

JIM FLUG FACT SHEET

Prepared by Rob Martin

Miller Center of Public Affairs, University of Virginia, 10/24/2007

Flug's Positions with EMK

1967 to 1969: legislative assistant in EMK's Senate office

1969-1973: chief counsel to EMK and chief majority counsel to Judiciary AdPrac Subcommittee

1979-1980: special counsel for EMK's presidential campaign staff

1994: special counsel in EMK's Senate campaign against Romney

2003-2006: chief counsel to EMK and chief minority counsel to the Judiciary's Immigration, Border Security and Citizenship Subcommittee

Important issues that Flug worked on with EMK:

- 1967 – congressional redistricting bill - “one man, one vote”
- 1968 – leg.asst. to both EMK's & RFK's Senate staffs during presidential campaign
- 1968 – groundwork in Indiana during primary campaign (1 of EMK's primary states)
- 1969 – Haynsworth nomination
- 1970 – Carswell nomination
- 1970 Voting Rights Act extension (civil rights issues)
- 1970 – spent time in MA for EMK Senate campaign
- 1972 Democratic National Convention in Miami
- 1972-1973 – Watergate investigation, including Ad Prac investigation, creating the Watergate Committee, writing the Cox mandate as special prosecutor, and likely ITT and the Kleindienst nomination
- 1979/80 presidential campaign, including work as campaign director in MD primary
- 1994 Senate campaign vs. Romney (includes coordinating opposition research)
- 2003 William Pryor appeals court nomination (according to article by Robert Novak)
- 2005 Roberts nomination
- 2005/06 Alito nomination

Other important issues/events that Flug might have worked on with EMK:

- 1967 – Marshall nomination
- 1968 – Fortas and Thornberry nominations
- 1968 – crime control and gun bill after death of RFK
- 1969 – Burger nomination
- 1970 – Blackmun nomination
- 1971 – Rehnquist and Powell nominations
- 2003 – Roberts nomination to D.C. Circuit Court of Appeals
- 2005 – Nuclear option/Senate filibusters of judicial nominations
- 2005 – Miers nomination

JIM FLUG TIMELINE

Prepared by Rob Martin

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1967 *Senator Edward M. Kennedy (EMK) serves on the Judiciary Committee, the Labor and Public Welfare Committee, and the Special Committee on Aging. EMK's subcommittee assignments on Judiciary include Immigration and Naturalization, Anti-Trust and Monopoly, and Constitutional Rights. He also chairs the Judiciary's Refugees and Escapees subcommittee.*

Important issues EMK works on in 1967 include the civil rights bill, crime control, the mentally challenged, Teacher Corps funding, congressional redistricting, draft reform and Vietnamese refugees. (Nick Littlefield legislative highlights, undated document)

January **Jim Flug** joins EMK's Senate staff as a legislative assistant. Dun Gifford joins the staff as legislative assistant around this time as well. David Burke is EMK's administrative assistant.

Spring-Fall **Flug** works with Senator Howard Baker (R-TN) aide Lamar Alexander on congressional redistricting to preserve the "one man, one vote" principle. RFK had brought EMK and Baker together. (Clymer, p. 93-95)

June LBJ nominates Thurgood Marshall to the Supreme Court. He is confirmed in August.

1968 Important issues EMK works on this year include the Civil Rights Act, Vietnamese refugees, draft reform, gun control/crime, the Fortas nomination, and RFK's presidential campaign. (Littlefield highlights)

EMK's, *Decisions for a Decade: Policies and Programs for the 1970s*, is published. The preface is written by George F. Kennan.

January EMK makes his second trip to South Vietnam on the 1st.

March Humphrey stuns LBJ in New Hampshire; RFK announces the following day that he is "actively reconsidering" his candidacy for president. (Hilty, p. 614)

On the 16th, RFK announces his candidacy for president in 1968. EMK, who had argued against RFK's running, later holds an important organizational meeting in his office to set up campaign assignments.

During the campaign, **Flug** serves double-duty as legislative assistant for both RFK's and EMK's Senate staffs while RFK's staff is on the road. **Flug** also works with student groups on nights and weekends. (Clymer, p. 109)

Flug travels to Indiana to work on the ground after EMK and Doherty convince RFK to enter the state's primary. EMK is given responsibility for Indiana. (Adam Clymer interview with James Flug, John F. Kennedy Library, 4/14/1996)

LBJ announces on the 31st that he will not seek reelection.

April Sargent Shriver is appointed Ambassador to France, serving until 1970.

May RFK wins the Indiana primary on the 7th with 42.3 percent of the vote.

June RFK is shot and killed in Los Angeles after winning the California primary. Flug had just returned to Washington, D.C. from Los Angeles the night before to start working on rules for the convention when he saw the assassination on television from his wife's parents' house. Flug goes to campaign headquarters to work the switchboard for 12 hours and then travels to New York with Lou Oberdorfer to work on invitations for the funeral. (Clymer interview with Flug, 4/14/1996)

Flug later says that gun control legislation gained traction after RFK's assassination. Senator John Glenn (D-OH) chairs a committee to study gun control, and legislation is later passed. (KOHP Flug consultation, 5/12/06)

LBJ nominates Abe Fortas as Chief Justice and Homer Thornberry as Associate Justice to the Supreme Court. Both nominations are withdrawn in October.

Summer Speculation builds as to whether EMK will announce his candidacy for either the presidency or vice presidency in 1968. EMK meanwhile spends much of the summer sailing with his family and contemplating his retirement from politics. (Clymer, pp. 119-121; *The New York Times*, 06/10/1968; *Newsweek*, 08/05/1968)

July After many Democrats call for EMK to run as Humphrey's running mate, EMK announces publicly that, "this year, it is impossible." (Clymer, pp. 120-121)

EMK travels to Spain with Claude Hooton, Chuck McDermott, and his nephew, Joseph Patrick Kennedy II (JPK II).

