



EDWARD M. KENNEDY ORAL HISTORY PROJECT

**TRANSCRIPT**

INTERVIEW 1 WITH JAMES FLUG

November 27, 2007  
Washington, D.C.

**Participants**

*University of Virginia*

James Sterling Young, chair  
Janet Heininger

© 2023 The Miller Center Foundation and the Edward M. Kennedy Institute for the United States Senate

Publicly released transcripts of the Edward M. Kennedy Oral History Project are freely available for noncommercial use according to the Fair Use provisions of the United States Copyright Code and International Copyright Law. Advance written permission is required for reproduction, redistribution, and extensive quotation or excerpting. Permission requests should be made to the Miller Center, P.O. Box 400406, Charlottesville, VA 22904-4406.

To cite an interview, please use the following general format: [name of interviewee] Interview, [date of interview], Edward M. Kennedy Oral History Project, Miller Center, University of Virginia.



EDWARD M. KENNEDY ORAL HISTORY PROJECT

TRANSCRIPT

INTERVIEW 1 WITH JAMES FLUG

November 27, 2007

**Janet Heininger:** This is an interview with Jim Flug, on November 27, 2007.

**James Sterling Young:** —with James Young and Janet Heininger. As a preface, we’ve already talked, before the recording began, about the ground rules of the project, the confidentiality rules, and how the transcript will be reviewed, edited, and cleared with whatever restrictions or stipulations Jim Flug would like to make prior to their release.

**James Flug:** Yes, we have.

**Heininger:** What did you learn from the One Man, One Vote legislative fight, about both how Kennedy operated and about what he needed from staff to operate effectively?

**Young:** This was 1967.

**Flug:** With the aid of a wonderful timeline here, I see that it started in April of ‘67. My memory is going to be shaky on some of this, but I can remember some of it very vividly; some of them may be false memories, but they’re memories. [laughter] I knew it was before Memorial Day in 1967, because I remember the Memorial Day weekend very vividly, and this timeline tells me it was in April.

It moved very quickly, and it started with a phone call directly from Congressman John Conyers of Michigan. There my memory is a little cloudy, because I can’t remember whether he made the call or his staff made the first call. I know I talked to him over that period. He may have made the first call, and I may have taken it, because if he asked for the Senator—the way the office worked, even for a Congressman, if he [Kennedy] wasn’t there—they very well might have said, “Is this something urgent? Would you like to speak to one of the staff?” and he would have been referred to me. I don’t think I had met him before that point, because I had only been up there since January, so it was in my fourth month up there. Since then, I’ve come to know him very well over the years, starting with that project, but he was the one who identified the issue to us.

He said, “We’ve just had a disaster here in the House. We have passed, overwhelmingly, this terrible piece of legislation that is calculated to undermine the One Man, One Vote principle as very recently articulated by the Supreme Court in two cases: *Baker v. Carr* and *Westbury v. Sanders*.” *Baker v. Carr* was more jurisdictional, with the Court’s deciding to get into the subject at all, in the context of state legislative districts, and then in *Westbury v. Sanders*, extending it to Congressional districts. I think that’s what the difference was. One was in ‘62 and one was in ‘64.

This whole concept was very new, and it was a time when the Supreme Court was very active and activist. These were *very* revolutionary decisions, because until that time the Supreme Court had refused to get involved in that kind of issue, on the basis that it was political, but now it jumped in with both feet and put down a very clear rule.

I haven't reread *Westbury v. Sanders* closely enough to remember all of the opinion, but it basically said that Congressional districts had to be reasonably equal in size, and reasonably compact and contiguous. The House had passed a bill, the main feature of which was that, at least for a period of time, the Congressional districts could have up to a 30 percent variation from equality. That is, the districts within a state, as set by the state legislature—because under the Constitution, the state legislature gets to make this decision—could vary by 30 percent, as I interpret that; I haven't gone back and looked at what we said at the time.

That would have meant that if the district should have been, in this particular state—let's just say, arbitrarily—100,000—I forget what they were at that time; I think they were larger than that, much larger than that—that would have meant one district could be 130,000 and the other district could be 70,000. The difference between a 70,000 district and a 130,000 district would have been six-sevenths of the seventy, so that one person's vote was worth 67-2/3 percent less than another person's.

Again, those figures may not be exactly right, but it was on that order of magnitude. It was a very bad bill. I forget whether the original House bill also had a provision—this may have come in later, but maybe it was in that original bill—that allowed the state, basically, to decide what was practicable in the way of compactness and contiguousness, and left it to the state.

Congressman Conyers called and said that this was a terrible thing the House had done. He had tried to fight it in the Judiciary Committee in the House, and on the floor, but he had gotten very few votes because the House leadership, including the leadership of the House Judiciary Committee—the chairman then was Emanuel Celler of Brooklyn, New York—had pushed this bill. The impact of this bill would be to delay One Man, One Vote at least for the '68, '70, and '72 elections, because it had a date in there. It would also give people time to do more damage and to make other compromises with what the Supreme Court had done, stopping the progress the Supreme Court had begun.

It was, as John Conyers said, a very important thing. I went back and read the House debate, and what had gone on in the Judiciary Committee, and again reread *Baker v. Carr* and *Westbury v. Sanders* and the other cases surrounding it. I must have written a memorandum to the Senator, although in those days, because of the technology and the propinquity, and the smaller number of issues and the smaller number of staff, I might well have just, after spending a day on research, sat down with him. My office was right through the door from his office. He could look out from his desk into my office. He wouldn't see me, because my desk was around the corner, but he was about five paces away.

**Young:** Which building was this?

**Flug:** This was in Room 431, in the Old Senate Office Building, what is now the Russell Building. Then it was just the Old Senate Office Building, because there were only two Senate

office buildings: the old and the new. It well might have been that I didn't write a memo the first time, that I just walked in and said, "John Conyers called." I well might have, because under the ordinary protocols he would have wanted to call John Conyers back personally if John had called personally. As I vaguely recall it, John said, "My staffer who is working on it is—" I'm having a memory lapse there as to the name of his staffer who was working on it. He said, "You call him, get the details, and they'll send you a package of materials." They sent over a large package of materials and I started going through those.

It's entirely possible that I would, at the next opportunity, have just walked into the Senator's office and said, "We got this call from John Conyers; they sent over materials; and here's the lay of the land. The Judiciary Committee in the Senate is not planning to hold hearings on this." I would have checked that out with the committee. "They plan to raise it as soon as possible in an executive session of the committee."

**Heininger:** Were you aware of the issue brewing before Conyers's call?

**Flug:** I don't think so. It just took us totally by surprise. In fact, the leadership was all aware of it, and the leadership of the Senate Judiciary Committee, which was Senator James Eastland of Mississippi, on the Democratic side. I think Everett Dirksen was the ranking minority member of the committee at the time. Whether he had that function because he was also minority leader, I'm not sure. I think he had both. Nowadays, I don't think you would have both, but I think he had both. On the Democratic side, the next people in seniority were probably Sam Ervin of North Carolina and John McClellan of Arkansas; on the Republican side, after Dirksen, you might have had [Hugh] Scott or [Jacob] Javits. You might have had a liberal Republican in there, but this thing was, as we say, "greased."

This was something that the leadership of both houses and the leadership of the Judiciary Committee had agreed on. The people over in the House thought the Senate really had no business meddling in this, because it was a House issue, but that argument didn't hold up. As soon as Senator Kennedy heard what the issue was, and what the essence of it was, my guess is that he probably had a direct conversation with Conyers too, and that Conyers emphasized it directly to him. There were pretty good notes of his calls then. I don't know whether you have access to that, but Angelique [Voutselas Lee] would have noted that, if he had called Conyers back.

**Heininger:** Why did Conyers call Kennedy? What did he want Kennedy to do?

**Flug:** He wanted Kennedy to stop it in the Judiciary Committee.

**Heininger:** He asked that specifically?

**Flug:** Yes. He said, "You guys have to take this on, because we got nowhere in the House." The House vote was overwhelmingly for the bill.

**Heininger:** Why Kennedy?

**Flug:** That's a good question, because Conyers also had, in the Judiciary Committee at that time, Phil Hart. Hart was more senior than Kennedy, but I don't know why. Now, Conyers may have called Hart as well.

**Heininger:** He didn't tell you he had?

**Flug:** But he didn't say he had. For some reason he decided that it had to be Kennedy. As I recall it, Hart was probably a little less likely to take on the leadership—I take that back, because I think Hart had been elected earlier than Kennedy. I'll have to look that up. I don't think that he was as early in his career. It was Kennedy's second term, but his first term was a partial term. He had only been there from December of '62 to '63. His temporary predecessor might have stepped down in December.

**Young:** I may be wrong about it. He may have had a special and then come back.

**Flug:** Yes. He had the special. He was elected in '62 and then again in '64.

**Young:** Yes.

**Flug:** In '62, he took over for his brother's friend.

**Young:** Smith.

**Flug:** Ben Smith. Great trivia question. *[laughter]*

**Young:** We try to avoid those.

**Flug:** I actually was at a meal once where nobody in the place—those who thought they knew everything—could get Ben Smith's name.

I'll try not to do this very often, but this one I have to footnote with something that happened this year. I was up in Cambridge, at Harvard, and the students I was working with at the Institute of Politics had a civics program in the high schools and grade schools in Boston. They asked me to do a class, which I was very pleased to do. It was right after the election, so the students were showing how much they knew about the election, and all the commercials they knew by heart. I then had them explain the commercials.

