on Science, Technology, and Space, and it actually took place at JSC, focusing on space commercialization.

FRANKLE: Yes.

JOHNSON: Can you give us some details of that?

FRANKLE: What I remember about that hearing is they finally got to the question I wanted them to ask me, and my throat seized up and I started coughing. And it was Senator Bentsen, Lloyd [Millard] Bentsen. And I was just hacking away. I couldn't stop coughing no matter what, and I'm saying, "I want to answer that one."

I think it was [Martin P.] Marty Kress who was still working on the Hill at the time, handed me a throat candy. But honest, half the time that I was supposed to be testifying and answering questions, I was coughing, because my throat just completely clogged up. It was the most humiliating and—and the senators thought it was funny. They said, "I've had people do all sorts of things to avoid answering questions, Mr. Frankle."

And I'm going [whispers]. [Laughs] I finally did get the answers out.

Actually, in terms of the content, I don't remember a lot about what the content was. I know we were messing around with commercialization the entire time I was there. I was up at Headquarters a week ago and I ran into someone who was supposedly doing commercial stuff now, and I asked him what's he's doing. And he goes, "Oh, we don't mention the 'C' word anymore." [Laughs] So I think we're in a lull at the moment, but I'm sure it will come back.

But, yes, to be honest, I don't even know if I have any records of what I said. I probably someplace have a copy of whatever testimony I gave down there, but I don't have a current recollection. It wasn't that big of a deal.

JOHNSON: Are there any other events that happened while you were in that position, as the Deputy General Counsel, that you'd like to share right now?

FRANKLE: No, I can't think of any, really. I guess the only other one was Jack O'Brien knew at some point—you know, he was becoming retirement-eligible. [Dr. James C.] Jim Fletcher was now the Administrator, and Jack was feeling that the Administrator really wasn't listening very much to his lawyer, and so Jack was getting very frustrated.

Turns out if you talk to Neil Hosenball—which I'm sure Jack did; he knew this, too—that Fletcher was like that always. He didn't really particularly want to hear about his lawyers, and he would if he had to, but he was not forthcoming, and he wasn't buddy-buddies. So it probably was to be expected with him as the Administrator. But Jack was very aware that his retirement date, eligibility for retirement was coming up, and he didn't want to do anything that would screw up potential work afterwards, whatever he was going to end up doing.

So, one thing he did do while I was Deputy, they were just coming up on the first of the selections under Space Station for what were known as the work packages back then. There were four of them. One of them went to Goddard, one Johnson, one Marshall, and one [NASA] Lewis Research Center [now Glenn Research Center, Cleveland, Ohio], at the time. Jack disqualified himself from anything having to do with those procurements, figuring that if he didn't, he could never work on any of those, or for anybody who got one of those, if that's what

was happening later on, and those could be very long-term contracts. And so he disqualified himself from that.

So I ended up being the Procurement Advisor. Those were also Administrator selections. That's the last time we had Administrator selection of a contract, to my knowledge. So I ended up being the advisor to Fletcher and Dale [D.] Myers. I guess it was Dale Myers. I think it was Dale Myers back then, as we moved toward that, to selection area. And so that was interesting, because I had not done—I had done SEDs [Shipper's Export Declaration] before, but never where you're doing the—you're really doing the second-level one, where it's coming up to Headquarters, and now it's just going up. So you're working off of what has already happened at the Centers, and you're making sure that it's ready, and that was sort of interesting.

There's some others that I can remember weird things, but I actually don't remember if it happened before or after I became General Counsel. There were a lot of stuff with the Reagan White House and the policy change. I don't remember when the policy change, where they said we could no longer carry commercial payloads on the Shuttle. I could look that up.

JOHNSON: That was part of that subcommittee at JSC. That's one of the things that they were talking about, so, [19]'87, '88. It was his ban on commercial payloads on Space Shuttle.

FRANKLE: Yes, and there was a lot of fallout from that. We litigated that for a long time. We had a big problem with the Administration. I still, to this day, think they should have just said, "If you have a contract and if your spacecraft is moderately well along, so that it would cost an awful lot to change it, we'll fly you off. But no new ones. And if you're just starting, so you can

modify it to go on an ELV [expendable launch vehicle], that's it. You're not flying on the Shuttle."

But they didn't. They said no, no flights, period. And as a result, there were just years and years of litigation. We ended up—I mean, Hughes [Aircraft Company] alone was asking like a billion dollars or something like that in damages. That was silly. But there were three or four lawsuits. We came out very well on those lawsuits, to be honest, but I think the government ended up losing about $53 million in the long run. That was just about a year or two ago, the year or two before I left, I mean. It took that long for those cases to go through all of their appeals. But that would have been $50 million that I think you could have at least cut in half, if not made even smaller than that, or made go away.

They didn't like NASA at that point, and they just weren't going to do anything that NASA wanted to do. They didn't even want NASA really involved in the board that determined which one should and shouldn't fly. We were just an advisor to it. It was being run out of the White House; well, Executive Office of the President. It was a very uncomfortable time.

JOHNSON: I think we're going to stop and take a break, and change out the tape.

FRANKLE: Okay.

JOHNSON: Let's talk about your move into the position of NASA's General Counsel, when that happened and how that came about.

FRANKLE: Okay. Well, Jack O'Brien retired, and Jim Fletcher was still the Administrator. Unlike when I came down to be Deputy, this time I wanted the job. I had been Deputy long enough, I thought. So the Administrator said he was going to look around, and wasn't going to make any rapid decisions; it was going to take him a little while. And I said fine, that was up to him. And he, in fact, did. He started calling around people, both inside and outside the agency, and talking to stuff.

That went on for a couple of months. I talked to Dale Myers, who was Deputy, who, I think, was a supporter, and to some of the other clients, the heads of the various Headquarters offices and stuff, and they talked to the Administrator. I remember it was Bastille Day that Dr. Fletcher called me and told me he was going to give me the job. And I thanked him and told him I didn't think he'd be sorry. I don't think he was. So it was nice. That was nice to know that when he's gone out—there was a little uncomfortableness in the interim, but it was nice when he finally did it.

But I had been Acting [General Counsel] for now several months by the time I became the General Counsel, so it wasn't a big change all of a sudden that happened at that point. So I got to move across the hall from one office to the next, but that was about it.

JOHNSON: You talked a little bit earlier about some of the organization of the office itself, but there are four major areas under the General Counsel Office. Maybe if you could describe those areas just a little.

FRANKLE: Sure. When I actually first came, I told you about how we reorganized and we did the stuff to turn the generations over while I was Deputy, and then moving on in. One of the

things we also did while I was Deputy was we started the fourth division. When I first came down, there were only three. There was GK, which is Contracts. There was GP, which was Intellectual Property Patents. And then there was GG, which was General Law, and that was basically everything else. It was agreements and contracts under GK, so your [National Aeronautics and] Space Act Agreements and stuff were there.

We created this new one because the commercialization pulse kept getting louder and louder and louder. There had always been a fairly uneasy fit of international stuff. We were doing more and more international work, and that was also under GG, and GG really was getting so much, that they were getting overwhelmed. So we created a new organization, which is now GS, and made that International and Commercial. So we split into four from three.

I think that was a good thing to do, because there's slightly different sets of thought processes and life experiences you want from someone negotiating a standard government contract, to someone who's trying to negotiate either an international agreement or a deal which is really a purely commercial deal. You just have different terms and conditions and you have to come at it from different perspectives. And so we felt it would be better to do it that way, and I think that's worked out pretty well.

JOHNSON: Did it give you an opportunity to hire more people?

FRANKLE: I don't think we hired more. I think it got us one extra SES person. I think we got one extra SES billet, but I don't think we got any additional people. In fact, the size of the office had been slowly drifting downward. Back when it was in the late sixties, I think, before the NASA budget started going, I guess very early seventies, before the NASA budget started going

really south, they had forty-some people in the office, and it was down to well below that by that time. So we just sort of realigned them. And then if somebody left, we might replace them with someone who had a different set of experiences, to try to fit the newer mold better. And I think that worked out fairly well.