August EMK speaks at Holy Cross College in Worcester, Massachusetts on the 21st, which is his first public appearance since RFK's death. In the speech, EMK announces that he will not retire from politics and will continue his brother's fight against the war. (Clymer, pp. 121-122)

EMK resists heavy pressure to accept either the Democratic nomination for the presidency or vice presidency. (Burns, p. 348; Clymer, pp. 123-126)

- September* EMK makes his first Senate speech since RFK's death. In the speech, EMK calls for the U.S. to alleviate the starvation in Nigeria and the break-away state of Biafra. EMK will become a national leader for the cause. (Clymer, p. 130, 158)
- December* After spending time with JPK in Palm Beach over the holidays, EMK flies to Sun Valley, Idaho for a ski trip. During the trip, EMK decides to challenge Senator Russell Long (D-LA) for majority whip. (Lippmann, p. 113; Clymer, p. 131)
- 1969** *EMK is named chairman of the Judiciary's Subcommittee on Administrative Practices and Procedures (Ad Prac). He had not previously served on the subcommittee. He continues serving as chairman of the Refugees and Escapees subcommittee.*
- Important issues EMK works on this year include the Philadelphia Plan, draft reform, Indian education, United Farm Workers, Biafra, the ABM treaty, national health insurance, the Hill-Burton Act, tax reform, and the Haysnworth nomination. (Littlefield highlights)
- January* EMK defeats Long to win the majority whip post. (Lippmann, pp. 117-125)
- Flug** begins serving as chief counsel to EMK on Judiciary's Ad Prac. Carey Parker replaces **Flug** as legislative assistant.
- April* EMK travels to Memphis, Tennessee to speak at a memorial for Dr. Martin Luther King, who had been assassinated the previous year. (Clymer, p. 137)
- EMK travels to Alaska to study Indian education in impoverished villages.
- May* EMK travels to Los Angeles for the first time since RFK's death to attend a protest led by Cesar Chavez, who had been close to RFK. EMK also writes a letter arguing against the death penalty for Sirhan Sirhan. (Clymer, p. 139)
- Nixon nominates Warren Burger to the Supreme Court. He is confirmed in June.
- July* EMK's accident at Chappaquiddick.
- EMK delivers a national television address on the 25th in which he accepts responsibility for Chappaquiddick and asks the people of Massachusetts if they still have confidence in his ability to serve in the Senate. The response is very favorable. (Rose Kennedy, pp. 491-492; Clymer, p. 152; Hersh, p. 414)
- EMK announces on the 31st that he will remain in the Senate and that he will not run for president in 1972. (Burns, p. 348; Clymer, pp. 155-156)

- August* Nixon nominates Clement Haynsworth to the Supreme Court to replace Fortas, who had resigned as Associate Justice in May. Haynsworth's nomination is opposed by the NAACP, ADA, AFL-CIO, and the American Jewish Congress.
- September* The Judiciary Committee holds confirmation hearings for Haynsworth. Bayh is chosen to lead the opposition in the Senate after Hart declines. EMK and Bayh reportedly argue with Ervin, Hruska and Eastland about RFK's 1964 clearance of Haynsworth of any ethical impropriety.
- The media breaks the Brunswick and Vend-a-Matic impropriety stories.
- October* The Judiciary Committee approves Haynsworth 10-7.
- November* EMK's father, Joe Kennedy, dies on the 15th.
- The Senate rejects the Haynsworth nomination 45-55. Haynsworth's brother and chief aide later suggests that they could not compete with the resources of the opposition Senators, which he suspects had been pooled under the effective control of Flug. (Frank, p. 43, 93; Clymer, pp. 160-161)
- 1970** Important issues EMK works on this year include the VRA extension and 18 year-old vote, Indian education, home heating, draft reform, Cambodia invasion, OSHA, family medicine, the elderly, the Mental Retardation and Developmental Disabilities Act, and the Carswell nomination. (Littlefield highlights)
- January* EMK testifies at Mary Jo Kophechne's inquest on the 5th. (Burns, p. 349)
- Nixon nominates Carswell for the Supreme Court on the 19th. Civil rights groups immediately oppose the nomination, but the Senate is generally indifferent as little is known of the details of Carswell's judicial record.
- On the 23rd, Flug meets with Hart, Tydings, Bayh and civil rights and labor lobbyists, where he tries to convince the group that Carswell can be defeated. The group tries unsuccessfully to designate a leader to fight the nomination. Later on, Bayh eventually agrees to lead the opposition.
- Flug sends EMK a scathing memo against Carswell on the 24th.
- EMK questions Carswell sharply during the Judiciary confirmation hearings. During the hearings, Flug sends EMK a memo entitled "How to Beat Carswell," projecting the head count of senators who could be expected to oppose Carswell. Around this time, Eastland calls EMK to complain that Flug is trying to order Carswell's unpublished opinions. EMK asks Burke to tell Flug to slow down but, after Burke has a long, emotional talk with Flug, Burke tells EMK that Flug is not willing to slow down, and EMK accepts it. (Clymer, pp. 162-163)

February On the 4th, Flug holds a meeting for thirty Senate staffers. Rauh presents the case against Carswell and Flug then goes through the projected head count he had sent EMK. Flug later claims, “That was dangerous, since no guy likes to be told how his boss is going to vote before his boss has voted... But it worked, because after Rauh spoke everybody saw that Carswell was a terrible choice and then the theoretical vote count showed that he could be stopped...” (Richard Harris, *Decision*, p. 80)

On the 16th, the Judiciary Committee votes 13-4 in favor of Carswell.

EMK travels to Bangladesh, which is seeking independence from Pakistan and is suffering from a harsh famine. (Burns, p. 349; Clymer, pp. 177-178)

Feb/March EMK co-sponsors a compromise VRA extension bill, engineered by Hart and Senate Minority Leader Hugh Scott (R-PA), which includes a five-year extension and two provisions from the administration’s bill: a five-year nationwide ban on literacy tests and a uniform residency requirement. Flug handles the civil rights issues in the bill. EMK also circulates a memo drafted by Carey Parker advocating an 18 year-old minimum voting age and indicates that he might tie the amendment to the VRA bill. Mansfield later introduces the EMK co-sponsored amendment to the VRA, which the Senate passes with the VRA bill. The bill would extend the VRA for five years, suspend literacy tests in all states and lower the minimum voting age to 18. The bill is passed by the House and signed into law by Nixon in June. In December, the Supreme Court rules that the law can only lower the voting age in national elections. In March, 1971, Congress passes a Constitutional amendment lowering the voting age in all elections to 18, which is ratified in June. (*1970 CQ Almanac*, pp. 195-197; Clymer, pp. 165-166)

March Senate debate on the Carswell nomination begins on the 13th.