They were also very interested in assassinations, so they wanted to know all about the Jack Kennedy assassination, and Bobby Kennedy's. These were fifth graders, so they were ten years old. They wanted to know, for some reason, who took John Kennedy's seat after he became President. We were talking about how Senators are elected, and what happened to Ted Kennedy. I needed Ben Smith's name, and for some reason I was able to pull it out of the air. Maybe I had thought about it beforehand. I told the kids, "I'm going to tell you the answer to a question that your parents aren't going to know and nobody else you know is going to know. If anybody asks you, 'Whose place did Ted Kennedy take?' it's Ben Smith, and you now know." They loved the idea that they would know something nobody else knew.

Anyway, it was roughly from '63 to '67, so he had been in the Senate four years. He had developed somewhat of a reputation on two things: immigration—there was immigration reform legislation in '65—and, also in '65, the Voting Rights Act. Those were his two major accomplishments before I got there. Obviously, Conyers would have known about both of those. Phil Hart is a saint as far as I'm concerned; John might have thought that Phil Hart would be less likely to take on the leadership, although during that period Ted Kennedy had developed a very close relationship with the leadership. Certainly Manny Celler was a friend of his. He had also worked on the '64 Civil Rights Act with Dirksen, so he must have had a good relationship with Dirksen.

What was more important, as I'm sure you've discovered in the course of your studies, he had a very good relationship with Eastland. For example, I said casually before that I'd checked with the Judiciary Committee and found out what they were going to do. That was the kind of relationship we had with Eastland's staff, even though they were diametrically opposed to us on everything. There almost was nothing they weren't diametrically opposed on that came up before the Judiciary Committee, whether it was civil rights or guns or crime or anything. Certainly on this issue, Eastland was part of the cabal trying to push this through. If I called and said, "What about this One Man, One Vote thing?" they would have said, "Yes, we're going to get that through quickly." I would have said, "Well, are you going to have hearings?" They would have said, "We're not planning to." I might have said, "Is there anything we can do about that?" They would have said no. That's what I presumably reported to the Senator.

**Heininger:** Here you were, a junior staffer. You'd only been there for four months, with a junior Senator, and had been asked by a member of the House to take on something that the House was saying was going to be steamrolled through. You did your checking and the Judiciary Committee said they couldn't do anything to stop it. What was the recommendation you made to Kennedy?

**Flug:** I probably did check with some experts. By that time, I knew that there were certain people that he worked very closely with on civil rights, civil liberties, and voting, so I would have checked with those people. I can't remember for sure who I checked with, but I probably would have checked with Joe Rauh and with Clarence Mitchell, the pair that represented the Leadership Conference on Civil Rights, but not too many more people, because I don't think, between January and April, we had had many civil rights issues come up. I may not have yet fully known all the players.

**Heininger:** But you knew enough to take a bunch of soundings before you made a recommendation to him?

**Flug:** I would have, but I was still learning. I learned a lot in those first few months.

I'll digress again, especially since he's not going to read this anytime soon, although he remembers this and it's public. During probably my first month in the office, he leaned in and said, "I have this lunch speech to do at a big Young Democrats meeting, and I'd really like to do something like Bobby did in South Africa." Bobby had given that *great* speech at the University of South Africa. The dates may prove me wrong, but I would guess that it was the summer of '66 or earlier, and that this was now early '67, because I came on in January. He said, "Pull that

speech out and take a look at it. I want to think about how I can use that at this speech I have at lunchtime.” It seems to me that it was that day—I don’t even think it was the day before.

Somehow I pulled the speech out, which in those days was not as easy as today. Today you can probably get that speech in ten seconds on Google, but Angelique had it or somebody else had it, or we found it in a book somewhere. I read the speech and made a copy for him. Even that wasn’t so easy in those days, because we weren’t allowed to have Xerox copiers; we could only have Dennison copiers, because they were made in Massachusetts, and they were terrible. *[laughter]* They produced very spotty, curly results. I think the paper was on rolls, rather than individual sheets, but I could be wrong, that might have been just the fax machine.

I gave him a copy of the speech, and he looked at it. He said, “That was really great. I’m going to use this when I talk at lunchtime.” I said, “OK, do you want me to take it and draft something that includes some quotes from Bobby?” He said, “No, no, no. I’ll just wing it, and I’ll have this with me.” I don’t remember being at the event, but I do remember watching the news that night to see if it was covered. Sure enough, it was covered, and I think we were watching it on CBS.

They showed a little lead-in, that Young Democrats were meeting in Washington and Senator Kennedy spoke, and that it was a very interesting speech, because it resonated with what his brother had said not long ago in South Africa. Then they played a clip from Teddy and then the same clip from Bobby and a clip from Teddy—I think they did four entire sentences. He had adverted to the fact that he was very taken with what Bobby had said in South Africa, but he didn’t say he was quoting from Bobby, and CBS—It would be fun to get that transcript. It would be pretty easy to find.

It was very embarrassing, and I learned that lesson very quickly: Don’t make any assumptions. If you’re worried about something, say it. Make clear what’s going to happen and what’s not going to happen. I blame myself for not insisting that he have a prepared text, and that he sit down and think about exactly what he was going to say and how he was going to work Bobby into it. That was one of the lessons I learned very early.

**Young:** Was Carey Parker doing any of that, or was he there at the time?

**Flug:** Carey Parker wasn’t hired until 1969. I was the one who brought in Carey Parker. *[laughter]* That’s another story. When I left the main office in ‘69 to go to the committee, we started looking for people. We were into the [Richard M.] Nixon administration, in ‘69. Carey was still in the Criminal Division [of the U.S. Department of Justice], so I must have called [Herbert J.] Jack Miller [Jr.], who had been head of the Criminal Division. Jack must have either called somebody in the division or remembered Carey from the division and recommended Carey. We took one look at Carey’s résumé. He was both a superb graduate of Harvard Law School, and had a Ph.D. in microbiology or some new— We didn’t even know what it was. We hired him very quickly, and he originally took my place as legislative assistant and I was on the committee. But no, there was no such function then.

**Young:** You were it, without knowing it.

**Flug:** Most of the speeches, especially if they had, for example, any Vietnam aspect to them—and in 1967, a speech to a group of young people would have had a couple of lines on

Vietnam— Had there been a prepared text, it probably would have gone through Dave Burke, both as then administrative assistant, now would be called chief of staff, and because he was the person who was writing, was involved with, most of the Vietnam stuff. Had it been in the regular order, there would have been a text—it would have gone through Dave at least—and it would have been made very clear that he was quoting from Bobby, where he was quoting from Bobby.

**Heininger:** So you had learned to take your soundings before you raised things with him.

**Flug:** By four months in, I had certainly learned that there were a whole lot of people out there that he trusted, and that I could just call up.

**Young:** These were people relevant to the One Man, One Vote?

**Flug:** Right.

**Young:** There would have been some attorneys?

**Flug:** There would have been. If I had to guess, it would have been Joe Rauh and Clarence Mitchell. By then I might have known some of the other liberal bar people, either in town or nationally. I might have looked at the cases and seen who the lawyers were in the cases on the side of One Man, One Vote. *Baker v. Carr* was a Tennessee case.

For a long time, and I can't remember whether it was contemporaneously or only while I was out in the desert for 30 years, I came to believe that *Baker v. Carr* was Howard Baker [Jr.]. I was in a discussion, some meeting in the '90s, and I adverted to that. The person I was talking to said, "No, no. It's not Howard Baker." Of course, I went back and it wasn't Howard Baker. I must have known that at the time, because I had read that case very carefully. The first name is in the name of the case, so I would have known it wasn't Howard Baker at the time, but for some reason, over time, I came to believe that it was Howard Baker, and had to be disabused of that. In any event, I would have talked to some people because I would have known the Senator was going to ask me, "What does Joe Rauh think?"

**Heininger:** What was your first instinct when Conyers raised it? Was it, "Oh, this is bad. We ought to try to do something about this"?

**Flug:** It sounded bad. I knew *Baker v. Carr* had been issued when I was still in law school. *Westbury v. Sanders* was issued when I was either clerking or at the Justice Department, so there are things I would have read at the time. I would have realized how revolutionary they were and would have had some instinct that this was important, but having a Congressman call personally and say it was—I don't know whether I would have immediately called the Congressional Research Service and had them also prepare something right away. They didn't operate as fast then, and I didn't know the people there as well.

**Heininger:** So the issue resonated with you, and the vetting that you were trying to do was, first, what's the lay of the land in the Senate and what did the outside advisors that Kennedy trusted think might or might not be possible, before you came to any conclusion that you felt you could recommend to Kennedy?



**Flug:** I probably would also have called a couple of the other liberal offices in the Senate, to see whether they were aware of it and whether they planned to do anything, all in anticipation of the questions he was going to ask me. That's 40 years ago, and today, that's the essence of it. Today it would all be in a very short memo the first time, a one- or two-page memo that would go in that day's bag. I'm sure you've heard about "the bag." I don't remember the bag as being as organized then as it is now. First, there wasn't as much that went in it; and second, the technology of getting something written—We were still using carbon paper, and I couldn't type. In fact, I didn't have a typewriter, so everything I did was handwritten, and then it went to a secretary, who also couldn't type. *[laughter]* It was a wholly different day.

**Heininger:** Very cumbersome.

**Flug:** If you wanted copies, they were carbon copies, because the copying machine was a pain in the neck. You didn't want to have to deal with the copy machine. In any event, I either wrote him a memo or spoke to him, and gave him the answers. Probably in my memo or my opening conversation with him, I would have given him all the questions I anticipated, and then he would have thought of ten or twenty more questions I didn't anticipate, or he might have wanted to hear from other people that I hadn't talked to.

**Heininger:** But did you give him a recommendation at this point?

**Flug:** My recommendation would have been, initially, to speak to Eastland about a hearing, to push for a hearing. I remember that was one of the non-substantive bases on which we argued for not having this legislation go forward, that it was very important and there had never been hearings; the counterargument to that was that it didn't involve the Senate, it just involved the House. I don't remember whether the House had hearings, but all those issues would have been in play.