One of the areas we had problems in soon after I was General Counsel—I think that was when I was General Counsel; might have been—was NASA was having more and more problems dealing with both the Department of State and [U.S.] Department of Commerce on export control. So we hired somebody away from the Department of Commerce in their export area to come in, basically take a look at and figure out how to redo our export program, and that was John [F.] Hall, [Jr.], who's still there. He moved out of the legal office to take the program on, but he came in an export control program and a template and training in that, and then when that got created, they created a new Headquarters Export Administrator and then Center Export Administrators. [Robert L.] Bob Tucker, [Jr.] went over and took that job first. John stayed as the counsel to that, and was that for a while, until Tucker moved up to another job and then John hired in, because that's how he got his SES, by going over there. So the export stuff was also put under the Commercial and International area.

Let me go back to what your question was. We had the four divisions. The oldest—well, probably not the oldest, but probably the most venerable—because up until me, both Neil Hosenball under even Tenney Johnson [phonetic – is this John A. Johnson?], I think, a long time before, but certainly for the prior twenty-some, twenty years, the apparent path to become General Counsel, because the General Counsel has traditionally been a career position, not a political appointee position, but the path had generally been someone as a Chief Counsel at a Center. He'd come up to be the Associate General Counsel, or sometimes they called them

Assistants, in the Contracts Division, and then they would become Deputy, and then they would become General Counsel.

That is what Neil Hosenball had been out at Lewis. He'd come in and done that. Jack O'Brien had been Chief Counsel down at [NASA] Kennedy [Space Center, Florida], and then come up to be GK. And the person who was in GK at the time was Gary Tesch, and he had gone from Headquarters, he'd gone on, he was Chief Counsel at Goddard, then he came back to be GK, and when he came to GK, I went and filled out Goddard.

So, when I became the Deputy, to the old-timers that were still around it appeared that I had leap-frogged Gary and I had skipped a step, and Gary wasn't given the job. And that created some tension. One of the ways I helped with that is when I became General Counsel, I made Gary Deputy, for credibility purposes as much as anything, and Gary was a good Deputy. He was fine to do that.

But that was always sort of the focus. NASA, from the outset, was a pretty procurement-focused organization. They had a relatively small number of people, but they were going out and getting a lot of contracts with a lot of people when they were doing all this stuff by contract. So that's really where the meat of what the legal work was doing was that and in intellectual property.

They always had a very active patent program, which we've tried to make a little bit more relevant, but I'm not sure how well we succeeded. They do the patents and they do copyrights and that kind of stuff, and licenses. I would hope that if you ever have some contractors come in and you're signing non-disclosure agreements, somebody has cleared that through the Counsel's Office. But they work on those kinds of areas, and data rights, in GP.

The remainder of the administrative stuff all goes to GG, and so your personnel stuff, your real estate, just about anything you can think of, ethics, all that kind of stuff, all those cats and dogs of a federal agency fall under the General Law section. I talked a little bit about the GS, which was the International and Commercial, which we created and then put in export control in there.

It's a workable set right now. You still have to do things. The lines between the various codes, I'm led to believe that they used to be really pretty rigid, and nowadays things are much more fluid, and things tend to cross over. While I was General Counsel they had—you may recall—the big effort for a commercial success called Dreamtime, where there were supposed to be people coming in and they were going to do a whole bunch of stuff with outreach and with photographs and archives, and they were going to do all that sort of stuff.

That's a totally different kind of agreement, and it covers everything. There was a lot of intellectual property stuff, patent licenses, and all that. It was a lot of contract stuff and agreement stuff. It was just purely commercial terms, making additions. We had to get into areas that we had never gotten into before, including Securities and Exchange Commission stuff.

So we created a commercial team, which included sort of a standing member from each of those divisions, and they would go to the main team meetings and then pull in help from their own organization, as much as they needed, but to try to give some sort of a consolidated bit of advice so that someone wasn't telling someone, "Oh, yes, it's fine," and then be told, "Well, this lawyer said it was fine, but that lawyer said it's not. What the hell are you doing to me?" which is sort of what we kept hearing.

So we worked around a lot of that to sort of get away from the concept of stovepipes. I don't know if they're still doing that much of that, or if that was just something we had to do for

that one type of effort, because it was pretty unique and it was something—Mr. [Daniel S.] Goldin really wanted to do some commercial things.

The problem was that so many of the people who were working on it, it seemed to me—actually, I was told—they really didn't care what the agreement said, as long as it was commercial. And it always seemed to me that you've got to have a goal, something that you want to do, and then you should see how to get there. So we had a bunch of discussions over that.

It's always been a fairly touchy relationship between whatever the commercial organization is and the General Counsel's Office, because the commercial people always are trying to think big and out of the box and do something. The lawyers are saying, "The law says no to that, but if you do it this exact other way, it might work." But that puts too many fetters on some of these people.

When Jim Rose was in Code C back then, when we had a Code C, he and I had some big arguments over what the proper role for counsel was and what they were supposed to be doing. I don't think there's much way to avoid that if you're really going to have someone who's out there doing nontraditional governmental marketing, because governments are not set up to market, and you've got all sorts of other restrictions in place about use of appropriated funds and use of your facilities for various and sundry-type things.

And even allocation of intellectual property rights, when part of it is funded by the federal government, I mean, there are laws as to what happens to those rights, and you can't just give them up because somebody says, "Well, this is commercial. I need them." The two sides still don't talk very well to each other.

JOHNSON: Were there any other issues with intellectual property that come to mind, as far as employees or anything of that nature?

FRANKLE: No, I don't think so. The employee ones are pretty easy. While I was there, they did pass the revisions to the Stevenson-Wydler Act, which actually required that the federal government share royalties with inventors whose inventions get licensed and bring in royalties.

I always thought that could be a divisive thing, but it turned out it was all right. You do have some people who are inventors and get really annoyed if the decision is made not to pursue an invention or not to license something, because they see it as money out of their pocket. But you make decisions for whatever reasons.

Earlier, before they did that, put in that royalty-sharing thing, the patent system at NASA had really gone down a path of not really what the patent—patent is supposed to put out in public a protected version of somebody's—it's not just an idea. It's more than that. It's an idea that has actually been reduced to practice, and described in a way that anybody reasonably versed in that area could go and duplicate it and use it. But that makes people put the thing out in public so that everyone can do it, figuring that that'll help speed the transition of technology into society, help everyone around, and what the guy gets or the gal gets for putting the invention out in public is he has a period of exclusivity, so they get money if somebody uses it.

The federal government was never really set up, at first, to do that very well. First the inventors weren't getting money for it, and the inventions also are pretty arcane. It sort of devolved into the Center Directors were using the patent system as sort of a parallel awards system, and so if you got a patent you automatically would get like a $500 award. This is back when $500 meant a little bit more than it might mean now, but it could mean a thousand or

whatever. But it was something that you'd get and you'd have something to hang on the wall, and you do that.

And so people were going out for inventions for things that were—I mean, it was silly to patent them and spend the money, because it costs several thousand dollars to get a patent. And if you don't think that this is going to be used in some sort of a mass market, or if there's no commercial potential for it, there really is no need to get a patent.

I went nuts one time, fairly early—I think it was fairly early in my tenure as General Counsel—because I used to see all the patents when they came across, because they were done by the Centers, and the only thing I did, it was at the very end, I would sign the package that was going over for the patent. But all the staff work had been, and all the money had been spent.

I got one—actually, it was out at JSC—and it was a patent for a Space Station to be built in lunar orbit, using expended external tanks. And I went nuts. I said, "Do you really think in the twenty-year life that this patent is going to have that there's going to be a commercial competition to build the first Space Station in lunar orbit out of expended external tanks?" [Laughs] So we put in a requirement that there had to be a determination of commercial viability, or at least interest, before we would actually spend the money to go get a patent.