The Washington Post reports that ABA committee members Charles Horsky and Norman Ramsey had met with Carswell on January 26th to ask about his role in the incorporation of a segregated golf club. Upon Flug’s request, Horsky drafts a memo of the encounter which reveals that Horsky had shown Carswell that his name appeared on papers of incorporation, suggesting he had lied about his knowledge of the papers during his confirmation hearings. (Harris, pp. 133-134)

April On the 8th, the Carswell nomination is rejected 51-45.

Judge Boyle’s inquest report suggests that, while EMK may have committed a crime and probably falsely testified that he and Kopechne were trying to return to the ferry, there are insufficient grounds to charge him with a violation regarding Kopechne’s death. (*The New York Times*, 05/01/1970)

May The Senate confirms Harold Blackmun as Associate Justice to the Supreme Court.

EMK reaffirms on NBC's *Today* show that he will not run for president in 1972.

June EMK announces his candidacy for reelection to the Senate on the 11th and again promises that, if re-elected, he would serve a full term and would not seek the presidency in 1972. EMK goes on to win unchallenged the endorsement of the Democratic state convention on the 13th. Josiah A. Spaulding wins the Republican endorsement. (*The New York Times*, 06/11/1970)

July EMK introduces bipartisan legislation for national health insurance. The legislation stems from EMK's work over the past two years with the Committee of 100 for National Health Insurance. (Clymer, pp. 159-160)

November EMK defeats Spaulding to win reelection to the Senate. **Flug** later tells Clymer that the campaign did as many events as possible in Massachusetts. "We all took our vacation time up there that summer. Carey and me in a second-floor office wearing our hard hats." (Clymer interview with Flug, 1/13/1997)

1971 *EMK becomes Chairman of the Senate Health Subcommittee. On Judiciary he continues chairing Ad Prac and the Refugees and Escapees subcommittees.*

Important issues EMK works on this year include ending the war in Vietnam, draft reform, national health insurance, funding for health/medical programs including cancer research, refugees in India and East Pakistan, Rhodesian chrome, northern Ireland, voter registration, Indian education, off-shore drilling, gun control/crime, and the Rehnquist nomination. (Littlefield highlights)

EMK travels to India with Jerry Tinker, John Lewis and Dr. Nevin Scrimshaw.

January EMK loses his majority whip post to Senator Robert Byrd (D-WV).

February Eddy Martin replaces Burke as EMK's administrative assistant. (Burns, p. 236)

April Nixon secretly orders Deputy Attorney General Richard Kleindienst to drop the DOJ's plans to appeal an unfavorable ruling in its antitrust lawsuit against ITT (International Telephone & Telegraph). (Flug, pp. 5-7)

October Nixon nominates Rehnquist to the Supreme Court on the 22nd.

November During Judiciary Committee confirmation hearings, EMK criticizes Rehnquist's record on civil liberties and civil rights, calling Rehnquist one of Nixon's "lawyers' lawyer during the time when the President made perhaps more legal errors than... any predecessor." (*The Washington Post*, 11/6/1971) Bayh leads the opposition to Rehnquist. Rehnquist is endorsed by the Judiciary Committee 12-4.

December On the 10th, Rehnquist is confirmed by the Senate 68-26.

After almost two years of work, Nixon signs EMK's and Senator Jacob Javits (R-NY) bipartisan legislation on cancer research. (Clymer, pp. 173-175)

1972 Important issues EMK works on this year includes the Equal Rights Amendment, Title IX of 1972 Education Amendments, amnesty hearings, Comprehensive Nuclear Test Ban Treaty, ITT investigation, the Kleindienst nomination and Watergate, creation of the Office of Technology Assessment (OTA), Bangladesh and Sahel, northern Ireland, Indian education, health programs for seniors and families, HMOs, as well as the beginning of many years of fighting anti-busing legislation. (Littlefield highlights)

EMK's book on health care, *In Critical Condition: The Crisis in America's Health Care*, is published on the 19th. (Burns, p. 349)

February EMK and Joan Kennedy travel to Bangladesh with JPK II, Jerry Tinker and Dale DeHaan. India had recently recognized a provisional government in former East Pakistan after India successfully repelled a Pakistani invasion. (Clymer, p. 186)

Spring EMK strongly questions Kleindienst in his confirmation hearings for Attorney General about the DOJ's 1971 decision not to appeal the ITT ruling. Kleindienst is confirmed in June. Flug later calls the hearings the "dress rehearsal" for the Senate Watergate investigation. (James F. Flug, "Watergate and Nixon Impeachment 1972-1974," pp. 1-4; Clymer, p. 191)

June Four men are arrested breaking into the DNC's headquarters in the Watergate office building. EMK has Ad Prac begin an informal investigation, but proceeds slowly because of legal, political and jurisdictional issues involved. EMK resists pressure from McGovern supporters over the summer to conduct formal hearings on Watergate. Flug argues that, because Watergate is not yet on the public radar, EMK is concerned that his participation might appear politically-motivated and look like he was misusing his subcommittee for partisan purposes. (Flug, pp. 1-9)

July EMK sends several staffers and friends, including Kirk, Flug and Tim Hanan, to the Democratic National Convention in Miami. (*The Washington Post*, 7/12/1972)

EMK declines McGovern's offer to be his running-mate. McGovern goes on to select EMK's brother-in-law, Sargent Shriver, as his running-mate.