The Judiciary meeting was scheduled fairly quickly after that. It was already on track in the Senate Judiciary Committee when we heard about it, which must have been right after the House passed its bill. The House passed its bill; it came over to the Senate, and was referred to the Judiciary Committee; and Eastland must have scheduled it very quickly for a meeting—not for hearings, but for a decisional meeting.

My guess is that he must have called Eastland directly. He might have done it by letter. Some things you did by letter, but on something like this, which was moving fast, he might well have just picked up the phone and called Eastland. In those days, he was frequently going over to Eastland's office at the end of the day. Eastland had an office in back of his main office that was much smaller than his main office, smaller than this room. I discovered it later. I had never been there at this time, but that's a different story, which we'll get to in the context of the nominations. Don't let me forget that.

Eastland had an office about two-thirds the size of this room, dominated by a big round desk, and at the end of every day, he would have his "retainers" in there. We called them his retainers because we thought he was some sort of lord of the plantation that he ran there. They would gather around and drink and talk at the end of the day. Everybody assumed they were drinking bourbon and branch water, but it turned out much later, that that wasn't what they were drinking.

Kennedy apparently—and I never observed it firsthand—would frequently go over there and have a drink with Eastland at the end of the day.

He could have saved that for the end of the day and gone over there and asked Eastland about it, or he could have picked up the phone and talked to him, or he could have seen him on the floor; he could have seen him in the gym. Any of those ways he would have found out very quickly from Eastland. Eastland would have told him very plainly that no, there wasn't going to be any hearing. There was nothing to do about it except add it to the list of things to complain about publicly, which we did.

That would have been step one. Step two was to prepare for the exec [Senate Judiciary Committee executive business meeting]. Whether there exist transcripts of the executive meetings in those days, I don't know. There should be. The Senate Judiciary Committee Library person probably doesn't know the answer to it, but could find out. If they do exist, they would be in an archive in St. Louis, but it well may be that there's a transcript to that exec. Based on what I remember and what I refreshed from—

**Young:** Were you present? Was staff permitted to attend?

**Flug:** Staff was normally admitted to the execs in those days. Now, was the public admitted? I'll have to think about that. Eastland had his own rules. Whatever the rules of the Senate were, Eastland had his own rules. Eastland did not like, for example, cameras in the hearing room, even around public hearings. He would allow the cameras to come in, take stills and movie pictures before the hearing—the witnesses lined up at the table, the Senators coming in—and then he would clear the room and all the photographers would go out. The pencil press was still in there; I guess to the extent that there were radio and TV reporters, they were still in there. Whether they had their tape recorders with them, I'd say yes, there were tape recorders. I can't really remember. I would have to ask Dan Schorr.

**Heininger:** It was raised; you did some vetting; you got the lay of the land—The first thing you recommended to Kennedy was not “You really need to take on this issue,” but “Why don't you ask Eastland if hearings can be held?”

**Flug:** It would have been a combination: This looks like an important issue, one. Two, it's greased; it's going to be a very difficult issue. Three, nobody else is working on it right now in the Senate. Four, I don't know, even among your friends, if Manny Celler is for this thing.

I noticed in some of the articles that Celler was portrayed as a good guy in this, but I don't remember it that way. I remember Celler as being one of the people who was conspiring to at least delay, if not totally undermine, One Man, One Vote.

I would have given him a realistic picture: that it was a bleak outlook, but that it was very important and that it looked like nobody else was doing anything about it, which would have whetted his appetite.

**Heininger:** Right. And you knew it would?

**Flug:** By that time? I might not have known by that time that it would.

When I think of the things we did before then, some of them were very routine. The very first thing I did, the very first day—He testified before something called the Oil Import Appeals Board, to get more permits for fuel oil to come into New England. In those days, you needed a license to bring in a barrel of fuel oil. It was a subject I knew zero about; by the end of that day, I was an expert on it, because there was somebody who represented one of the New England fuel distributors, who was a very good lobbyist, who could keep his clients' parochial interests separate from the public interest. I could sit down with him and rely on him to explain to me what was going on. Then I could draft something and show it to him, to see where I got it right and where I got it wrong. The Senator would *want* to know that I had consulted with him before then. I was still just getting up the learning curve.

On this, I wouldn't have had any expertise, either, at law school or in my clerkship or in the Justice Department, because it just hadn't come up. I would have been starting from scratch.

**Heininger:** Or politically, on how you go about tackling something that is—

**Flug:** The only other issue I can think of that early that came up was guns. In those days guns was still a pretty tough issue, but not as tough as it is now.

**Heininger:** It hadn't been resolved at that point, either.

**Flug:** No, but we had had a little go-around, which I was reminded of last night, where some wise guy in the National Rifle Association had sent us a ticket to go to the exhibits. He was a gun dealer of some sort, and he thought it would be cute. Kennedy had already established himself as an advocate of gun controls of various sorts, so this guy sent us a ticket to the exhibits, where they show all the guns and everything, as part of the convention.

Well, I didn't know there was an NRA [National Rifle Association] convention. For some reason, we had developed a nice relationship with the guy who was then head of the National Rifle Association. He was a former general, and I can't remember his name, [ed. note: Harold W. Classen?] but a very nice guy. I called him up and said, "Are you guys having a convention in Washington?" He said yes. I said, "When is it?" He said, "It's coming up next month." I said, "Somebody sent us a ticket for it." He said, "Well, you ought to come and see the exhibits." I said, "I don't want to see the exhibits." He [Kennedy] probably had had some hearings on gun control by then, although it might have been in '68, but more like '67. I said, "You really ought to have a debate. Can I see your program?"

He sent the program—and in those days he would have walked it over. I looked at the program and they had John Dingell speaking, and nobody on the other side. I called him and said, "How can you have just one side of the issue instead of both sides of the issue?" He said, "Well, we are on one side of the issue. We don't want to hear the other side of the issue." I said, "Come on, you have to have enough confidence in your position." I had cleared all this with the Senator in advance. I said, "Why don't you invite the Senator to appear together with Dingell and let your people hear the arguments? If you're afraid he's going to turn them around, then you have a problem." He said, "I'll have to go to my board with that, and to Dingell." [laughter]

They called back and said Dingell wouldn't agree and the board wouldn't agree, but they would allow him to appear jointly with Dingell before the board of directors. I talked to the Senator

about that and we agreed on a strategy. I came back to him and said, “Look, that doesn’t make any sense, because the whole idea here is to let your members get at the board of directors, a handful of people. The members ought to see us.” He said, “No, Dingell won’t do it and my board won’t go along with it, but we’d love to have you come to the board of directors meeting.” We set it up and he thought this was the funniest thing ever, that he was going to invite himself to the National Rifle Association meeting and challenge Dingell to a debate.

It ended up that we went over to where the board of directors was meeting. We told all the press—Dick Drayne was terrific at gearing up the press—and all the press was there when we showed up for the meeting. Of course, they weren’t going to let cameras into the board of directors meeting, so he gave his speech before the cameras, outside the meeting, all the cameras grinding, and then went into the meeting, said hello to the board of directors, and left. Then Dingell was on his own, and the press had all gone by then. He thought that kind of thing was very enjoyable and very productive. So yes, I had gotten it by then that he was going to be willing to do the tough and the unexpected and the ironic.

**Heininger:** Whose idea was it to get the press to come?

**Flug:** Once we got on this track, where he had invited himself to the meeting and they had it under consideration, we would have brought Dick Drayne into it; we would have brought Dave Burke into it; and it would have been something that we all took on as a project.

**Heininger:** This was a lesson to you on how effective the media could be in drawing attention to things?

**Flug:** I didn’t have much experience with the media then, because in my earlier jobs I had been told to stay away from the media. I didn’t quite have a feel for it yet, but in strategizing this with Dick and with David, we would have—The whole purpose, originally, of going to the meeting was to have a media event, with Dingell and Kennedy appearing at the NRA. It would have been a fabulous story, which is exactly why they wouldn’t let us have it. In any event, I did have the sense that it was OK to make difficult, challenging, even far-fetched proposals, and that there would be a certain desire on his part to look for projects like that.

**Heininger:** A certain receptivity.

**Flug:** Yes, and Dick Drayne and Dave Burke were very receptive. My principle in life has always been, if you have ten ideas, maybe two of them are good, but you don’t know which two the decision maker is going to think are the good ones, so float the ten, and they’ll be screened out.

**Young:** He encouraged that, did he?

**Flug:** Yes, but I would have bounced something off against Dave and Dick before suggesting it to him. They might have screened out four of the eight, so that would leave me four out of ten. Maybe I’d present four and he’d take two. There was really no limit to what you could do at this point, so it would not surprise me if, by even April of ‘67, I knew that he would be interested in taking on a fight like that, probably because of what I knew about the history of immigration, the voting rights.

**Young:** So the One Man, One Vote issue was shaping up as another one of those issues? It was an unusual thing to take on.

**Flug:** Well, no, because one of the attractions of it was, and this was apparent right away, that he had already established voting rights as one of his areas of interest.

**Young:** That was his issue.

**Flug:** It fell within his chosen bailiwick, so that was an advantage in proposing that he do something.

**Young:** How did Senator Dirksen's son-in-law come to be involved in this?

**Flug:** We're not quite there yet, because I don't think [Howard] Baker was on the Judiciary Committee. We went to the Judiciary Committee, and he made a speech. There was a vote; he was voted down. I read that the vote in committee was 10-5, so that means that five people supported him. That probably would have been Hart, [Birch] Bayh—In '67, I don't know who the other liberals were—probably [Quentin] Burdick, and then maybe a couple of Republicans, maybe Javits, and Kennedy, but [Hugh] Scott might have been on the committee then too.