How well that worked, I don't know. I think it was the right thing to do. But NASA doesn't work on a lot of things that just have immediate commercial value. I mean, a lot of the problems they're looking at are how do you get better power out in Pluto's orbit, you know. They're dealing with issues where the hard parts are in weight or extremes of temperature or stuff that don't really show up very often.

So, we never got the level of interest in licensing that I always wanted to get. We certainly increased the number of licenses. Langley did it better than anyone else. Glenn, which

is a research center you would think would have tons of interest in patents, never had really real interest in it, and does almost nothing with it. JSC does a moderate amount, and they have some decent inventions.

But it always seemed to me that there should have been something we could have done that would have really made it better, and really gotten some tremendous interest. We did change the situation so if someone came in looking for a patent license, we also, uniformly, would agree to give them a Space Act Agreement, where they could utilize the inventors to help them understand not only how to do exactly what's in the invention, but the know-how in the surrounding area to help speed up the way to get it into commerce.

That worked, too, but those kind of things take the people away from the research they're now doing, and they don't want to do it that much anyhow. And if they do want to do it, they want to do it as an employee of a commercial company, where they can get rich. So there's a lot of little pulls and tugs in the intellectual property area, but only in that area would I say that anything really much has happened. Other than that, it's pretty much the same way that it's been.

JOHNSON: NASA launching satellites and the Committee on Peaceful Uses of Outer Space [COPUOUS] and all of the Outer Space Treaties and the satellites that are being launched, what does your office have to do with those sorts of things? Do you have to make sure that the process is followed so that everything's covered?

FRANKLE: The Committee on Peaceful Uses at the U.N. [United Nations], we provide—we the NASA Legal Office provides the legal member. Code I is the head of the delegation and is the member to the science and technical side of that same committee.

That committee was very vibrant—I don't want to be too politically incorrect, but that was very vibrant and a major contributor back in the sixties when the main treaties got written up. Since the mid-seventies when it came up with the Moon Treaty, which really has never been accepted by many people at all, it became more political, and so it really hasn't accomplished a whole heck of a lot. There have been some things, little minor steps and things like that, but the big treaties are all of sixties vintage. In many cases, NASA's participation in those committees, or even the U.S. participation in those committees, has been more of making sure that they don't succeed in doing something that we think would be unfortunate.

Certainly during the cold war there was a lot of stuff going on that was politically motivated, of East versus West and all that kind of stuff. That doesn't happen anymore, but now there's a very strong feeling—at least there was; I haven't been in a couple of years—of basically Third World versus the rest; the developing nations versus the established nations, and what's the appropriate sharing of any space resources or assets or knowledge or know-how, and that.

Some of that's interesting, but parts of it can be really mind-numbing. Those meetings go on for weeks. It used to be there was like three weeks—was it three weeks twice a year, or once a year? Might be three weeks once a year. Now it's down to like a week, because there wasn't anything more to talk about. It's just they would talk for longer times, and it tended to be in nice places, Vienna or something like that, Geneva, but it was just a terrible, terrible waste of time.

Now I think it's gotten to where they are working some commercial issues and they're doing some things that are worthwhile and they need to be looked at. I was up there just last week and I was told that the Committee on Peaceful Uses of Outer Space, which just got back from a meeting—and this is a really arcane little piece. There are two different treaties. There's the Outer Space Treaty and the Registration Committee, and both of them talk about the launching state. They use the same terms, and it always occurred to me that they really shouldn't be. They shouldn't mean the same thing, because the treaties had different purposes.

So I had presented a paper several years ago, saying that it doesn't make sense to have them mean the same thing, even though the words were identical and two units—they were done both in the sixties—because in one you were trying to assign liability broadly, we use the term, and in another one you're trying to define sort of ownership narrowly. And so you can't do both with the same term. And they use the same term.

So, if in fact you want people to step up to space activity, you shouldn't then put them in a situation where by doing that, you're going to be exposing them to perhaps unnecessary liabilities. The State Department always said they liked the view, sort of, but they were nervous about it, and so they have never been willing to adopt it formally, although COPUOUS just did.

There was a meeting over in Korea, they met. At least I think that's where they did it. But I have just talked to [E. Jason] Jay Steptoe, who's now in charge of that division, and he said that COPUOUS has now taken the position that we have been espousing, but that the Department of State has not yet done it, which I think is funny.

I'm sure I went way beyond what you're talking about one area, and forgot what the rest of the question was.

JOHNSON: That's okay. That's fine. During the nineties, the Shuttle-Mir Program was a unique opportunity for international cooperation. Can you talk about some of the issues relating to that program?

FRANKLE: There certainly were issues. The cold war was just winding down, and so there still were issues of competition. There clearly were going to be issues of tech transfer and—

[INTERRUPTION]

FRANKLE: But at the same time it was clear that the Russians have an incredible amount of capability that could be useful. So we were trying to figure out ways to do things. Sometimes, though, and it was especially right around the time of the fall of the Soviet Union, or right after, the reasons were really more in terms of—at least it seemed to me that the reasons were more, we really need to help them a little bit. We can get something for it, but we need to help them, and that's really the primary reason.

So, some of the things we did I don't think we necessarily did because it was the only way it could possibly have happened, but just it seemed like the right thing to do as NASA supporting the foreign policy of the United States, which, of course, we're supposed to do, and there's nothing wrong with that.

But when we were negotiating the first few contracts, it was really difficult at times. I remember George [W. S.] Abbey being up there helping Dan Goldin, and the concept was they were going to help, and they were going to get a hundred million a year for four years. It was fine. "What are they going to do?"

He said, "We'll negotiate it." But the bottom line was, they were going to get a hundred million a year for four years, because that's what they needed to support whatever needed to be supported. So you were going into some of these negotiations where the price has already been set. What hasn't been priced is what you're buying. And that's a very unusual situation to be in.

I went over a couple of times for negotiations, and the Russians were really strong negotiators. It seemed to me, especially in the beginning when they were just coming up, they would tend to get right to the point, and you'd be sure that you weren't going to make an agreement, and then they'd make a change, which you would have agreed to days before, and you'd say, "Okay."

And they'd say, "Great. We have an agreement."

And you'd go, "What just happened here?" But it happened enough times that you knew that if you had a deadline, you were going to negotiate right to that deadline. But the chances were very strong you were going to have an agreement by the time that deadline got there. And I've never completely understood that. But it worked, so that was good.

With Shuttle-Mir, I was over there with—let's see. Brian O'Connor was there, Dan Goldin. We were negotiating, and initially it had been for like three or four flights, and that's what Brian was thinking. As we were leaving the building, I heard Goldin turning to—I guess it was still [Yuri] Koptev then—and say, "We need this to be ten flights."

We were just getting in a van to go catch the airplane, and I mentioned to Brian O'Connor—at least I think it was Brian—that, "It's amazing that it's now ten flights."

And he goes, "What?" [Laughs] He didn't know. But we came out as a ten-flight program, and certainly there were plenty of things they could do, and the extra transportation was helpful. But a lot of it got done very seat-of-the-pants and very ad hoc, and probably was a

success because of that. It was a very strange set of situations, because they were just dealing on such completely different systems, especially in the beginning. The Russian system, as I understood it, they had law and you could go to jail for stuff, but they really didn't have civil law. They didn't have the kind of things that we have that describe whole codes. They didn't have patent law in the same way we had, and they didn't have a bunch of other things. They've been catching up to speed very quickly, and they're making an awful lot of progress to move into that, but they didn't have a civil code, and so when you tried to explain to them what was happening because of this, it was based on concepts that they did not have. And it was a challenge; it was a challenge.

JOHNSON: It also was the first time that an American launched in another country's vehicle. Were there any liability issues that your office had to deal with because of that? And also when they returned, if they had to return, they would have been returning in an emergency in a Russian vehicle.

FRANKLE: We talked about it, but to be honest, for the U.S. astronauts, they are U.S. employees in one way or another, whether they're military or civilian. They're covered by liability schemes during their official duties and all that, and it really doesn't matter, from that perspective, whether or not it's a U.S. vehicle or a Russian vehicle or whatever.