Fall *The Washington Post* and *The New York Times* begin reporting the "dirty tricks" stories linking Watergate to Haldeman and Mitchell, but the DOJ shows no interest in investigating possible ties to the White House. EMK begins a formal Ad Prac investigation after Rep. Wright Patman (D-TX) fails to get subpoena authority for his House Banking Committee investigation and Ervin decides not to conduct the investigation in his Constitutional Rights Subcommittee. Ervin, who is already involved with wiretapping issues, instead urges EMK to open his own investigation into Watergate. (Flug, pp. 1-9; *The Washington Post*, 10/10/1972)

At some time in the next couple of months, **Flug** and Carmine Bellino, an accountant consultant to various congressional committees and, later, chief investigator for the Watergate Committee, go to California to question Nixon's personal lawyer, Herbert Kalmbach. When Kalmbach refuses to cooperate, Flug serves him with a subpoena to appear in January, 1973. Kalmbach later pleads guilty to two charges of illegal election-campaign activities in February, 1974. Other charges are dropped in return for Kalmbach's cooperation in the forthcoming Watergate trials. (Clymer interview with Flug, 4/3/1992)

- November* Mansfield asks Eastland and Ervin to take over the Watergate investigation, preferring to find a Democrat with no presidential aspirations. **Flug** notes that both Ervin and Eastland had more conservative reputations than EMK, which was needed to lead the investigation. Mansfield decides the next month that a Select Committee is needed to lead the investigation. (Flug, p. 11; Clymer, p. 194)
- December* EMK tells Gwartzman that he has been discussing the possibility of running for the presidency in 1976 and that several prominent Democrats have offered to raise one million dollars for his campaign. (Clymer, p. 197)
- 1973** Important issues EMK works on this year include ending the war in Vietnam, the War Powers Act, emergency health services, ethics in medical experiments, aid for the handicapped, Watergate, and human rights in Chile. (Littlefield highlights)
- January* Ad Prac releases a public report of its Watergate investigation in preparation for the transfer of the investigation to a Select Committee. (Flug, p. 11)
- February* The Senate votes 70 to 0 to create the Senate Select Committee on Presidential Campaign Activities (the Watergate Committee) to be chaired by Ervin. Ad Prac ends its investigation and turns over its materials to the Watergate Committee. **Flug** had worked with Javits on the floor when Republicans were trying to weaken the Watergate Committee rules. (Clymer interview with Flug, 5/15/1997)
- April* On the 30th, Haldeman, Ehrlichman and Kleindienst resign and White House Counsel John Dean is fired. Nixon announces that he will nominate Elliot Richardson to replace Kleindienst as Attorney General and that a special prosecutor will be appointed to investigate Watergate. (Flug, p. 13)
- May* EMK helps draft legislation creating a special prosecutor to investigate the Watergate affair. Archibald Cox, JFK's former solicitor general, is appointed special prosecutor. EMK and **Flug** play important behind-the-scenes roles in Cox's selection and the writing of Cox's charter. **Flug** specifically adds language to strengthen Cox's charter. EMK convinces Richardson that the Senate will not confirm him as Attorney General unless he agrees to select a strong, independent prosecutor. EMK had also advised two of Richardson's earlier candidates, U.S. District Judge Harold Tyler and Warren Christopher, a former Deputy Attorney

General in the Johnson Administration, to decline Richardson's offer unless Richardson agreed to strengthen the powers of the special prosecutor position. Both Richardson and Cox are confirmed. (Flug, pp. 2-3, 13-14; Clymer interview with Flug, 5/15/1997; Richard Nixon, *RN: The Memoirs of Richard Nixon*, p. 910)

June Dean testifies before Ervin's Watergate Committee that Nixon was involved in the cover-up. (Flug, p. 15)

July EMK appears with George Wallace at a July 4th Alabama rally. (Lippman, p. 106)

A White House aide reveals the existence of a White House tape recording system to the Watergate Committee. Nixon refuses to give the tapes to the committee or to Cox because it would undermine the separation of powers. (Flug, p. 15)

Flug steps down as EMK's chief counsel on ApPrac and leaves his staff.

[For background, I'm including highlights of Watergate timeline after Flug leaves.]

Fall The White House discloses 18^{1/2} minute gap.

October Agnew resigns; Nixon nominates Ford as Vice President on the 12th.

The D.C. Circuit Court of Appeals unholds Judge John Sirica's ruling that Nixon has to turn over the White House tapes.

Nixon orders Cox to accept a proposal in which Stennis would listen to the tapes (once) and prepare his own summaries. Cox, who had already declined this proposal once before, declines it again. (Flug, p. 16; Clymer, pp. 200-201)

Nixon fires Cox in Saturday Night Massacre; accepts resignations of Richardson and Deputy Attorney General William French Smith. After EMK attends a series of meetings, it is announced that Judiciary will hold hearings and that Cox will be the opening witness. The possibility of a censure resolution had also been discussed. Richardson is also called to testify in the hearings. (Flug, pp. 17-18)

November EMK meets with Senator William Saxton (R-OH), Nixon's soon-to-be-named-nominee for Attorney General, on the 1st, to discuss the powers that should be given to the next special prosecutor. Nixon announces that same day that Leon Jaworski will be the new special prosecutor. **Flug** later writes that Jaworski goes on to receive "Cox-type powers." (Flug, pp. 19-20)

December Ford is sworn in as Vice President after he is confirmed by the House and Senate.

1974

- February* The House votes to give the House Judiciary Committee authority to “investigate fully and completely whether sufficient grounds exist” to impeach Nixon.
- March* EMK attends the hearings of Dita Beard, an ITT lobbyist. (Flug, p. 22)
- May* The House Judiciary Committee begins formal hearings on the possible impeachment of Nixon. (Genovese, xxvii)
- July* The Supreme Court rules 8-0 that Nixon must hand over subpoenaed tapes of Watergate discussions to prosecutors. The House Judiciary Committee adopts three articles of impeachment against Nixon – obstruction of justice, contempt of Congress, and abuse of presidential powers. (Flug, p. 20)
- August* The White House releases tapes which show that Nixon personally ordered a cover up of the Watergate break-in. Nixon resigns on the 9th.

1979

- September* EMK informs Carter at a White House lunch that he will run for president and, soon after, announces that Joan and Rose Kennedy no longer object to his running for president in 1980. (Clymer, p. 284; *The New York Times*, 09/12/1979)
- October* EMK authorizes the formation of “Kennedy for President,” an exploratory committee to be headed by Stephen Smith. Paul Kirk is named national campaign director, Carl Wagner is named national campaign director for field operations, and Bob Shrum serves as a speechwriter. *Flug* returns to work for EMK as special counsel on the campaign. (Clymer, p. 291; *The New York Times*, 10/30/1979)
- November* On the 4th, EMK’s interview with Roger Mudd is broadcast on *CBS Reports*.
EMK appears at Faneuil Hall on the 7th to declare his candidacy for president.
- December* EMK criticizes the deposed Shah of Iran during the hostage crisis.