**Heininger:** But right there, that gets you your five.

**Flug:** There are five in those six, and maybe I'm missing somebody. I don't think [Joseph] Tydings was there yet. There was one more Democratic liberal. [Hiram] Fong was also there, I think, on the Republican side, liberal—Hiram Fong from Hawaii. There was one more Democratic liberal, but you had the Republican conservatives, most of the Republicans. I don't know how many Republicans there were then. If there were 15 on the committee, it might have been 8-7, Democratic. There might have been seven Republicans, of whom maybe two or three were fairly liberal. The rest were [Roman] Hruska, Dirksen, and another very conservative Republican, and then the three Southern Democrats: Eastland, Ervin, and McClellan. The rest were mostly liberals, and maybe there was one more southerner.

[BREAK]

**Heininger:** We're resuming the interview with Jim Flug on November 27th.

**Flug:** It [One Man, One Vote] was defeated in committee. He made his arguments based on what we had put together then, but it was a rush job. We had the package of materials that had come over from [John] Conyers [Jr.], and whatever we could scare up quickly, but it seems to me that that meeting must have been soon after that first call. There wasn't much time to prepare for it, but he made his arguments in committee and they were voted down.

It wasn't as easy then to slow things down, in terms of the committee rules. Nowadays, you have a one-week automatic layover on anything on the agenda, and you can filibuster in committee, although under the current rule in the committee, you can break a filibuster as long as you have one person on the other side. Even if the present rule had been there, you would have been able to break an effort to speak forever in the committee, so there wasn't a whole lot of choice. When something was greased, it was greased.

**Heininger:** But the defeat didn't deter him?

**Flug:** No. I'm looking at this cheat sheet here, and it came out of the committee May 23rd. In the course of that, they not only beat back his position—By then we had come up with an amendment that flipped it. Instead of making it something that weakened *Westbury v. Sanders*, it was something that enshrined and strengthened *Westbury v. Sanders*, and made it immediately applicable. His amendment was defeated, and at the same time—I did not remember this, but was reminded by some of the materials I looked at—the committee raised the permissible variation on the size of districts from 30 percent to 35 percent. This means, in our hypothetical example, if the ideal district had been 100,000, you could be 135,000 or 65,000. Now there was a 100 percent factor, that is, somebody in a district with 65,000 people in it had the same representation as somebody in a district with 135,000 people in it. In other words, the person in the 65,000 district had twice as much clout as the person in the other district.

**Heininger:** From Kennedy's standpoint, this was even worse than what came out of the House.

**Flug:** It was consciously worse. I read that the reason was that Manny Celler discovered that, whereas he had thought that 30 percent would cover all of the incumbents' districts in New York, he discovered that there were a couple of them that were between 30 and 35 percent, so he asked Eastland and Dirksen to raise it to 35 percent, which they did. It was after the Judiciary Committee reported the bill that—I don't remember knowing exactly how it happened, but I think it happened Senator to Senator, because I don't recall anything else—He must have said to me, "I saw Howard Baker on the floor today. He cares a lot about this subject too, and wants to try to help us on the floor. You should see his legislative assistant."

**Heininger:** But it wasn't a strategy that you had recommended to him?

**Flug:** No. Obviously, we wanted to try to get some Republicans, if we were going to do anything with it on the floor, but I don't think we had a particular idea, unless of course, I mistakenly thought that the Baker in *Baker v. Carr* was Howard Baker, and said, "Why don't we try Howard Baker," but I don't remember it that way. I must have known that it was not Howard Baker, so my guess was that he talked to Baker on the floor.

**Young:** Somebody has written in a book that it was his brother Robert.

**Flug:** That's what I've seen in my readings. That's in the [Adam] Clymer book. I did not go back and look at the original, but I'm looking at some excerpts, and it does say that Bobby Kennedy had been a friend of Baker's since the '50s. I'm not sure why that is. Bobby worked for, I think, McClellan, who was from Arkansas, and to us easterners and northerners, Arkansas and Tennessee are all the same thing anyway. [laughter]

**Young:** Estes Kefauver was around.

**Flug:** Kefauver was around. Did Bobby work for Kefauver too? He might have.

**Young:** That I don't remember.

**Flug:** He might have, so he might have known Baker that way, because Kefauver might have known Baker, but I didn't know that until I referred to the Clymer book. I'm not allowed to ask you whether you've talked to Clymer?

**Young:** Oh, yes. Not, I think, about this particular subject.

**Flug:** It would be interesting if Adam has any more detail on that. Adam has a lot of stuff that isn't in the book, obviously, like any book. Although you can't tell, they did cut some stuff.

**Young:** We have all of his interview notes.

**Flug:** He did a very thorough research job. He found stuff of mine in the archives I couldn't believe.

**Heininger:** So you had Baker and Kennedy—

**Flug:** Baker and Kennedy decided to do this together.

We have to go back, because we haven't talked about this. In 1967, the layout of the Senate was—I should have pulled out the exact numbers, but my guess is that the Democrats had at least a 60-person majority, but that was meaningless, except for organizing. It's so central to everything else that goes on, both then and now. There was no such thing as a partisan vote. Every vote was bipartisan, except the votes to organize the Senate.

For example, on voting rights, on civil rights, to get anything done, if you were a Democrat, you had to have all the liberal Republicans, because you were going to lose all the southern Democrats, and the southern Democrats made no bones about it. They were unreconstructed southern Democrats. They were still virtually racist and more conservative than the run-of-the-mill Republicans on everything else as well. If you were going to do something on the floor, you had to have Republicans. I would suppose that we had one or two Republicans in the Judiciary Committee, like Javits, and that we expected to work with them. They would get us the liberal Republicans, which offset the southern Democrats. Maybe there were 20 southern Democrats and 18 liberal Republicans, with people on the edges on both sides, who might be in the gray area on one thing or another.

If you were going to do something on the floor, it wasn't surprising, at that time, to have some Republicans, because you would *always* have Republicans. The question was, What *kind* of Republicans? Could you get a mainstream Republican, who might bring you some of the moderates, especially since on this one, you were going to lose some of the Democrats who had signed on to this thing? I can't honestly remember where Mike Mansfield was on this. I want to hope and guess that he eventually voted with us, but I don't know where he was at this point.

That's something that, later on, we certainly would have done before taking this on; we would have gone to Mike Mansfield and to Charlie Ferris. Has Charlie Ferris come on your radar screen?

**Young:** Yes, he's been on it.

**Flug:** The last time I spoke to Charlie Ferris, his memory wasn't *that* great, but I'd be interested to know if he remembers this and remembers what Mansfield's role was in it. Normally, he was almost one of the first people we would have gone to, if we were going to be serious about doing this out on the floor. We would have wanted to know where Mansfield was going to be, both in terms of his own vote, because other people were going to ask that, and in terms of how much time he was willing to give us to get our act together, because this thing had been greased, and was going to move fast, as evidenced by what happened in the committee.

The committee reported it out the third week in May. According to this chronology, on the 25th of May Kennedy and Baker gave speeches on the floor. I'd love to see those. Then, Kennedy would have had probably a week to file a minority report from the Judiciary Committee. The rules were pretty fair in those days; there were some things they did adhere to, and you did get some time after a committee acted to file a minority report. That minority report would have been—as well as his floor speech—about the same time. The speech would have been a summary of the minority report, or maybe not even a summary. That would have been the case as we saw it at that point. If I had to guess, it would have included both the fact that this thing was being rushed through without hearings and that it was too important, was unconstitutional, and really needed some careful study before we did something as radical as this.

**Heininger:** But you had also had a shot across the bow, with Baker having made a floor speech against it as well.

**Flug:** Right. That was the announcement that this was going to be a Baker-Kennedy operation.

**Heininger:** What happened over the Memorial Day weekend?

**Flug:** This I do remember extremely well. I had been gathering cases, law review articles, and clippings, and by then I must have had something from Congressional Research. I put it in a *huge* loose-leaf, and I hadn't even read all the stuff that I was putting in this loose-leaf. It was Memorial Day weekend, I'm pretty sure about that, and I dumped the whole thing in his bag. It was much less organized and much smaller then than it is now. When he came back from Memorial Day, he had read every bit of that loose-leaf. I could see his notes and markings all over that loose-leaf. I had also read, by then, the stuff I hadn't finished reading, and had also done up some long floor speeches for him, and those are in the record. If I had to guess, one was probably procedural, one was substantive, and one was a peroration. We didn't have a good vote count. This was brand-new to everybody. The press was beginning to write about it, but I don't think there was a whole lot of writing about it.

**Young:** How did you know what kind of vote count was shaping up?

**Flug:** I don't think we did. This was not something—Normally, if it had been a big civil rights effort, we would have had the Leadership Conference on Civil Rights, the unions—

**Young:** Helping you.

**Flug:** Helping and doing the counts.

**Young:** And figuring out where the people were coming down.



**Flug:** Yes. I just don't remember that kind of effort. We didn't have time for that kind of effort.

**Young:** I don't remember seeing that. I've seen some of his notes in his papers on counts.

**Flug:** He would have been talking to people on the floor, certainly.

**Young:** I don't remember seeing any on this particular subject.

**Flug:** You'd have to see how many votes there were during that week after Memorial Day, because he would have been loaded for bear then, but it looks like it went to the floor almost immediately after Memorial Day. This says June 6th. You have three pages on this, so he must have some detail on what happened during that period. He would have been going one on one with every Senator he could see, and Baker would have been going one on one with every Senator *he* could see. But on a complicated issue like this, and one where the leadership was on one side and these young upstarts were on the other side, very few people would have been giving firm commitments one way or the other.