The Russians may have had some concern because some of the immunities that would apply to suits against the United States might well not apply to suits against a foreign government. But at the same time, they probably would have had to have gone over to Russia to sue them, and suing the Russian government in a Russian court, I don't know. People sue the

U.S. in the U.S. courts and win, so maybe you can do it against the Russians. But again, they don't have that as something of their collective consciousness.

We got more into that when it was Mr. [Dennis] Tito flying up on the Russian vehicle, where he was an American. He ended up having to basically agree that he wouldn't bring suits against the United States for things that might happen to him up there on the U.S. station, because we were a little concerned about liability there, and we required that the Russians get something from him from that. But not just with each other's astronauts flying on each other's vehicles. Those were controlled by the international agreements that we have signed, and it's just part of international commerce. I don't mean commerce in terms of business; I mean in interplay between governments. So that really wasn't a problem.

JOHNSON: Did this help to form the basis, as far as the future international agreements for ISS [International Space Station], this first step?

FRANKLE: No. The original Space Station agreement was signed in 1986. The Russians, obviously, weren't a part of it then, but ESA [European Space Agency] and the Japanese and the Canadians were. That was just a big multilateral agreement. [19]'88, I mean. I'm sorry. It was 1988, because it was signed the same day that we returned to flight.

That was an interesting day, because we flew down for the launch, and then as soon as the launch took up [Frederick H.] Rick Hauck and his crew went on up, and as soon as they went up, we got on an airplane and we flew directly to the State Department so we could be there for the signing ceremony over at State for the Space Station agreement.

But that was negotiated and hammered out over a couple of years of negotiations, where, to be honest, the hardest part of the negotiations was not with the international partners; it was with the various agencies of the federal government that all felt they had something to say about it. We had these working groups that were just almost at times unbelievable. There'd be [U.S. Department of] State there and [U.S. Department of] Commerce there and [U.S. Department of] Treasury there and [U.S. Department of] Defense there, and everyone, and they all had these views about what should and shouldn't be in these agreements. The [U.S.] Department of Justice was there, and big issues over what law would apply and what criminal law would apply, what civil law would apply. It was just all these things went around and around and around.

The second Space Station agreement, which was ten years later, in [19]'98, which added the Russians, that one built much more on the first agreement, I think. I don't know. The Russian part of it certainly was based somewhat on the prior agreements we had with the Russians, but I don't think the Shuttle-Mir did. What the Shuttle-Mir did is it allowed what in arms control parlance is called "confidence-building." There were fairly small measures that once were done, the various parties knew how the other ones operated, that you could trust them to do what they said they were going to do, and this is what you were going to get out of it, and that it allowed you to move forward without thinking you were taking too big of a step.

So, the Shuttle-Mir, I think, was very important, but I don't think it was a real big issue into the Space Station agreement, which I think was your specific question.

JOHNSON: During your time there, of course you mentioned it before, commercialization, and you testified before Congress several different times about that issue. Can we talk a little bit about that issue, and NASA's stance on that?

FRANKLE: Sure. Let's start with the earliest ones. The first things that were becoming commercialized were the launch vehicles, and that started very early. Even when I was still out at Goddard, they were starting to talk about phasing out the Delta Program because we were buying them that way. And one of the guys who had been a prior Delta Program Manager out at Goddard went off and tried to form a company that would sell the Deltas commercially when the government was getting out of it.

The government was phasing out of ELVs because the Space Shuttle was going to be—it was NSTS stood for National Space Transportation System, because it was going to be the primary way for launching everything, because it was going to launch twenty-some times a year, and it was going to do all this, and it was going to be so much cheaper, and yada, yada, yada, which, of course, never happened. But meanwhile, they were phasing down the ELVs and you still had these vehicles that worked, and so then they were being moved over to see if there were any commercial markets. The problem was going to be that if people were able to get either very cheap or very highly subsidized launches on shuttles, it's going to be hard to sell ELVs for full-market value, or the sums you can make on it. And so that was a big issue early on.

After *Challenger* was lost and they changed the policy, there was a big stink in Reagan era about changing the NSTS from National Space Transportation System to NASA Space Transportation System, because this wasn't the national one. The national one was going to be ELV-related and all that.

The first thing we had to do was get it so that even the U.S. government could buy ELVs commercially. After they threw all of the payloads off the Shuttle, they then had to find ways to

launch the NASA payloads that would have been launched on the Shuttle otherwise, and so they had to come up with a way to buy these vehicles.

Again, because of the differences between the way commercial people buy things and the government buys things, there were some problems. For instance, if you or I were building a house, we put money down and we pay progress along the way, and then at the end we take ownership of it. The government can't make advanced payments, generally. I mean, they're not allowed to pay before they get value, and there's ways of doing it and that sort of stuff. But when you're building vehicles for the government, like they used to do with the Deltas, the money would go to them, but then the titles, all the parts would go to the government, so they'd say, "Okay. We have some security." It's a big issue in government buying, about having security for your money. When your commercial person goes and buys a vehicle or a launch, they just pay money upfront. They don't get anything other than this is a big company and they have a contract and they're going to survive on contract law, if necessary.

So we were going out with this mixed-fleet, it was called, buy, where we were going to buy a bunch of different launches from a bunch of different vehicles. There were Deltas and there were Atlases and there were Scouts and there were some other things. It was long before Pegasus. And they wanted to direct how many to each, and it was going to be very interesting.

There were a couple of different problems with that. One of them was the money issues of how do you pay for it in that time, and that one we solved. This is one of the things that I thought was interesting. It shows you how much things have changed, because it was so much easier. This was back seventeen, eighteen years ago.

I had written a paper and given a talk about why the U.S. government can't just go buy these things, why things like this advanced payments restriction really got in the way. I got on

the phone a few months after that with Senate staff who were talking about it, and we were at that point still getting NASA authorization bills. So they said, "What would we do to fix it?"

And over the phone we drafted a statute which is now Section—I think it's 311 of the Space Act, which says that NASA can make advanced payments on ELVs and not have it be lined up directly with the progress and all this other stuff. We agreed to the language in one afternoon over the phone, and two months later it was law. I think we've had one authorization act in the last fifteen years, and it hasn't been a friendly one. We don't have that kind of relationship with Congress that we used to back then. But we were able to go do that.

Then once we had the ability to buy the things, it was a question of, for each of the payloads there probably was more than one vehicle that could have launched it, but we wanted to make sure that each of these vehicles survived, and so we were doling out the thing. But the Competition in Contracting Act wouldn't let you say, "I'm going to just launch this payload on this vehicle," if this other vehicle could also do it, because they would have to be competition.

So we put together—and I think I was pretty influential in that—a mixed-fleet strategy, which for the first time NASA used as an authority in the Competition in Contracting Act, to use, basically, the public interest, to not do anything in competition. So we bundled them all together, put together one piece of paper that I think Dick [Richard H.] Truly signed—I'm pretty sure it was Dick—that said that "We're not launching on the Shuttle anymore. It's in the national interest to make sure that various ways of getting transport to space are still around, so we're dividing this up amongst them in a way to provide the maximum survivable industry."

They signed it. We sent it to Congress, and Congress said, "Fine." They don't have to say, "Fine." They have to not do something for thirty days, and then it becomes a totally unchallengeable sole-source procurement. That was the first time NASA had ever used that C-7

exception, but that was because we were trying to address—both of those were really just trying to address the creation of the ELV industry as commercial, which it hadn't been before that. So that was really sort of the first areas, I guess, where we were really getting into commercialization.

TDRS I talked about briefly earlier, and how that didn't work because they just really hadn't thought it through as a commercial—and eventually they had to reform the contract and buy the commercial part out of it. I don't know. Any specific commercial things you're interested in?

JOHNSON: Some of the liability issues and the cross waivers.