1980

- January* EMK criticizes Carter’s grain embargo on the Soviet Union.

Carter wins the Iowa caucuses with 59 percent of precinct delegates. EMK comes in second with only 31 percent of the delegates. According to Gwirtzman, EMK briefly considers dropping out but then decides to cut expenses and emphasize his policy differences with Carter. (Gwirtzman, “Overview Memo,” p. 16; Clymer, pp. 301)

On the 29th, EMK gives a speech at Georgetown University emphasizing more liberal themes to challenge Carter. (Clymer, p. 301)

February Carter defeats EMK in the New Hampshire primary on the 26th.

March EMK wins the Massachusetts primary but loses to Carter in Vermont.

Flug reportedly scales back his role in the campaign to part-time consultation as the press reports the campaign is underfunded. (*The Washington Post*, 3/14/1980)

Carter wins the Illinois primary on the 18th, taking 155 delegates to EMK's 11. EMK's chief delegate counter, Rick Stearns, tells EMK that he can no longer win enough delegates to take the nomination. (Clymer, pp. 303-304)

On the 25th, EMK wins the New York and Connecticut primaries.

April On the 1st, Carter wins a landslide victory in Wisconsin. Brown subsequently withdraws from the race. (*The New York Times*, 04/02/1980)

On the 22nd, EMK edges out the Pennsylvania primary. (Clymer, p. 309)

May EMK wins the District of Columbia primary but loses in eleven states. On the 29th, EMK offers to release his delegates if Carter will agree to a debate. (Clymer, p. 310)

Flug, serving as campaign director in the Maryland primary, targets Maryland as kicking off a late surge for EMK as the primaries move into the northeastern industrial states. However EMK loses the Maryland primary 38 to Carter's 47 percent. (*The Washington Post*, 05/14/1980)

June On the 3rd, EMK wins in New Jersey, California, South Dakota, New Mexico, and Rhode Island. However, Carter's victories in Ohio, West Virginia, and Montana clinch the nomination. (Clymer, p. 312; *The New York Times*, 06/05/1980)

During a White House meeting on the 5th, EMK tells Carter that he would consider expect to support the nominee if they had a debate and were able to make progress in dealing with economic issues but Carter wants their different views presented to the platform committee. (Kennedy, "Memo to the Files," June 5, 1980, pp. 2-3.)

August At the Democratic National Convention, EMK loses a procedural vote that would have permitted delegates to switch their vote on the 11th, effectively ending his campaign. On the 12th, EMK gives a rousing speech defending the liberalism of the Democratic Party and formally releases his delegates. (Clymer, pp. 316-318)

In his first speech after the convention on the 21st, EMK urges the American Federation of Teachers to support Carter. (*The New York Times*, 08/22/1980)

EMK meets with Carter at the White House, announces his support for Carter's new economic program and agrees to campaign for Carter. (*The Washington Post*, 08/26/1980)

Flug leaves EMK's campaign staff.

1991

Spring William Kennedy Smith is charged with sexual battery in Palm Beach.

Summer EMK and Vicki Reggie begin dating and are later married in July, 1992.

October The Clarence Thomas Supreme Court confirmation hearings begin. (Clymer, p. 499-500, 518)

EMK gives a speech at Harvard's Kennedy School of Government in which he acknowledges that he has made mistakes in the conduct of his private life. (Clymer, pp. 502-503)

December EMK is called to testify at Smith's Palm Beach trial. Smith is found not guilty.

1993

Summer EMK names nephew Michael Kennedy as manager of his 1994 senate campaign.

November EMK, Vicki Kennedy and Caroline Raclin host a lunch with the five women Democratic Senators to kick off EMK's reelection campaign. Vicki frequently campaigns with EMK and is seen as a great political asset.

1994

February W. Mitt Romney accuses other MA Senate Republican primary candidates, radio talk show host Janet Jechelian and 1982 gubernatorial candidate John R. Lakian, of raising the religious issue by calling attention to the fact that Romney is a Mormon. Romney officially declares his candidacy for the Senate. (*The Boston Globe*, 02/02/1994, 02/03/1994)

Spring At Vicki Kennedy's urging the EMK campaign investigates Romney's business. (Clymer, p. 550)

May A survey suggests over 60% of Massachusetts respondents think EMK should not run for reelection. (*The Guardian*, 09/12/1994)

Romney wins a substantial victory at the Republican State Party Convention.

EMK produces a compromise health care proposal preserving much of the Clinton plan. Romney criticizes EMK's health care plan as "big government." (*The Boston Herald*, 05/19/1994)

June EMK criticizes Romney for not being involved in important issues such as gun control and abortion. (*The Boston Herald*, 06/04/1994)

Romney challenges EMK to a series of debates. (*The Boston Herald*, 06/02/1994)

EMK accepts the Democratic State Party Convention nomination.

July A \$546,000 ad campaign emphasizing EMK's accomplishments goes on the air. (*The Boston Globe*, 11/10/1994)

Ampad Corp. buys a Marion, Indiana, paper products plant and fires all the workers, offering to hire them back at reduced wages. Romney is chairman of Bain & Co., which owns Ampad Corp. (*The Boston Globe*, 11/10/1994)

August Romney launches a series of ads focusing on welfare, healthcare and crime. Two weeks later, EMK's pollster finds that Romney has gained over ten points. Near the end of the month, EMK airs an ad on his role in passing the crime bill. Romney counters with an ad mocking the idea of EMK as tough on crime. (*The Boston Globe*, 11/10/1994; *The Boston Herald*, 08/03/1994)

The Boston Globe reports that Flug's law firm has been retained by EMK's campaign to coordinate opposition research and has hired Terry Lenzner's Investigative Group Inc. to investigate Romney's background. The EMK campaign had previously denied that it had directly hired Lenzner's group. (*The Boston Globe*, 08/19/1994; *The Washinton Post*, 03/02/1998)

September Joan Kennedy announces that she will re-open her divorce settlement, but agrees the following month to wait until after the election.