As I recall it, we went into the floor vote without any knowledge of how many votes we'd have. I also notice, from the result, that there must have been many absentees or people who didn't vote for some other reasons. The final was 44-39; quite a few people were missing. They may not have come home from Memorial Day, or the vote may have been on a Friday, and people may have left for the following week already.

**Heininger:** Had you done anything to gin up the media on this?

**Flug:** Apparently not. *[laughter]* I don't see any clips here. We would have tried, at the time of the committee meeting, to get the people who covered the Judiciary Committee interested, and we would have tried to get the *[Washington] Post* editorial board interested.

I'd be surprised if somewhere in here there wasn't a *Post* editorial footnote. There were two people on the *Post* editorial board—one was Alan Barth, a very famous civil libertarian, who not only wrote editorials but books on civil liberties; and another one who has the same name as somebody in the energy field—his first name was Jim, I think—who wrote some of the Judiciary editorials for the *Post*. One or the other of them would have written an editorial at some point, either at the time of the committee action or at the time of the floor action. I'd be very surprised if those didn't exist.

There may have been a few others as well, but my ability at that point to spend a lot of time with the press would have been somewhat limited. I didn't know them very well and this was all done on an ad hoc basis, with no staff. There was nobody helping me at that point. The other staffs—Well, Lamar Alexander was doing the same thing on Baker's side. Our press person would have been trying to get the press interested in it, but there could have been three or four other things happening. As it turns out, this was the same week as the 1967 war in the Middle East.

**Heininger:** How do you explain the reversal? You were under a limited timeframe, over a holiday week, and a major news story.

**Flug:** I think two things: one, both Kennedy and Baker knew the issue so well and had their arguments down so well that when they went one on one with the members of the Senate they persuaded people. It rarely happens, and it certainly rarely happens on the floor of the Senate, but they were persuasive. These people who did not know the issue—In those days there was much less screening by staff. If Kennedy went to somebody on the floor and said, “We’re having this vote tomorrow; it’s really important and it’s really bad. Here’s the minority report and the speech I gave yesterday; take a look at them,” they would have shown it to staff and staff wouldn’t have had anywhere to go. You didn’t have any organized opposition on the other side.

**Heininger:** Because it was greased.

**Flug:** Because it was greased; it was a leadership thing. There probably *were* papers on the other side; I’m sure there were. Celler must have had them in the House, but Kennedy and Baker must have done a very good job, and I’m not sure that Dirksen and Eastland were as well prepared.

**Heininger:** Or working it.

**Flug:** Or working it, or as invested in it, for the same reason the House people said, “It’s none of your business.” They may have felt somewhat ambivalent about it.

**Heininger:** What lesson did you draw from that process, and the fact that the committee defeat was reversed on the floor, in a very short period? What lesson did you, as a staff member for Kennedy, draw from that, as to how to staff him and how to prevail on issues like this, where it doesn’t initially go your way?

**Flug:** If I drew any lessons, they would have been, first of all, that he’s the best advocate, that he can do much more personally with other Senators than the staff can do. I could have gotten, and probably did get, copies of the report, the minority views, and his floor statements out to other Democratic staffers. Lamar probably got copies of the same materials and his boss’s statements to Republican staffers, and those staffers probably talked to their bosses, but probably what made the most difference was the one-on-one between Baker and the Republicans and Kennedy and the Democrats.

**Heininger:** Was it also that you had provided this big loose-leaf notebook of information that he really went through?

**Flug:** Right. It was a fairly simple argument. The Supreme Court had said that it wasn’t democratic to have wildly gerrymandered, oddly shaped, different—There’s a wonderful quote from one of the cases about being half a citizen or something like that. There was a lot of good stuff in the Supreme Court opinions, and I don’t remember how long they were. I think *Baker v. Carr* was pretty long and *Westbury v. Sanders* wasn’t, but you could distill the essence of it and get it all on one sheet of paper. It was clear that what was being done was *anti-constitutional*, and probably unconstitutional.

There were really three arguments. One was the procedural argument, that we can’t do something as drastic as this without having the right process. The second was that it was not going to work, and it was going to muck up all the elections for the next six years, because if you pass something that’s unconstitutional and it goes back to the Court, then you don’t know what’s

going to happen. One of the possibilities was that a whole lot of people would run at-large, because at least in a few of the court cases, the way they had handled interim resolution of a redistricting issue was to say, “We can’t figure this out anytime soon, so in the next election, all the Congressmen in that state will run at-large.” Well, the Congressmen didn’t want that. They have enough trouble just keeping their own constituencies happy. If they have to run statewide all of a sudden—They weren’t happy about that.

Procedurally, what they were advocating on the floor was a substitute for the bill reported out by the committee. Once you pass a substitute amendment, then it occupies the field. There’s not a whole lot you can do about it. In fact, what happened was that once the substitute was amended onto the committee bill, there was another vote on final passage. On final passage, the bill got 55 votes instead of 44. Once the job had been done, everybody—not everybody, but a lot more people—wanted to be on the right side of the issue.

It has a long, tortured history after that, which he remembers much better than I do, because it involved a conference with the House. I don’t think, in those days, they would have kept him off the conference [committee]. I think he was on the conference. I may have gone to some of the conference, but it didn’t matter, because we didn’t have the votes on the conference. The conference came back with a bill that still did terrible things, and they beat it again in October. The House then did another bill that was trying to stave off something and delay everything, and they beat that one again, in November, at least according to Clymer. I don’t have a good recollection of that, because once we won in the Senate, it looked as though we were not going to have any more problems, even though the House kept trying to do bad things. Every time we’d come back, we’d have to vote it down again, but by then we knew we had the votes.

Personal footnote: Because it happened at the same time as the 1967 war, remember who the hero of that was? Moshe Dayan. Do you remember his distinguishing feature? The eye patch. The reason I remember it happened at the same time was that the next day the staff presented me with an eye patch to wear. *[laughter]*

**Young:** And you deserved it.

**Flug:** That was my first big experience in the Senate and with him. Many of the most prominent elements of the way he’s always been, he had obviously learned just in those four years. First is his willingness to take on unpopular, or at least unpopular in the Congress, and difficult, if not apparently impossible, tasks, and to do so even if he’s one of a very small number of people, or the only person who was focused on it. Then, of course, is his need and ability to work across party lines, because in those days, you could not get a majority for anything without Republicans. It was just a question of how many Republicans you could get, how many Democrats you were going to lose, and the importance of doing the homework. And there’s the importance of getting input from the outside, because I’m sure we got a lot of help from people on the outside.

It’s hard to think back and distinguish that particular fight from the fights that followed the next year, in ‘68, that were more civil liberties fights. But even on this one, we developed some relationships with surprising people. There were unexpected people out there around the country,

who, once they knew about the issue, wanted to be helpful. He would take help from wherever he could get it. In those cases, of course, the staff had to do a lot of the contact with those people.

One of the joys even then, one of the advantages, of working for Ted Kennedy in 1967 was that everybody knew who he was. Everybody knew he was the brother of the late President. You didn't have to explain who you were if you were calling from his office. It didn't matter what *my* name was. If I said, "I'm calling from Ted Kennedy's office," I would get through to whoever it was, whether it was the state attorney general or U.S. Attorney or a government official. We were still in a Democratic administration then. We were on the phone, in those days, to Presidential appointees every day. We were part of the same team. Many of those things, especially the relations with the executive branch, changed.

**Young:** Were the people in the DOJ [Department of Justice], the executive branch, at all involved in this effort?

**Flug:** Ramsey Clark had become the [U.S.] Attorney General in the fall of '66, and the head of the Civil Rights Division was still either Burke Marshall or John Doar, probably by then John Doar, but I don't remember them getting directly involved in it.

**Young:** So it wasn't LBJ's [Lyndon Baines Johnson]—?

**Flug:** They never had to take a position on it, because they never had to testify, because there wasn't a hearing, unless they testified over in the House. LBJ might well have been somehow co-opted by Celler and Dirksen, and if Mansfield was involved, they may have had a hands-off position, if they had a position at all, but I don't remember them being either for us or against us. Obviously, it would have been better if they had been for us, and they might have been, but I don't remember. I would have to have the committee report to see if they filed anything with the committee.

**Young:** But clearly, they weren't hand in glove.

**Flug:** No. They were not big players.

**Heininger:** Is it fair to say that—Unlike when he did the immigration bill and when he did the Voting Rights Act, this is one he took on after it had been greased for fast passage, so there was no leadership support; it looked like it was just going to sail through—he was really tilting at windmills here, and he won?

**Flug:** I would say it was a little better than tilting at windmills, because it was clear that the House passage was so self-interested that it didn't have much weight, number one. Number two, even though Celler, on the House side, was for it, the fact that the principal people pushing it on the Senate side were Eastland and Ervin meant that there was no presumption that the mainstream Democrats were going to go along with it. I would be surprised if we hadn't gotten one or two of the liberal Republicans in there, so we were going to get a respectable vote if we had enough of the mainstream Democrats and a few of the liberal Republicans. We weren't going to get an embarrassing vote, although there was no such thing as an embarrassing vote. I don't think he would have cared. The issue was so clear on this one, and both the procedural and

the constitutional reasons for his position were so understandable and so persuasive, that I don't think he would have cared if there hadn't been a chance of doing it.

**Heininger:** Was he surprised he won?

**Flug:** We were all surprised. We were all totally surprised. It almost never happens that you get out on the Senate floor with a committee report and you don't just amend a bill, but you reverse the bill 180 degrees. We took the 35 percent thing—Our amendment said you had to be as equal as possible; I think we used the Supreme Court language—and we took whatever they did on the compact and contiguous part, which was to leave it to the states, and we again used the Supreme Court's language.