FRANKLE: Well, cross waivers came in really more of a result from the Shuttle than anything else. In the beginning, the Shuttle was being marketed as a major launch vehicle, and we were selling it against Arianne [Rocket Program]. So you had Arianne on one side and the Shuttle on the other, and we were seeing who was going to buy more.

It turned out that one of the things that kept people from wanting to launch on a Shuttle was potential liability. If you launch on any expendable vehicle, you don't have to worry about the vehicle because you know it's history once you've launched it. So you don't have to insure against the value of the vehicle. Also, the value of an ELV is fairly low. It's a heck of a lot of money, but it's not a heck of a lot of money when you compare it to the cost of the Shuttle.

So they were afraid, initially, that if they launched on the Shuttle and something happened that caused damage to or loss of the Shuttle, that they'd be responsible for the Shuttle,

which is $2 billion, and that they were going to have to buy $2 billion worth of insurance. And, France said, "Well, no, we wouldn't want that to happen."

So the concept of a cross waiver came up, where we would agree that we wouldn't claim against them if they damaged the Shuttle, and they wouldn't—both ways. We wouldn't claim against them if they damaged the Shuttle, and they wouldn't claim against us if the Shuttle damaged their payload, or something happened.

Then it became required to spread it broader, because we were putting multiple payloads in the payload bay, and they were willing to insure their own spacecraft, because they always did, but they didn't want to have to also insure for the co-rider's spacecraft. So it became a much bigger deal, and it had to be written up and spread in a way that it was flowed down, and it was required—but also you had to write it in a way that you'd waive all the claims, but only against the other people. Even though you're flowing this thing down, you still have to be able to enforce your contract.

If somebody is going to provide you with propellant, and they don't, you have to be able to sue them even if they're in your chain. It's a fairly intricate piece of legal work, where you try to leave those legitimate contract claims available, but take out the tort-based claims from almost any source. So that really was the genesis of the cross waivers.

What happened is once we started doing that in the Shuttle world, (*A*), we were doing most of the launches, so people were sort of used to it; and, (*B*), everyone started realizing that's not a bad idea, because again, almost everybody insures their own property anyhow, except for like a Shuttle, which the government owns, and the government doesn't buy insurance. So all the equipment is insured once, because everyone buys their own. It's like a no-fault.

If you didn't have a cross waiver, then people have to start buying more insurance, and so everything gets insured two or three times, and that drains a lot of money. When you're paying 20, 25 percent of the cost of a launch in insurance, which is what it has been, or was for a while—I guess it's a little lower than that now—that drains a lot money that could be used for space activities. So it turns out you can really encourage people, or at least take away one of the major discouragements from people, by having cross waivers.

So they became fairly standard, and they got put into ELV contracts. They got put into Arianne contracts. They got put in pretty much everywhere. So that was something that NASA started before I was there. I think I helped expand it, but before I was there, they started it, and I think it really did change the whole map for that type of commercial space activity.

JOHNSON: And indemnification?

FRANKLE: Well, indemnification is—there's an authority that NASA has; they have two of them. The main one is under Public Local 85804, and it came out of the old War Powers Act during World War II, maybe even before World War II. But it basically said that if you're doing something that facilitates the national defense and there's a determination made, the government will take over any third-party liability.

It was really meant for people who were manufacturing huge amounts of armaments and stuff like that, so if something blows up while they're producing war materiel, they're not going to be responsible for the damage to the local community. The government will pick it up, because it's really because of them.

NASA has used that authority from time to time. It does require a determination that it facilitates the national defense, though, which for NASA—we used it on the Shuttle, because the Shuttle always was dual-use. And so we were preserving something for potential military use. We used it in a bunch of different areas when there was also military interest in the system. People got used to that. And we used it also—sometimes, but not always—on expendable launch vehicles. They got used to it there, too, and they really liked it. They just said, "Oh, you can't make us bet our business on every launch."

My response to that—and I testified a couple of times—was, "I don't know why not. I think lots of businesses bet their business on everything." I mean, every time two Boeing 747s fly over New York City, they're betting their business. They have a $2 billion insurance policy. If those two planes collide, fall down, land, explode over a full football stadium or into a building and cause huge damages, they'll pass that two billion very quickly, and that extra money is on Boeing. They're betting that's not going to happen.

Pharmaceutical industry, every time they put out a drug, if something happens and it comes on the mass market and people get really, really, seriously damaged, and each one sues, they don't have enough insurance to cover that. They're betting that it's not going to happen, and it's not anything real different.

Then they said, "Oh, it's the startup nature of the business that makes it so necessary. They're too fragile at the moment." Okay. Well, that's a determination. And so we got into a lot of discussions where I would generally testify against the need for indemnification for the ELV industry. They testified in support of it.

Department of Transportation, who got the authority to license ELVs, because Jim Beggs said, "This is eventually going to be a trucking operation, and NASA shouldn't be in the business

of regulating trucks." I think he had a point. But he said, "No, we don't want it. This is trucks; give it to Transportation."

So they took it over. So they argued on behalf of the agency, and they got this thing under the Commercial Space Launch Act. The industry calls it indemnification. It's not indemnification. Indemnification is you get a claim; it gets paid. Under 85804 it just gets paid, because it's there, and you don't worry about it.

The Commercial Space Launch Act has a claims authority, which says that if it's more money than Transportation has, they can ask Congress, and Congress can then appropriate the money. It doesn't say they will; it says they can. So there isn't any guarantee there either. So they're still betting their company, but there's a couple little pats on the back. That's really all it is, and I discovered that people got annoyed if you pointed that out, that it was an Emperor's New Clothes-type thing, but they really, really liked it.

Then I argued we could do it—by then we wanted to do some new kinds of things. There also was an authority under the NASA Act that we can indemnify for people using NASA space vehicles. So we can provide indemnification for people using the Shuttle, say, and we do that for certain classes of payloads, mostly the ones that are smaller; universities and things who couldn't afford anything anyhow. So, we do that. But we can.

But then we started going into new areas, and when we were in the area like the X-33, when we were trying to come up the next-generation whatever, NASA wasn't going to own that vehicle. It wasn't going to be a NASA space vehicle. The military kept saying it had no interest in the X-33, so you couldn't say it was facilitating the national defense. There was no use for it. So we couldn't indemnify.

There is an authority in the Space Act. It's Section 205-C-13, which is a claims authority that NASA has, which I felt was just as good, if not better, than the claims authority that Department of Transportation has. So I said we could use that, which became much more controversial than I thought it was going to be. I still am convinced I was correct. We could have done it, and I think we did, once or twice. A couple of contractors bought off on that in the thing.

But then what happened is after we got the contractors to buy off on it, then all of a sudden other parts of the federal government didn't like it, because indemnification itself, in general, is inconsistent with our systems of law. We have a tort-based system. We believe that law is set up to believe that people are motivated by their monetary interest, and one of the reasons you make sure that products are safe, that cars are safe, that things aren't going to go wrong, and that you're not going to have a horribly cracked sidewalk in front of your house, or steps that people are going to fall through when they visit you, is that you know that if you do, you're going to get sued, and you're going to lose a lot of money.

If you indemnify everybody, that weakens that impetus to be safe. And so there's a lot of theoretical concerns, especially at Justice and Treasury, over anytime you go and provide indemnification, because it's supposedly inconsistent with the general—and there is something to that. But at the same time, you have to do something. What's it going to be? How are you going to do it? There's various ways and you play with what you can play with. So that's what we were trying to do.

So we kept trying to do that, and we tried to get—and we did, in fact, get an authority which we wrote—I think I wrote a good part of it—which says that if we're doing it for experimental aerospace vehicles, which would have allowed us to provide some indemnification

for, for instance, an X-33 flight, because it's just an experimental vehicle that is not yet a commercial flight. If it ever got to be commercial, we'd have to go over to the Commercial Space Launch Act, because they have reusables as well. But while it's still in the NASA, we did write it up and got some indemnification authority for that purpose.