EMK's nephew, Joe Kennedy II, writes a column in *The Boston Herald* saying that Mormons treated blacks and women as "second class citizens." JPK II later acknowledges that he "had made a mistake." Despite his June promise not to raise the issue of religion EMK says it is proper to ask Romney about the issue of blacks in the Mormon church. He is criticized by the Boston media. EMK's lead over Romney shrinks 23 points to 50-47 from August to mid-September. (Clymer, pp. 550-552)

Romney wins the Republican state primary on the 20th and pulls even with EMK in the polls. EMK is unopposed for the Democratic nomination. (*The Boston Globe*, 09/21/94, 11/10/1994)

The Clintons appear at fundraisers for EMK. (Clymer, p. 553)

The EMK campaign interviews Ampad workers on strike from a plant in Marion, Indiana and produces ads depicting Romney as a heartless businessman. The commercials are effective in driving up Romney's negative ratings. (*The Boston Globe*, 11/10/94)

October

The United Paperworkers union sends a "truth squad" of Ampad strikers to Massachusetts to decry Romney. Publicity of their Massachusetts tour further hurts Romney. (*The Nation*, 10/14/1994)

An invitation-only rally at Faneuil Hall marks a new start for EMK's campaign in which Paul Kirk, Dave Burke and former chief of staff Ranny Cooper take over from Michael Kennedy. Flug also joins EMK's campaign staff as special counsel around this time, but presumably not before the *Globe* story about his firm hiring Lenzner had broken in August. (*The Nation*, 10/14/1994)

On the 12th, *The Boston Globe* and *The Boston Herald* jointly invite the candidates to two debates. EMK and Romney agree to the two debates. (*The Boston Globe*, 11/10/1994)

Romney runs a series of ads charging that EMK made exorbitant monetary gains through a real estate transaction "at taxpayers' expense." EMK denies the charge. (*The New York Times*, 10/26/1994, *MacLean's*, 10/31/1994)

Prior to the first debate, *The Boston Herald* conducts a poll showing EMK with an 18 percent lead on Romney. (*The New York Times*, 10/26/1994)

In their first debate at Faneuil Hall, Romney pits his "skill and experience in the private sector" against EMK's seniority in the Senate to argue that he better knows how to create jobs. EMK gets Romney to concede that he does not know how much his plans for health care would cost, and accuses Romney of not giving medical care to part-time workers he employs. Romney counters with similar accusations about employees at the Kennedy's Merchandise Mart in Chicago. Romney also charges that EMK is "soft on crime." Commentators call the debate a draw. (*The New York Times*, 10/26/1994)

In a second debate in Holyoke, Romney promises to oppose increasing taxes and spending, though he separates himself from other Republicans by saying he does not support cutting money for student loans or reducing the federal tax on capital gains. EMK emphasizes his accomplishments and his ability to build coalitions, which he plans to do next for health care legislation. He also challenges Romney

on the banning of cheap handguns. A telephone survey completed before the debate finds EMK leading 52 to 38 percent. The debate is not expected to significantly alter EMK's lead. (*The New York Times*, 10/28/1994)

November EMK defeats Romney. Republicans win majorities in both houses of Congress. (Clymer, pp. 559)

2003

January Bush nominates John G. Roberts, Jr. to the D.C. Circuit Court of Appeals. The Judiciary Committee approves Roberts 16-3, with EMK opposed. (*The Washington Post*, 6/2/2003)

February ***Flug*** rejoins EMK's staff and is named minority chief counsel on the Judiciary's Subcommittee on Immigration, Border Security and Citizenship.

May The Senate unanimously confirms Roberts' nomination on the 8th.
(<http://thomas.loc.gov/cgi-bin/ntquery/D?nomis:3:/temp/~nomisyT5EQY::>)

July The *Mobile Register* reports that Democrats on the Senate Judiciary Committee are using fund-raising documents that were given to EMK staffers without permission to fight the nomination of Alabama Attorney General William Pryor for a federal appeals court judgeship. Robert Novak later reports that ***Flug*** was the staffer who had received the documents. After Senate Democrats lead a successful filibuster of the nomination, Bush temporarily names Pryor to the appeals court in 2004 in a controversial "recess appointment." Pryor is later confirmed by the Senate in 2005 in the "Group of 14" agreement. (*Mobile Register*, 7/16/2003; *Chicago Sun-Times*, 8/25/2005; *The Boston Globe*, 3/9/2004)

2005

May A bipartisan group of 14 senators, known as the Group of 14, reach an agreement that ends Democratic filibusters of three previously blocked Bush judicial nominees – including William Pryor, whose nomination ***Flug*** has reportedly been fighting since 2003. (It is also very possible that ***Flug*** played a role in opposing the other two nominees, Priscilla Owen and Janice Brown, as well, in addition to many other lower court nominations that were blocked in Bush's first term.) In exchange for the Democrats allowing these three nominations to go forward and for agreeing to oppose the filibuster except in "extraordinary circumstances," the seven Republicans in the group agree not to vote during this session of Congress for the "nuclear option," which would eliminate filibusters against judicial nominees. Many feared the rule change would institutionally damage the Senate. EMK, who is not a member of the "Group of 14" and strongly supports the Senate's traditional use of the filibuster, joins with four others in voting to continue debate on Owen, the first of the three nominees up for a vote. The Senate

later votes 67-32 to end debate on Pryor and confirms his nomination 53-45. (*The Boston Globe*, 5/25/2005; *The New York Times*, 6/10/2005)

July Bush nominates John G. Roberts, Jr. to be an Associate Justice on the Supreme Court on the 29th. (<http://thomas.loc.gov/cgi-bin/ntquery/D?nomis:6:./temp/~nomis3JSrk0::>)

August Conservatives circulate a memo warning that ***Flug's*** return to the Senate to work with EMK on the Judiciary Committee signals that the Democrats are preparing to seriously challenge the Roberts' nomination. The memo, written by Ed Meese and two other prominent conservatives, warns, "It is hard to fathom Mr. ***Flug*** coming back to Capitol Hill after 30 years of private practice for anything other than a bitterly tough confirmation fight." (*Chicago Sun-Times*, 8/25/2005)

September Roberts is nominated as Chief Justice by Bush. Hearings begin on the 12th.

On the 13th, EMK questions Roberts on his positions on the constitutionality of civil rights legislation, such as the 1964 Civil Rights Act, the 1965 VRA, and the 1968 Fair Housing Act. EMK particularly focuses on voting rights, which Roberts had claimed was beyond the jurisdiction of the Court. Roberts points out that at the time he expressed these opinions, he was a staff lawyer in the Reagan DOJ.