**Young:** Putting it into legislative—Where was Robert [Kennedy] on this?

**Flug:** I would have guessed that he was supportive, and I am reminded by some of the articles, that before the day of the vote, Bobby and Teddy got out on the floor together, and they had a bit of repartee, which they loved to do.

That's a good question. Running through all of this, on three of the things we've mentioned: the speech to the Young Democrats, where he got photographed quoting from Bobby at length; going to the NRA; and on One Man, One Vote, I can see the two of them walking down the halls and one kidding the other about what they were doing. Bobby would have been kidding Teddy about all of these things, but just being proud as hell.

They used to joke about their staffs all the time. Beginning no later than either the NRA thing or this, whichever came first, I was seen as a troublemaker, in a nice way. I know, because I used to hear back from Bobby's staff sometimes, or later on from Bobby himself. Well, there wasn't much later on; this vote was taken one year before Bobby was killed. But during that year, I would hear back from Bobby about something Teddy had told him, and he would want to hear it from my point of view. They obviously had spent time joshing about their respective staffs, because Bobby had a colorful staff too.

**Young:** Were they very different people or very much alike?

**Flug:** Bobby had two main legislative people: Peter Edelman, who was very laid-back and stable and studious; and Adam Walinsky, who was just all over the place. *[laughter]* I fall somewhere between Adam and Peter probably, in whatever spectrum that is, but they clearly talked to each other about their staffs and bragged on them or told jokes about them. "You want to hear what *my* guy did yesterday? He wants me to go to the NRA," and that kind of stuff. That dynamic probably had something to do with decisions on things like that.

I assume that before deciding to go ahead and do this, Teddy had probably picked up the phone and said to Bobby, "All right, listen to this one. Everybody in the world is for this bill and John Conyers has called me. Flug says it's unconstitutional. I guess if I'm going to go do it, I have to find a Republican somewhere." That may have been the conversation in which Bobby said, "I have a Republican for you." They might have thought *Baker v. Carr* was Howard Baker, for all I know, *[laughter]* but Bobby might well, in one of those conversations, have said, "I have just the guy for you."

**Young:** It is noticeable, isn't it, at least it seems to me, that once Robert got out of the Senate, they were each having their own issues.

**Flug:** Yes.

**Young:** There was communication, but there was not collusion.

**Flug:** I think that's right. I don't know.

**Young:** It looks that way from the outside, how Bobby was spending his time.

**Flug:** I don't remember Bobby having a lot to do with immigration, and I don't remember Bobby having a lot to do with the Voting Rights Act. On the other hand, I think in the summer of '64, Bobby went down to Mississippi and to South Africa, so he was very much into racial issues, as Teddy was, but not as overtly and not as noticeably as Bobby was. So yes, I think Bobby was much more into poverty and race and those things.

**Heininger:** And you don't recall Bobby working on this issue, One Man, One Vote?

**Flug:** Obviously, he showed up on the floor with Teddy at the end and gave his own speech. His speech looks like it was written not by me, but by his staff, from the excerpts of it that are in one of these things.

**Young:** There was a bit of competition, wasn't there?

**Flug:** Oh, there was tremendous competition, but always jocular competition—I don't mean with a K, without a K—and they really enjoyed doing it. Jumping ahead a year, when Bobby decided to run, Bobby read some of the speeches that Teddy was giving on crime, and asked Teddy if he could borrow me and could I come help on his crime speech. That stuff was going on all the time, but it was an important factor. I'm sure he went to Bobby on many of these strategic decisions.

**Young:** Did you ask him what to do?

**Flug:** Just to tell us what he thought. The conversation, I imagine, was what I just said: "Hey, guess what Flug wants me to do now, and this is based on John Conyers. He says it's unconstitutional. I have this whole suitcase full of stuff I have to read over Memorial Day, and we'll be fighting Dirksen and Eastland and Celler." Was it Tip [Thomas O'Neill]? It was probably still John McCormack. "All these guys are for it and Flug wants me to be against it, and Conyers wants me to be against it." Bobby would have said, "Well, what do you need?" "I need some mainstream Republicans." That's where Bobby may have said, "I'll talk to Howard Baker," and that may have been the key conversation of the whole thing. I don't know. I hope you get a chance to ask him that question.

**Young:** It becomes an interesting question, historically, because Robert's Senate experience was a wholly different story. He wasn't a Senator, and he was working for his brother then, or with his brother, even on the other things, as a staffer.

**Flug:** I'm sorry?

**Young:** He was a staffer, Bobby was. That was his Senate experience.

**Flug:** Oh, yes, previously.

**Young:** Previously, and he was returning to the Senate in '65, obviously with a future of some sort in mind, and it was probably not to remain a Senator. That's what it looks like from the outside, which might set him on a different path of issues from his brother. If Ted was looking at a long-term future, too, or the immediate future, it looks like it was in the Senate.

**Flug:** Yes.

**Young:** I'm just thinking out loud. Doing his own thing and becoming his own person, I should think, would be very important.

**Flug:** That's what's astounding about reading back over these clips. Here is a subject that nobody had heard of, for at least two years, since the *Westbury* case. There were redistricting cases that they were trying to implement, but I would doubt that anybody saw any articles about it. Then suddenly, on June 9th, is one front-page *New York Times* article, and then on June 12th, John Herbers's column, "Edward Kennedy Is Gaining Stature in the Senate." Then there was a long article again in November, after the last vote, by John Herbers, a front-page story.

My favorite, especially in the light of what's happened since then, was also in November, after the last one, by [David S.] Broder, "Apportionment Honors Due Senators Kennedy and Baker." That is a wonderful piece, because it talks about how sometimes it's harder to stop something than to get something going, which isn't usually true. It's usually easier to stop something, but what he says is that people don't get remembered for stopping something, and you don't have a bill with your name on it if you stop something, but this is important and this is earth-shaking.

You know that when those front-page articles appeared, and when that Broder column appeared—and I'd love to see the archive someday—Bobby ripped out that article and circled it, and circled some particularly pithy Broder quote and sent it over to Teddy, and the two of them were happy as clams. The dynamic between those two was so much fun to watch when things were going well. They would have been sending these things back and forth, with Bobby saying, "Jesus, I haven't gotten on the front page of the *Times* for anything good in six months." [laughter] You know that was feeding this, and had a lot to do with it.

Of course, the next year, 1968, he was doing a lot of work on many things, crime especially, and to some extent guns. There was a fight over gun control just before Bobby was killed, and that continued after Bobby was killed, but beginning in March of '68, when Bobby announced, and probably for a month before he announced, Teddy was totally occupied with Bobby's campaign. He disappeared off on the campaign trail and Bobby's entire staff disappeared off on the campaign trail.

In those days, it was a little less formal and less flexible than it is now, so I was spending days in the office being legislative assistant for both offices, because they had no staff left. I was getting instructions by phone, because in those days you could get a paired vote, especially when you

were off doing something like a Presidential campaign, so that your vote was always recorded. On every vote, we were getting instructions from both Teddy and Bobby as to how to record them. Then on nights and weekends, I was going off on the campaign trail. Just to complete '68, once Bobby was killed, Teddy was around very little, for almost the rest of the year.

**Heininger:** He came back for a while in the fall.

**Flug:** But I don't remember for what.

**Heininger:** Gun control.

**Flug:** Yes, for gun control, but he didn't say much about it.

**Young:** When he came back, Biafra was his first speech.

**Flug:** He turned me over to John Glenn, and John Glenn ran a committee for gun control. I spent all of my time working on gun control during the summer.

**Young:** Before Bobby went on the campaign trail, before his death and Chappaquiddick and all of that, at the point in time where you'd had this surprising success on an important civil rights issue—One Man, One Vote—against the odds, what was the sense of the measure of Ted Kennedy that other Senators were making? Did it make a difference to them?

**Flug:** It had to. I only saw the result; nobody ever said anything. Forever after, for the whole rest of my time there, there was nothing in the field of civil rights, certainly not in the field of what was then more called refugees than immigration; in civil liberties; in crime—He was always a player.

He and Phil Hart and Birch Bayh basically ran an alternative Judiciary Committee, using their subcommittees, but always with the most polite and respectful relationships with Eastland, and even with Ervin. Did you ever actually see the letter where Kennedy said to Ervin, "You need to do a Watergate committee, because it won't be credible if I don't do it?" Have you seen that letter? Ervin wrote back and said, "I don't have time to do it; you do it," and then we did our—That's the way it was. With Eastland and Eastland's staff, we had as good a relationship with Eastland's staff as he had with Eastland. We always got our budget on the subcommittee without question. When we wanted to do a hearing.

One of the other hearings in '67, about the same time as all of this was going on, the summer of '67, there were riots going on in Newark. Jim Eastland wanted to hold a hearing to show that it was all Communist-inspired crazies that were rioting in Newark. Senator Kennedy went directly to Senator Eastland and said, "You can't just have witnesses talking about outside agitators and Communists. We want to have some people talk about what life is like for blacks in Newark. How many witnesses are you having?" Eastland said he was having the U.S. Attorney or the district attorney and the mayor, whoever it was. Kennedy said, "All right, I want to have an equal number of witnesses. I want to have a civil rights leader; I want to have a black politician; and I want to have a sociologist." Somewhere in that summer of '67 there was a long hearing, where they discussed the Newark riots, and Kennedy just turned that whole hearing around, from something silly into something meaningful.



Those things were going on, but the answer to your question is, though, with these front-page articles, with a Broder piece, and when the members of the Senate knew that two young Senators won something on the Senate floor that had passed the committee overwhelmingly, then they had to sit up and take notice. The ones who had been around for a while knew about immigration and knew about how difficult the Voting Rights Act was and what Kennedy's role was in the Voting Rights Act. Dirksen certainly knew.