So I think there is theoretical availability of that, but I still don't see the need for it. I think it's a tempest in a teapot. We've been launching spacecraft for I don't know how many decades at this point now, and at least in the U.S. there's been no third-party claims.

There's been some in China where they've blown up some villages, but that's because they allowed the villages to be that close, or they put their things that close and they don't move people. That's a Chinese decision. But there really hasn't been any third-party liability for that type of stuff. So, indemnification, whether you have it or not, it's a mental sop. Yes, you're betting it, but it's a really good bet. [Laughs] You know? You're betting a lot more every time you step out onto the street, because a lot of people don't make it across. Nobody has not made it out of that issue, and so I really don't understand the vehemence with which people come after that issue.

JOHNSON: Let's move on to ISS and some of the legal questions that arise with the ISS, the permissible scope of onboard activities, the conduct of the crew, that sort of thing.

FRANKLE: All right. When they first signed the agreement in 1988, it said that people would do what they needed to, to make the laws right. The only law that needed to be changed to enable the first act, the first Space Station Agreement, to go into effect, was there was a Patents in Space Bill. There was the Patent Secrecies Act, which said that basically if somebody tells another

country, or you apply for a patent in another country first, if it's a U.S. inventor, they can't come and then apply for a patent in the United States, because the Patent Office wants to see them first. And if you have a U.S. inventor on a space station where it's a different module, where it was not going to be a U.S. space, there was going to be an issue as to who could patent what, or if you could patent anything. So we had to change that.

That one went through fairly quickly. It took us a couple of years, simply because we didn't always get a bill, and had to explain it once or twice. But it wasn't too bad, and we got it changed so that if, in fact, an international agreement said that you could do it, it was fine. So we fixed that one. There really weren't a whole lot of other laws that needed to be changed for Space Station.

In terms of what you can get away with or do, basically the law is going to be whatever the country's—whose module it is—law, what it says it is. Now, we have a provision in there about criminal law, which took us a long time to get to, but basically it says that if somebody commits a crime up on the Station, they will first turn to the person's own country to see if they will do something about it, and if not, then the country whose law was violated has a shot. But whether you can get your hands on them or anything like that is left up in the air.

There was a big issue in the very beginning, where the Justice Department wanted to just say that everybody had to be subject to U.S. criminal law under all circumstances, no matter what, and that just was not going to fly for all the foreign folk, and eventually it petered out. It does say that there would be a code of conduct, which was pretty hard to negotiate. That was negotiated during the late nineties, and it's now up on the website, and you can see it.

One of the most controversial parts of it is it gives the station commander authority to take whatever actions are necessary to ensure the safety of the vehicle and crew, and that

includes arresting people. It could include, if you want to think that far out, using violence to subdue somebody. You could shoot somebody if you had a gun, which you wouldn't have, I hope. But I mean if you had to. It's sort of a self-defense-type thing, or self-defense of the vehicle.

That was very, very controversial. In the beginning, the international partners were very much opposed to anything like that. But eventually they sort of got to the point of—what are you going to do? If someone's getting ready, and you can tell that they're getting ready to do some serious damage that's going to punch a hole in the side of the Space Station, you've got to stop them. And you can't just say, "Please." So, it says that.

Other than that, there are always going to be issues about intellectual property up there, and it's simply because people have different intellectual property laws. The Russians didn't have a developed intellectual property law, and viewed as protectable things that we would say were just public domain data. Clearly, how you do something, you have trade secrets and those should be protectable and all that, but certain things, like the appearance of a dial, is the Russians would say, "No, that's protected. You can't tell anybody about that. That's protected." And it's not. And there's no way we'd be able to protect it. So we had to get to things about what is and what isn't protectable, but most of that isn't changing things; it's getting to an understanding with your partners.

The big issue of patents which people talk about, isn't real. The big issue of patent law is when you infringe something. People aren't going to be widespread infringing things on the Space Station. There's going to be a few people up there, at most, and they're going to be doing an experiment here or experiment there. They're not going to be manufacturing mass quantities

of anything. They're not going to be doing anything that has real serious IP [intellectual property] infringement capability.

Now, if they do something up there which then comes down to Earth, and they sell it or something, or they take some information or infringe on something, then they're infringing it on Earth, and there already are ways to do things about that. So if somebody steals your intellectual property here and goes to Europe, there's something you can do about it, or if they go to Russia, if the Russians have an intellectual property law, which they're developing. And so there are terrestrial ways to enforce this kind of stuff, and the Space Station really doesn't change that very much. What it changes is for those activities on the Station, and there just aren't going to be that many.

There have been always some people who want to look—they call themselves forward-thinkers. I think of them as sort of whackos. I love science fiction, but some people just take this stuff a little too seriously. So they used to have conferences which, thank God, at least I haven't heard anymore, about Space Station and how we're going to export the U.S. Constitution and Bill of Rights to the stars, and what are we going to do, but they're looking at issues that are not going to come up until you have, say, a thriving large community on Moon. Okay?

I used to give a talk, where I'd talk about, I am not interested in the solution to knowing whose child custody laws are going to apply if a Japanese astronaut and a Russian astronaut have a child in the U.S. module. I'm not going to worry about that. It isn't going to happen on my watch. It isn't going to happen on anybody in this room's watch. Don't worry about it.

When we get to the point where we are actually building cities and big towns, or even towns the size of the Old West settlements, then you have to start thinking of developing a law framework that applies there. But until you do, it's too controversial and much too problematic.

You're just guessing at what it's going to be like and what the real problems are going to be. Wait until you know what the issue is before you come up with a solution.

That's been something I always have pushed, and I hate people who just decide that they've got to come up, and they're going to know better and they're going to solve every potential problem that could possibly exist, because you can't. And I get tired thinking about it, so I refuse to do that.

JOHNSON: In the research we came across a few interesting legal issues that you had to deal with. One of them was the claim of ownership for the asteroid 433-Eros.

FRANKLE: Yes.

JOHNSON: Do you want to just talk about that briefly?

FRANKLE: Yes. Actually, I just saw something. I was down visiting some friends here recently and they pulled out a catalog. It's an "unusual stuff" catalog, and it's for $15 or something like that, you buy yourself a couple of acres on the Moon. Same thing. It used to be—and I have no idea if it still works—it used to be if you went to www.lunarembassy.com, you could buy anything you wanted in the cosmos. They would sell it to you.

This is related to one of those. This guy comes in, and after we landed the [Near Asteroid Rendezvous (NEAR) Shoemaker] Probe on Eros, we got this bill for parking. He sent us a bill for $25 for every Earth century, for parking our spacecraft on his asteroid. And I refused. I said

first, why did he think it was his asteroid? And he said, "There's nothing that prevents an individual from owning things in space." You can take issue with that.

I think the first letter I sent back to him, I was probably a little bit too flip and I said things a little bit too quickly, and the guy then got some law professor to write me a letter saying, "Surely you don't believe—." It was sort of nuts.

But the Outer Space Treaty says that no nation can claim sovereignty over anything in space, essentially; any natural bodies, Moon, celestial bodies, and all that sort of stuff. It doesn't talk about individuals, because back then no one thought of individuals getting to space and whatever.

I said, "Well, fine. What court are you going to enforce this in? How do you know you own it? And then what court are you going to make me show up in, to make them pay?" And unless there's an *or what* clause—I always liked that term, the *or what* clause—I don't really care what you're saying, what it is, because I don't see an *or what*. If I don't pay you, I don't pay you. You can't do a thing about it.

And the same thing, you see that in a lot of stuff where there's a requirement written down somewhere. There's requirements everywhere. But the question is, okay, or what? Do I get fired? Do I have to pay money? Do I go to jail? Or is it just, this would be sort of nice to do if you could, and you need to be able to explain, at least a little, why you didn't do it. I said it makes a difference as to how you treat that requirement. And so, I always look for the *or what* clause. There was no *or what* clause here.