On the 14th, EMK follows up with Roberts on civil rights and affirmative action.

Senate Minority Leader Harry Reid (D-NV) announces his opposition to Roberts, followed shortly by EMK and Kerry. (*The Boston Globe*, 9/23/2005)

On the 22nd, Roberts is approved by the Judiciary Committee 13-5. Three of the committee's eight Democrats join all ten Republicans in supporting the nomination. EMK is joined in the opposition by Senators Feinstein, Schumer, Durbin, and Biden. (*The Boston Globe*, 9/23/2005)

On the 29th, Roberts is confirmed 78-22 by the full Senate, and is sworn in as Chief Justice just hours later. Senate Democrats split 22-22 on the vote. Democrats voting against Roberts include moderates with presidential aspirations, such as Senators Clinton, Bayh, and Biden. (*The Washington Post*, 9/30/2005)

October Harriet Miers is nominated as Associate Supreme Court Justice but requests a few weeks later that Bush withdraw her nomination following a Republican attack on her judicial and conservative credentials.

On the 31st, Samuel Alito is nominated by Bush as Associate Justice.

December On the 5th, EMK asks Alito to provide a fuller explanation of why he failed to recuse himself from a 2002 case involving the Vanguard investment company after telling the Senate in 1990 that he would not rule on Vanguard matters due to his investments in the firm. (*The New York Times*, 01/31/2006)

On the 22nd, EMK sends a subpoena request to Judiciary Chairman Specter for documents belonging to *National Review* editor William Rusher. EMK believes that the documents may expose information about Alito's involvement in Concerned Alumni of Princeton (CAP), a conservative group founded by Rusher that opposed the admission to Princeton of women and minorities. Alito included his CAP membership on a 1985 job application for a position at Reagan's DOJ. **Flug** leads EMK's CAP investigation. (*The New York Times*, 01/31/2006)

2006

January On the 9th, confirmation hearings for Alito begin. EMK challenges Alito on Vanguard, CAP and his views on executive authority, privacy, and job discrimination. **Flug** reportedly convinces EMK to focus on the investigation into Vanguard and CAP rather than Alito's views on abortion for fear of alienating moderate Democrats. (*The Washington Post*, 02/02/2006)

On the 19th, EMK, Leahy, Durbin, and Salazar announce their opposition to Alito. EMK calls it "the vote of a generation." (*The Washington Post*, 1/20/2006)

On the 24th, Alito is recommended 10-8 along party lines by the Judiciary Committee. EMK and Kerry call for a filibuster. Unlike for Roberts, EMK places little emphasis on civil rights during the Alito confirmation.

On the 31st, the Senate confirms Alito 58-42. EMK votes against confirmation.

July **Flug** leaves EMK's staff to take a position at Harvard's Kennedy School of Government and to teach at Harvard Law School. (*Chicago Sun-Times*, 7/16/06)

HAYNSWORTH, CARSWELL AND REHNQUIST NOMINATIONS

- “Haynsworth Nomination,” prepared by Milt Gwirtzman, EMK Senate office, undated.
- Jim Flug, “Haynsworth” memo to EMK, 9/26/1969.
- Jim Flug, “Minority Views on Haynsworth” memo to EMK, October, 1969.
- Short version draft of joint views of EMK, et al. on Haynsworth nomination, undated documents.
- EMK draft of statement on Haynsworth, undated document.
- “Carswell Nomination,” prepared by Milt Gwirtzman, EMK Senate office, undated.
- Excerpt of Richard Harris, *Decision*, reprinted in *The New Yorker*, 12/5/1970. [Tab J of Senate office briefing book].
- “Rehnquist as Associate Justice,” prepared by Milt Gwirtzman, EMK Senate office, undated.

**SELECTED READINGS
FOR KOHP INTERVIEW WITH JIM FLUG**

“ONE MAN, ONE VOTE”

- Excerpts from Howard Baker Timeline, prepared by Gregg Lindskog, Kennedy Oral History Project, Miller Center of Public Affairs, 6/13/2006.
- “House District Standards, 1967 Legislative Chronology.” CQ Electronic Library, *CQ Congress and The Nation Online Edition*.
- Adam Clymer, *Edward Kennedy: A Biography* (New York: William Morrow and Company, Inc., 1999) pp. 92-95.
- James Clarity, “Senate Approves A Tightened Rule on Redistricting,” *The New York Times*, 6/9/1967.
- John Herbers, “Edward Kennedy is Gaining Stature in the Senate,” *The New York Times*, 6/12/1967.
- John Averill, “Negroes, Republicans Team on Redistricting,” *Los Angeles Times*, 10/29/1967.
- John Herbers, “Senate Rejects A Delay Until ’72 of Redistricting,” *The New York Times*, 11/9/1967.
- David Broder, “Apportionment Honors Due Senators Kennedy and Baker,” *The Washington Post*, 11/14/1967.
- “Floor Remarks of U.S. Senator Lamar Alexander (R-TN) Tribute to Senator Ted Kennedy on Casting his 15,000th Vote,” 11/4/2007 (<http://alexander.senate.gov>).

1968 CRIME BILL

- Theo Lippmann, *Senator Ted Kennedy* (New York: W.W. Norton & Company, 1976) pp. 166-171.
- “President Johnson’s Program for Crime Prevention, 1968,” CQ Electronic Library, *CQ Congress and The Nation Online Edition*.

JIM FLUG TOPICS

November 27 and 30, 2007; drafted by Jan Heininger 11/16/07; revised 11/26/07

The Big Picture

When did you first meet Kennedy? How did you come to work for him?

What is your value to Kennedy? Why has he turned to you repeatedly through the years? What can you do for him that others cannot or do not? How is your relationship with him different from others staffers or advisers?

What have been the most important issues to him?

What changes have you seen in the Senate and how Kennedy operates within it?

Why did Robert Novak once call you Kennedy's "gunslinger?" Is that an accurate description of your role? How would you characterize it?

One Man, One Vote

What did you learn from the one man, one vote fight about how Kennedy operated and what he needed from staff to do so most effectively? What did you learn about use of media coverage, Kennedy and coalition partners, prevailing after defeats in committee, House-Senate interaction, conference reports and Senators' interpersonal relations? How did you subsequently apply these lessons?