Whatever respect Dirksen had for Kennedy before this, which I think was pretty substantial, because he certainly knew about immigration and was right in the middle of the voting rights— Well, with the '64 Civil Rights [Act], I don't know. I'm not as sure of what Kennedy's role was in the '64 Civil Rights Act. I think he focused more on the '65 Voting Rights Act, and Dirksen certainly was a part of that. But after this, basically beating Dirksen using his son-in-law, Dirksen had to sit up and take notice. So, yes, this was very important.

**Heininger:** What did it do for your stature as staff?

**Flug:** Within the office, I immediately got the eye patch from somebody, and I was called Moshe for a couple of months. Then it created an expectation. What's the next one going to be? I was looking for the next one; he was looking for the next one; and everybody else was looking for the next one.

**Heininger:** Was this outside of Kennedy's own staff?

**Flug:** Yes, because I was working, on a daily basis, with the Judiciary Committee staff, even though I was on his main office staff then, because the only subcommittee he had then was the Refugee Subcommittee, and they were doing very important work. My guess is that during '67, he probably made a trip or two to Vietnam—

**Young:** He made two trips.

**Flug:** Maybe one in '67 and one in '68.

**Young:** The first one was, I think, in '65.

**Flug:** So he spent a lot of time on refugees, but in terms of—

**Young:** Dale de Haan was.

**Flug:** Dale de Haan and George Abrams—but in terms of my situation, the other Judiciary offices just couldn't believe a thing like this.

**Heininger:** They were sitting there looking at you like "Whoa!"

**Young:** Why did you join up with this man?

**Flug:** I had been working at the Justice Department. I came down here for one year, in 1963, to clerk for a very liberal judge, Judge [David L.] Bazelon, who was a good friend of the Kennedys. In fact, I always thought—although somebody has disabused me of this notion recently, too—

that he thought John Kennedy was going to appoint him to the Supreme Court. I came down in the summer of '63, and in November of '63 that was over. I have been disabused of that notion since then and have been told that he thought Johnson was going to appoint him to the Supreme Court, which never happened. He was too liberal even for Johnson.

That was one year, and then I was supposed to leave town. I had a teaching job in Philadelphia. To make a long story short, I went to one of my professors at Harvard Law School and said, "I'm supposed to teach? That doesn't seem right; I'm one year out of law school." He picked up the phone, called his brother-in-law, who was the First Assistant [Attorney General] in the Tax Division. He said, "Go down to Washington. You're going to be offered a job for a one-year clerkship for the head of the Tax Division. It's not going to sound very interesting, but take it; you'll love it."

That got me into the Justice Department. Bobby Kennedy was running that summer for the Senate, but he was still Attorney General. So I was in the Kennedy Justice Department, but I don't think I ever met Bobby during *that* time. I had met him once, but I was assigned to Lou Oberdorfer, who was the head of the Tax Division and was very close to Bobby.

Then I went from Lou's office, when Nick Katzenbach became Attorney General, to the Attorney General's Office, but I was very low profile. In none of those positions did anybody outside the immediate place I was working know of me. But then Nick Katzenbach was sent, by Lyndon Johnson, over to the State Department as Undersecretary or Deputy Secretary of State, because Lyndon wanted somebody over there he could trust. He didn't think he could trust the people over there to back him up on Vietnam. I don't know where Nick was on Vietnam personally, but Johnson thought he could trust him, so Nick left.

I was left without a boss in the Attorney General's Office. Ramsey Clark was Deputy. He became Acting Attorney General, but he wasn't Attorney General yet. In Nick's office, I was the liberal because I had come from Bazelon's office, so I was the liberal in the Attorney General's Office. Well, Ramsey Clark didn't need a liberal in his office, so there was no function for me in that position. I was not smart enough to say, "Put me in one of the divisions or put me in the U.S. Attorney's Office," which would have been the smart, thoughtful thing to do. Instead, I let a couple of people know that I was looking, including my law professor's brother-in-law, who was in the Tax Division.

One day that same brother-in-law sat down on a plane next to a guy he didn't know, who introduced himself as Dave Burke, and they got to talking. Dave mentioned that the Senator was looking for a legislative assistant—I think Alan Novak had just left—and John said, "I know this guy who is working for Nick Katzenbach who is looking for a job." That day Dave Burke called me, and introduced himself over the phone. He said, "I understand you're looking to leave the Justice Department." I said, "Well, if I find the right thing." I was pretty cocky. He said, "How would you like to work for Senator Kennedy?" I said—What would *you* say to that?

**Heininger:** You said, "Which one?"

**Flug:** Exactly. So he said, "Does it make a difference?" I said, "I don't know." He said, "It's Ted Kennedy." I said, "Oh, I don't know too much about Ted Kennedy. If you're interested, I'll send

you my résumé, but I'd like to talk to some of the people who know him and know me, and see whether they think that would be a good match." Then Dave said, "Who will you talk to?" I said, "Lou Oberdorfer and Nick Katzenbach and John Douglas." I probably mentioned two or three other people. Dave promptly called each of them. *[laughter]*

**Heininger:** And you learned how Washington is wired.

**Flug:** That's how I ended up working for Ted Kennedy. I showed up there the first of the year, in '67, and the next day I was doing this Oil Import Appeals Board that I'd never heard of, and then three months later—

**Young:** Was that when you first met Ted Kennedy?

**Flug:** There were a couple of times when he had come down to the Justice Department, during the Voting Rights Act, when I was there, and it may be that I sat in on a meeting on the Voting Rights Act when I was in the Attorney General's Office, but I didn't know him. I may have shaken hands with him. I had met Bobby at least once during that period; it had to be after I was already on the Hill, probably the summer of '67.

**Young:** Did Ted interview you or anything like that?

**Flug:** He must have.

**Young:** And you don't remember that?

**Flug:** I don't remember it. Isn't that strange? I was in a fog, the whole thing happened so quickly, and I was bowled over. I'm sure Dave interviewed me; I remember that. I must have at least said hello to the Senator and been interviewed by him, but I don't have great recollections of it.

**Young:** You were hired.

**Flug:** That wasn't my first contact with the Kennedys. My first contact with the Kennedys was in May of 1960, when I was an aspiring journalist. I had been news director of the Harvard radio station. It was my senior year in college, and I had to arrange it so I didn't have any spring exams. I drove down from Cambridge to Washington and stayed over, and then drove to West Virginia with a friend of mine, and we covered the West Virginia primary. While I was in Washington, I called one of the local stations here and got stringer capacity with them, so I was representing both Harvard and WWDC.

I followed [John F.] Kennedy and some of the other candidates around West Virginia, and got his press person to set up an interview for me with Senator John Kennedy, which was the first time I had met a Kennedy. I interviewed him, and got him kind of mad, because I asked him about his radio commercials in West Virginia, which were very tough. He cut the interview off at that point.

The next morning—I don't know that I've ever told the Senator this story—he [John F. Kennedy] grabbed me at a factory gate. We were out at 6:00 in the morning at a factory gate. He

sent his press guy over to get me, and talked to me during a slow period. He said, “I have to explain to you what happened yesterday. This is West Virginia. It’s not Washington and it’s not Cambridge. People might not like the radio commercials they’re using in West Virginia, but that’s the way they do it in West Virginia. I never heard those commercials and I have to rely on my local people to do what’s appropriate down here. You don’t have much experience in politics, do you?” I said, “None at all.” He said, “Well, that’s the reality of it. They may do some stuff down here that seems pretty tough to you, coming from Cambridge, and to people listening in Washington and Cambridge.” I said, “I appreciate that,” and we parted somewhat friendly.

Then I met him again at the ‘60 convention—I had driven across the country, camping out—up in Los Angeles. I had snuck into the ‘60 convention. I got into the receiving line and introduced myself. I said, “Senator, I met you in West Virginia. Do you remember? I was working with the Harvard radio station.” He said, “Oh, yes, I remember that.” *[laughter]*

I told that story for many years, and my friends would rib the hell out of me. They said, “You don’t understand. When you tell a politician you’ve met him, he’s never going to deny it.” Many years later, I met Chuck Roche, the press guy in West Virginia. I said, “I have to ask you something. I met the Senator [John F. Kennedy] in West Virginia. You were his press guy, and you set up an interview for me. It didn’t go too well. I met him again in Los Angeles and he said he remembered me. My friends always kid me about that.” He said, “Oh, I remember that interview and he remembers that interview. He almost fired me because of that interview, and he never let me forget it.” *[laughter]*

As you go out, you can see where that part of the story ends. It ends when he’s President-elect in Cambridge, and I interviewed him one last time for the Harvard station. I had a history with the Kennedys, but it was a rocky history. I did not disclose that when I first—I did interview with the Senator [Edward M. Kennedy], I’m sure, because I remember deciding not to disclose that.

[BREAK]

**Heininger:** We’re now resuming the interview with Jim Flug on November 27, 2007. Tell us about 1968.

**Flug:** 1968. Congressional redistricting ended in ‘67. I don’t remember too much about late ‘67 or the first few months of ‘68, except that we were working very hard on crime control. President Johnson had appointed a Presidential commission on crime, chaired by Nick Katzenbach, while I was at the Department in ‘65. It must have reported in ‘66 or ‘67, and made many legislative recommendations, which Congress was starting to process in ‘67, ‘68. That was a major focus of ‘68. It ended up in the Omnibus Crime Control and Safe Streets Act of 1968.

He was very involved in that, from three points of view. One was the civil liberties point of view, because the more conservative elements in the Democratic Party and some of the Republicans were trying to graft on all sorts of anti-civil liberties provisions, especially on wiretapping, but on other things too. Secondly, he had a proposal of his own that had to do with a criminal justice research institute, which I found out the other day, because I sat at dinner with somebody who is running it, still exists and still does what was intended. That was going to be his affirmative contribution to the bill. Third was the question of gun control.