You can claim whatever you want. You have absolutely no right to doing that. You get rights because—to be honest, the only reason you have a right to anything, that I have a right to be sitting here, is because the government here, over the last two hundred and some-odd years

has said, "This is how our property rights are going to be, and if you get this kind of deed and this kind of piece of paper, you have a right and it's enforceable." That's what makes you right.

You have the [U.S.] Constitution that gives you certain rights. Other than that, it's chaos. It's anarchy. And that's what you have out there in space, but since nobody can get there, who cares? Once you get to the point where there are a lot of people there, they're going to have to do something about that to keep people from just going and pushing people off the asteroid and taking it on their own. But we don't do that yet, and this guy has no claim. So it was just silly.

JOHNSON: I imagine you ran into more than one.

FRANKLE: Oh, yes, yes. You can go on—I wonder if it still works. Lunar embassy, you want to buy a star? You can get a star. Even though it's lunar embassy, it's not just—

JOHNSON: It's all out there for the dollar, huh?

FRANKLE: [Typing on computer keyboard.] I don't know if I spelled embassy right. Yes, lunar embassy world headquarters.

JOHNSON: Maybe it should be loony embassy.

FRANKLE: [Reading] Buy yourself some space.

JOHNSON: Goodness.

FRANKLE: [Reading] Christmas orders. Get your Christmas order in soon. Christmas is nearly upon us. Don't worry if you're late in ordering. At the end of our—or to make it available to you, register to receive this.

JOHNSON: This would be interesting if people start putting in prior claims and then they—

FRANKLE: Absolutely. Christmas orders. Let's see. What's this all about? It's just bizarre. Here's the latest news. Look at pictures, latest news. But anyway, quick buy. I've got to do that one. It says copyright to 1980, so it's been around for a while.

JOHNSON: Goodness gracious.

FRANKLE: Okay. [Reads] Register. Archive for fifteen bucks. Lunar properties, an acre, 19.99. Prime lunar properties with a deed with your name printed on it, as opposed to being without it, is 22.49. Yes, it's just crazy. I mean, I guess there's no reason you can't do that, because there's—here's prime view Martian properties are also 22—same price.

JOHNSON: Same price.

FRANKLE: You can get an atmosphere for the same price, just a thin atmosphere. So, at least one of them will also go and, like I said, you can buy stars or the entire asteroid belt or something.

It's crazy. But they're just saying—they're wrong. That's all I can tell you. Or if they're not wrong, it doesn't matter.

JOHNSON: You talked about what you felt was your significant accomplishment. What do you think was the most challenging point of your career with NASA?

FRANKLE: Challenging in which way?

JOHNSON: Challenging to you personally.

FRANKLE: Getting through the *Challenger* accident. Getting through the *Challenger* accident. There's no doubt about it. That was awful, personally. Professionally it was fine. I did okay as a lawyer. But so many people that you knew so well. It was just so hostile and for so long, that that was really, really hard. I think that would clearly be the time.

JOHNSON: Have you been involved in any of the work relating to the *Columbia* disaster, as a consultant?

FRANKLE: Very little. No, very little. I've gotten a couple of phone calls asking about what do I remember about this or that. A couple of reporters have called me. I was very happy I wasn't there.

JOHNSON: I would imagine.

FRANKLE: Couldn't have done a—I could have, but I wouldn't have wanted to do a second one. I don't want anyone to ever have to do a third one. But it was just not—

JOHNSON: Do you think NASA was better prepared for this event than they were for the *Challenger*, legally?

FRANKLE: Legally? No, I don't think so. I think they were legally just about the same place. The problem—the thing is, not the problem; the thing is it was no longer an unimaginable event, and so it got a moderate amount of attention, but nothing like *Challenger* did; just nothing like *Challenger* did, which I'm glad for the people who had to live through it. Not saying that this has been good, because it certainly hasn't, and they're not through with it yet and I think there's still more hearings coming up and all that. And who knows what's going to happen to the Shuttle system.

But you didn't have the accusations of criminality and the moral stuff, and the stuff that was really heart-wrenching, other than, obviously—and please don't make it sound like I'm not saying that it wasn't heart-wrenching to see what happened to the families and the people and those—and they're wonderful people who died, and all that. But the extra stuff that was going on that was sort of the extracurricular stuff out of *Challenger* was much, much greater.

I think that part of it's just it's the second one, and I think the country has become more inured and are probably a little harder now, and less empathetic. You know, whatever. I don't know.

JOHNSON: When you decided to retire from NASA, you had been in the General Counsel position longer than anyone else.

FRANKLE: By quite a bit.

JOHNSON: What brought about your decision to retire when you did?

FRANKLE: Before I got the General Counsel's job, I had never been in a single position for more than about three and a half years. I always moved to a different job or did something different. As I said from the beginning, I always wanted to do different things. After thirteen-plus years as General Counsel, I knew I could do that job. Most of the issues—not all; things change from day to day, and different Congresses and all this sort of stuff, but most of the issues either had come up before or were similar.

I was tired. Ten years of working directly for Dan Goldin was tiring. And I realized one morning that the day I crossed over my retirement eligibility, I was essentially taking a 50 percent pay cut, because they were going to pay me half for not working, so they were only paying me half for working. So I said, well, wait a minute. I'm working real hard here for half the money that I used to be working here, and if I can go out someplace and work just to replace that 50 percent, and if I'm in private—I'm a lawyer. If I'm in private practice I get more per hour than I get here, so it shouldn't take me 50 percent of the time to make 50 percent of the money. I would have all that extra time available, and still be making the same or more money, and I'd be doing new things. Let me see. That took about—I'm joking if I said it only took me about twenty seconds, but really, we talked about it and I knew I was getting tired of the job.

I had been there a long time and the things that I had gone in wanting to do, the turnover of the place, the putting it in order—when I went down to Headquarters from Goddard, there were no computers. There was two computers in the entire office, and they were running these inane little programs that did everything in codes that nobody knew anything about. They were still using [IBM] Selectrics when I went down there. A couple of them had like one-page-memory things.

We had no computerized docket systems to tell us what litigation we were involved in or anything. I've got all that stuff put in. We got everything up to date. I can't claim credit for all of that. They were part of the whole thing. But I certainly was an agitator for it from the function—the program offices always had money and always had this kind of stuff. The functional offices do not have budgets, and are subsidized, essentially, are always the poor sister of the whole thing. But I was always up there yelling and screaming at these meetings, and doing stuff, and I think had some impact on that.

So I really accomplished what I wanted to do while I was there, and I couldn't see what I was really going to accomplish by doing it for another one, two, or three years. I certainly wasn't going to do it for another five, just because you've got to stop sometime, and it just seemed like it was the time.

JOHNSON: If you don't mind, I'm going to ask Rebecca if she has any questions for you.

WRIGHT: I have a couple. It's kind of a combination question, I think. You worked under so many Administrators, five Administrators, as well as a number of White House administrations, and you mentioned earlier that after *Challenger* it was a very uncomfortable time with the

Reagan administration. Can you share with us maybe a little more information about just how uncomfortable that was, and when that feeling started to move into more of a positive approach? And just how difficult is it to work under that many different types of leader and types of leaderships?

FRANKLE: The first time I was involved with political appointees is when I was in—I mean directly; I always was involved with them as the Navy and that sort of stuff, but where I was working directly for them and reporting directly to them, other than the General Counsel at Navy, but that's slightly different, was at Selective Service.

After Reagan was elected, but before he had gotten around to replacing the Director of Selective Service, so we still had the Carter director there, I went down to the Federal Executive Institute for a three-week thing, which they send new SES to a lot, and they brought down a busload of new Reagan political appointees. These people—we're new; they're brand new. They've not met us. They don't know anything about—all I know is that we are reasonably young—I was thirty-three—career employees who have just made it to the SES level, and that we're going to be in charge. They came in and said things like, "The only thing that career government employees do is get in the way of the political agenda and the mandate we've been given. People in the SES are nothing but deadwood retired in place, waiting for their retirement so they can take care of their advantages. If we had our way, we would fire every single one of you."