What do you think Kennedy learned from this fight?

1968 Crime Bill and gun control efforts

Tell us about 1968's Crime Bill and Kennedy's then and subsequent gun-control efforts.

Judicial Nominations: Overview

What do the two sets of nominations bracketing Kennedy's Judiciary Committee service Haynesworth and Carswell and Roberts and Alito reveal about the Senate's confirmation process and Kennedy's role in it?

Why did his efforts to block Haynesworth and Carswell succeed while those against Roberts and Alito did not?

How does he decide whether to support or oppose a nominee? Who does he consult? How important is the ABA's rating? Interest groups' views? Staff recommendations?

What does he look for in a nominee? How does he conclude that nominees are "unfit," "unsuited," preferably not confirmed even if qualified, OK or desirable?

What strategies does Kennedy use to get other Senators to oppose a nominee? At what point does he take soundings with his colleagues? When does he do it versus staff? How have Kennedy and you utilized the media to affect a nomination's outcome?

How important is getting background information on nominees? How is it gathered? What are you looking for in it? How has this changed since the Nixon era?

How important is committee questioning? Courtesy calls? Floor speeches? How does he use these to make up his mind about a nominee or to influence other Senators?

The Details

Part 1: Key nominations—the Nixon era

Haynesworth

What were the reasons for opposing Haynesworth? What was Kennedy's initial view of the nomination? How did that change during the confirmation process?

What was your role in getting Kennedy to oppose Haynesworth? What role did Kennedy play as opposition mounted? How did Chappaquiddick affect his actions?

Which arguments carried the most weight with Kennedy in opposing Haynesworth—that he was “insensitive” on human needs and values that are the context of legal cases, particularly on civil rights or negligence on ethical issues?

How did it being the “Fortas” seat affect deliberations on Haynesworth?

Carswell

You argued that opposing Haynesworth's nomination should raise the level of future appointments. Did Kennedy agree? Why did Nixon nominate Carswell?

How did the handling of Carswell's nomination differ from Haynesworth's? What was Kennedy's role on Carswell? What effect did Chappaquiddick have?

Tell us about the early advice you gave Kennedy on both Haynesworth and Carswell. In each case, why did you think their confirmations could be defeated? Did others agree?

How important was Carswell's record on civil rights, especially his participation in turning a municipal golf club into a private one so it could continue to exclude blacks and his school desegregation actions, compared to his 40% reversal rate?

How important was Hrushksa's comment on Carswell's credentials? What role did public sentiment play in defeating Haynesworth and Carswell? Legal community attitudes?

How did other Senators react to Kennedy's leadership role against these two nominees?

What was the response to Harry Blackmun? Was Nixon right that the Senate would not confirm a nominee from the South who believed in strict constructionism?

In retrospect, who would have been worse – Haynesworth or Carswell?

Rehnquist

Tell us about Nixon's trial balloon of Hershel Friday, Mildred Lillie and Robert Byrd. Why did he again suggest names that the ABA would not support?

How did its timing affect the outcome of Rehnquist's nomination?

Tell us about the "core values" test and how Rehnquist's nomination led to its creation.

How were civil liberties an issue in Rehnquist's confirmation? Why did they resonate less than did civil rights issues? Is that still true?

Despite similar segregationist beliefs or actions, why was Rehnquist confirmed while Haynesworth and Carswell were defeated? How does Kennedy see Rehnquist's tenure?

Bush II

Why did Kennedy ask you to come back to work for him? What did he need you to do? Tell us about the disputed Appeals Court nomination.

Tell us about Bush's disputed nominations. How was the conflict resolved? What was Kennedy's role? Tell us about the nuclear option and the "Group of 14."

What was at stake in O'Connor's resignation and then Rehnquist's death? What issues were of greatest concern to Kennedy in opposing Roberts and then Alito? How were these issues similar to and different from those for opposing Haynesworth and Carswell?

How did executive branch strategy to get a nominee confirmed change from the Nixon era? What caused it? Was Robert Bork a factor? Clarence Thomas?

What strategy did Kennedy use to oppose Roberts? Why was he confirmed?

How would Kennedy define the judicial philosophy of Roberts and Alito? How did they differ from each other—in judicial temperament, judicial record, views espoused? Did you or Kennedy think that there was greater hope for moderation in Roberts or Alito?

How much of a danger did you think Roberts and Alito posed? In retrospect, how accurate was your assessment? What did Kennedy think?

Judiciary's Subcommittee on Administrative Practices and Procedures (AdPrac)

How did Kennedy interpret the Subcommittee's mandate? What issues did he use it to investigate? What was the response of other Senators to his view of its mandate?

Tell us about the subcommittee's staffing. Why did you appear to have near carte blanche to look into almost anything? How did you use it? How much did Kennedy know – and when – about what you were doing?

What were the issues Kennedy most cared about within the subcommittee's jurisdiction? What were his most important contributions and failures?

Tell us about the ITT/Dita Beard investigation. How did it lead to Watergate?

Part 2: Watergate

Big Picture

What was Kennedy's most important contribution? What would have been different without his efforts?

What back story can you provide to flesh out the written record? What was your role? When did you operate under direct instructions and when under AdPrac's carte blanche?

The Details

How did his efforts help preserve evidence from destruction?

Tell us about the investigation into Herbert Kalmbach's involvement.

What role did Kennedy play in setting up the Ervin Committee and its charter? How did Kennedy oversee the Committee's floor operation?

Tell us about the drafting of the charter for Special Prosecutor Archibald Cox.

Kennedy Campaigns

What changes have you seen in Kennedy's campaign style since the 1960s?

What did you do in RFK's 1968 campaign? What interaction did you have with Ted Kennedy during that campaign? What were your impressions of him then?

What was your role in his campaigns? 1980 presidential campaign?

Why were you brought into the 1994 senatorial campaign and by whom? How much did Kennedy know about your Ampad investigation?

Voting Rights

Tell us about voting rights issues that arose during your first tenure with Kennedy, such as one man-one vote and lowering the voting age to 18.

Retrospective

In fifty years, what do you think people will not know about Kennedy that they should?

What makes him an effective Senator? How do his colleagues view him? Has that changed from your early years working for him to your most current Bush II tenure?