That was when I was introduced to a whole mass of political appointees together at once. After I got RIF'd out, I had said I was not going to ever work directly for a political appointee again. [Laughs] And you saw how well I did that.

Every administration comes in, and the Reagan administration really had what it felt was a strong mandate to change things dramatically. They had a very different view of what the role of government was and what should happen, and they really felt that NASA, especially after the loss of *Challenger*, was an obstacle to doing what they wanted to do, and they were very upfront and very hostile about it. So that was *really* a difficult period of time.

Every administration—Republican, Democrat, doesn't matter—comes in, believes that they have the mandate to change everything, and that the people who are in the senior government career positions really are holdovers from the last administration; that's how they got to that position anyhow; and they're suspect loyalty. They all do that.

I received my distinguished rank in the last year of George [H.W.] Bush Sr., and the awards ceremony was held during the first year of the [William Jefferson] Clinton administration. Every year before that, if you got distinguished rank you were invited to the White House. You got to shake the hand of the President. They had a picture taken, and all that sort of stuff. This year the Clinton administration was so suspect of these awards, that nothing was ever done with the White House. We never got any recognition from the President or anything, even though that's the highest possible award you can get. They had a dinner, but the highest-ranking person they would send was the Administrator of the EPA [Environmental Protection Agency]; not even a member of the [U.S.] Cabinet.

I'm telling you that that one period of time was really hostile in the Reagan administration. The Clinton administration ignored the whole group completely. In other administrations, I would go over to the White House and deal with White House Counsel fairly frequently. We would talk about issues. There used to be a thing called the Federal Legal Counsel, where the General Counsel of all the things would get together.

In the Clinton administration, they wanted nothing to do with it at all. We never had any meetings. They never did anything. If I got three calls from the White House Counsel's Office during the Clinton administration, it would be a lot. And it's just a different way of the way they look at things. Unless you have actually done something with a specific human being, and worked with them enough so that they now know what you're doing and capable of doing, every administration mistrusts the career leadership. They always think they're there to prevent them from doing what they were elected to do. And that gets tiring after a while. It's not a big pull on you all the time, but it's a little pull. It's sort of like catching a big fish with a five-pound test-line, you know. That fish could snap that in a second, but if you just keep it on and it's always five pounds, eventually they get tired. And eventually you get tired.

That's why when I could retire, I also knew I was going to move away from Washington. I'd been in Washington for thirty-seven years, and I was tired of the politics. I am the career guy. I always wanted to be a career guy. I never wanted to be a political guy. I would refuse any offer to become a political guy. But I just needed to get away from it, because everything—and if you haven't lived in Washington and worked in Washington and seen it, people won't believe it, but everything is politics. I don't care. I don't care if it's the color of the pad of paper, or the budget for something as simple as—certainly, you think, what should be so political about school lunches? But you know from reading the papers that that's really political. Everything. There is nothing under any circumstances that you can say, do, or anything, doesn't matter what mission it is or whatever, that is not politics. And I understand that.

NASA Headquarters has always done a very good job of protecting—I think too good of a job—of protecting the Centers from recognizing that. The Centers usually believe that they get their budgets and they get their programs because of things like scientific merit and things like

that, and it's not true. They get it because of the politics of the situation in the time, and it's politically right for the people to vote that way because it's going to get them more votes, and it'll help them get reelected, or it'll do whatever else it is, but it's all politics. That's just the way the system works. I'm not arguing against that, because I don't know what else you'd do. I think it is almost everywhere. It's just that personally, I find it very tiring. Found it very tiring after thirty-seven years in Washington, D.C., and thirty-two years working in the federal government.

WRIGHT: You were there thirteen and a half years. You said ten of it was working for Dan Goldin, and, of course, the rest of that time you had a very quick change of Administrators.

FRANKLE: Right. Beggs, Graham, Truly, Fletcher.

WRIGHT: Do you have a preference of working with four quick ones, other than having that continuity over ten—

FRANKLE: Dan was really an interesting guy. Dan certainly—everyone knows his liabilities, and he clearly has them. He was very, very tough on people. I actually think that if he had stayed three or four years and left, he'd still be known as one of the best Administrators NASA ever had. I think he came in and he shook up an organization that seriously needed being shaken up. He was a little bit too hard, I thought, on a couple of people, but to be honest, that was probably quibbling.

But what happened is his style was creating this kind of chaos, and you can only do it a certain amount of times, and after a while you get numb. And I think the organization finally became numb. He would go off and do anything, and we'd salute and we'd go off and do all this stuff, but he had lost the hearts and minds, which he had in the first couple of years.

Having a real quick turnover in just months and stuff isn't real good, because you really don't get to know people and they don't really get to measure you, and you don't really get to measure them. A turnover rate of like once every four or five years would be fine, and I think might be good for the agency, because you start running out of new ideas and things to do after a certain number of years.

That's another reason why I felt that it was time; you know, it didn't bother me that somebody else was going to come in and be General Counsel. I mean, I thought I'd come in with a pretty big reservoir of ideas, but I'd used most of them up. [Laughs] Others would come up from time to time, but it was time to move. And I think that Dan just stuck around a little bit too long. Other than that, I didn't really care.

Actually, the worst one for NASA, in my tenure, was Bill Graham. He was awful. He's still around and I see him every now and then, testifying on something or whatever, but I don't think he ever really cared about the agency, or if he did, he never showed it in a forum where I was present. It was a shame. It was a shame that he came right at that time.

WRIGHT: Just as a last question, to follow up on that. When you were getting ready to make your decision to leave, you knew a new Administrator was going to be coming in. Did you have any thoughts that maybe you need just to stay a little bit longer so that you could help with that transition?

FRANKLE: No. As a matter of fact, what I decided was, I felt that the way to do—first, they were taking a long time, you know. I had thought that the transition would have occurred long before that, and we would have had somebody new, and it was just dragging on and dragging on and dragging on. So, initially I was thinking, yes, I'll go do that, and do it one more time. But then when it got down toward the fall and we still hadn't had a name or anything like that, I decided that I really couldn't, in good conscience, wait much longer.

At that same time, I figured, well, also, historically this has been a career job. Personally, I was very open that I wanted it to remain a career job, but I know that I made my points with Dan Goldin, actually, because he and I actually always got along. I didn't always approve of what he did. He knew that. I told him sometimes. But I also knew what my job was and what his job was, and if he made a decision that I didn't like, that was his decision to make and it was then my decision to go implement what I could.

But I dealt with him from the first time his name was mentioned, long before his hearings and stuff. I met him up at the White House, and we started working on his paperwork and his issues and stuff like that. And he learned that I was somebody he could rely on and trust, and the people in the White House told him that—in fact, what he told me was that he was told that they had never seen anybody get such good support, not just from me, but from other folks he was getting it from NASA, but I was in there, of any other agency, and they thought this was just tremendous and all. So he came in and he knew he could rely on me, and he did. So I was out of the box very quickly.

What I decided to do is, once I had made up my mind it was time, after they named Mr. [Sean] O'Keefe, I didn't go to a single meeting with Mr. O'Keefe. I sent my Deputy and told

him that story, and I told him that he needed to develop—it was going to be O'Keefe's decision as to what was going to happen with the job, and me making a good impression on him wasn't going to help Bob any, so it would be better if Bob made a good impression on him. So I sent [Robert M.] Bob Stephens over to do that.

What nobody knew is that he had a college roommate and best friend, and he was the godfather of the children of Paul [G.] Pastorek, who, as far as I can tell, is a very good lawyer and is doing some very innovative and interesting things, not the way I would have done it, but I'm not there anymore, and so that's fine. I think the organization looks like it's doing okay. Yes, he's done some things I wouldn't have done, but I would expect nothing less. They didn't want a clone. [Laughs]

JOHNSON: Is there anything else that we haven't talked about?

FRANKLE: No, I think we've talked about pretty much the gamut.

JOHNSON: I sure appreciate you doing this with us today.

FRANKLE: No problem.

[End of interview]