The Crime Commission had made strong positive recommendations on gun control, and he was heavily involved in that. I'm sure we had many hearings on gun control in late '67 and early '68. Tom Dodd got the assignment to hold those hearings, as chairman of the Juvenile Delinquency Committee, which Teddy sat on. Any time there was a hearing on it, he got involved in that. But of course almost everything came to a halt in March or April of '68, when Bobby announced. I'm fairly confident that it was in the Senate Caucus Room, in what is now the Russell Building.

Everything pretty much came to a halt, in both his office and Bobby's, and Bobby's staff went on the campaign full-time. I stayed as full-time legislative assistant to both Teddy and Bobby, because Bobby's staff was gone. At night, I would go over to the headquarters, which was on M Street, downtown. I was placed in charge of youth and student affairs. I had no political experience whatsoever, except for my visit to West Virginia, and some interviews I did on the Harvard radio station, so I was not of much political use, but my job was to get stuff going in youth and student affairs, which we were starting from ground zero.

It was very important in the sense that Gene McCarthy, whose result in New Hampshire was fueled by this horde of young people going out and canvassing door-to-door in New Hampshire. Bobby wanted to have his own young people out there doing things. In fact, we rounded up anybody who came in and wanted to do something. We put them to work in whatever state it was, but the state that we initially focused on most was Indiana. We had somebody who was a professional canvasser, who put together a canvassing operation out in Indianapolis, which I visited two or three times, on weekends.

I didn't see much of Teddy during that period. I spoke to him a lot on the telephone, because every time there was a vote, he wanted to pair with another Senator on the other side, and they had live pairs in those days. I don't think they have very many of those now. The other Senator would withhold his vote and announce: "If I were voting on this, I would have voted nay; I'm paired with Senator Kennedy, and he would have voted aye. I withhold my vote." They would only do that if it wouldn't affect the result of the vote, but it was a courtesy to another Senator who wasn't there, and allowed him to be recorded in the *Congressional Record*, even though he was not at the formal tally.

I did go out to Indianapolis. That's the only place I went, until the very last week of the campaign, when I went to California. The main things that came up during that period on the floor were the Civil Rights Act of 1968. The Senator was very interested in that, and asked me to stand in at meetings. I tried to be his representative, so that people didn't think he was totally abandoning ship. I would brief him on what happened and I'd be in a position the next day to have whatever input there would be on his behalf, but he was off on the campaign most of the time.

Once in a while he would show up in the campaign headquarters for a day or something, as would Bobby. Bobby would come into town more often than Teddy would. Frequently I was the only one from either staff around, so that's when I got to know Bobby pretty well.

The big issues that I got involved in, on the substantive side, were when Drew Pearson had a column revealing that Bobby had authorized the wiretapping of Martin Luther King [Jr.]. That

came out about a month into the campaign. That was something I worked on, because I was the wiretapping expert.

I pretty much had the run of the campaign headquarters, and spent a lot of time there. I was single. I was dating Carla [Carbaugh]; she was in college. She had gone back to school, so I spent a *lot* of time at the headquarters at night, and knew everything about the headquarters. I knew all the people, including all the boiler room people. In addition to the youth and student stuff, I did whatever I could.

As I mentioned before, when I was writing some of Teddy Kennedy's civil liberties and crime speeches, Bobby was going to give a big crime speech in Indianapolis. I was planning to go to Indianapolis that weekend anyway, so they had me come to the hotel suite, where Adam Walinsky and Peter Edelman were writing the speech. I did a draft or a redraft or something, worked very closely on it. When I was out there, I also looked at what the youth and students were doing on the door-to-door canvassing, went to some of the training sessions, and then went out with some of the canvassers, to see exactly how the process was working.

Footnote: It was Kennedy, [George] Wallace, and [Matthew E.] Welsh, the Governor of, the favorite son of, Indiana. A lot of canvasses were coming in as number one, Kennedy; number two, Wallace. A lot were coming in number one, Wallace; number two, Kennedy. It didn't make much sense.

I went out with the canvassers one day, and after they had left some houses where they had gotten those one and twos, Kennedy and Wallace, I stayed behind and talked to the people. I said, "How can you be number one, Kennedy; number two, Wallace—or number one, Wallace; number two, Kennedy? They're so diametrically opposed in everything they believe." The consistent answer was, "I'm not an expert on these issues. I don't know much about issues, but I know that both of those people care passionately and they have positions that they feel strongly. That's the kind of person I want." That was one of my first little lessons in elective politics.  
[laughter]

I was there the last weekend, and for the primary on Tuesday. I don't remember exactly what the results were, but Bobby did very well. Afterward, there was a famous scene, at which I believe I was present, where Bobby was in the airport—because that was the only place you could get something to eat in Indianapolis late at night—and some of the Kennedy volunteers and some of the McCarthy volunteers from Indiana were there. In one of the books, they have a portrait of Bobby talking to this McCarthy volunteer, still trying to persuade him to come over to his side, and trying to understand why these people were still loyal to McCarthy. It was a very poignant moment.

In any event, the night Martin Luther King was shot I was in the headquarters, which was around six floors up. You could see the fires starting around Washington. Strangely enough, that night I was having dinner with Peter Edelman and Marian Edelman, who was very close to Martin Luther King, and that's how I spent that night. When Bobby was giving his speech in Indiana, I wasn't there for that. Those are the footnotes.

I did go out to California. I think Ted was up in Oregon the last day, and Bobby was in California. There really wasn't much for me to do out there, so the night before the primary, Peter Edelman and I were told, either by Teddy or Steve Smith, to go back to Washington and start researching the rules for the convention. We flew back, I think on a red-eye, that Monday night, and I was in Washington the day of the vote.

I was at Carla's parents' house the night of the vote, and watching television at 3:00 in the morning, when that all happened. I woke Carla up and told her what had happened. I said I was going down to the headquarters and I didn't know when I'd be back. I guess I had a key to the headquarters. There was nobody there, but—it was an old-fashioned switchboard, and the lights were all lit up on the switchboard. As part of my thoroughness, I had, in the course of my activities, found out how to run the switchboard. I sat there all that night, picking up lines on the switchboard: family members, the White House. I spent the whole night there

One of the sets of calls was to arrange for a group of people, I think led by Lou Oberdorfer, to fly up on an Air Force plane to New York, and start making arrangements for the funeral. Then there were arrangements to get Air Force One, or some White House plane, out to California to pick up the body. I was sitting there all night. I think it was an actual plug-in type switchboard. It was just the most amazing night.

The next morning, I went home and got a shower, a shave, and some clothes. I got on the plane to New York, and spent the next two days with Teddy's secretary, Bobby's secretary, Steve Smith's secretary, and a couple of other people from each Kennedy generation, somebody from the John Kennedy generation. All of them brought their address books with them and whatever files they had, and we literally went through every name in the book. Among us, we decided whether they should be invited, where they should sit.

How did you invite people to something the next day in those days? Telegram. We sent out thousands of telegrams over the next 12 hours, and each of the telegrams was coded. We had to come up with a seating plan for the cathedral, and a way to get the right people in the right places. The family had to be taken up front, different generations of people. We came up with a color-coding system. At the end of each telegram, it either said white or blue or gray or green, and then at the cathedral—I just happened to pick up one of these upstairs—were these colored cards. People could show their telegrams and get one of these cards. The different colors told where you would sit. Then we had to arrange the train and everything else.

**Heininger:** How were you designated to do this?

**Flug:** I think it was because I was sitting there at that switchboard, and because Lou Oberdorfer was the first one sent up to do this, and I had worked for Lou Oberdorfer. I can't really remember, other than it might have been Nick Katzenbach. It was either Nick Katzenbach or Lou Oberdorfer leading the delegation that went up; it was all people of that vintage. Bobby's secretary and Teddy's secretary knew me, so they were comfortable with my being in the room when they were having these very private discussions about who ought to be invited and where they ought to sit.

That process went on until it was through. I don't know how many telegrams we sent out, that would be an interesting number. The big thing was who was to get on the train. We went through all that stuff, right through the night, and all those telegrams went out. Then one day later was the funeral and the train back.

I had been here for John F. Kennedy's funeral in '63, but that's too minor a footnote.

He [Edward M. Kennedy] didn't come back for most of the summer. We had been working on gun control, to try to get it in the Crime Control Act, before then, and had been failing. Then I think it was the Senator's idea to call John Glenn, who was then an astronaut, and get John to establish a citizens' committee for gun control [Emergency Committee for Gun Control]. John and a distinguished group of people formed this committee. John did it full-time. He made a lot of radio and TV appearances, gave speeches, wrote letters, and did press interviews. That was the first time since I'd been up there where we had this grassroots outreach that was initiated at the Senate end. It was unusual. The result was that we did get legislation in the fall of '68 [Gun Control Act of 1968]. It was not part of the Safe Streets Act.

He came back for that. I didn't remember this, but I'm reminded by the clip, that he didn't speak that first day when he came back, but he was in the chamber and everybody knew that he had been involved behind the scenes in getting the public interested in the legislation. A pretty good bill passed. It's a bill that still exists and hasn't been diluted too much, although they've tried. Some of the record-keeping provisions aren't followed very well. That was the fall of '68.

There was the Nixon election. I don't remember his getting very involved in the election campaign at all, and we certainly weren't.

**Young:** There had been efforts to get him to the nomination himself.

**Flug:** Oh, that's right. You just reminded me. There is one story. As a result of the One Man, One Vote business, I was automatically considered an expert. Governor [Richard J.] Hughes of New Jersey was appointed chairman of a committee or a commission in the Democratic National Committee to think about One Man, One Vote in relation to the Democratic Convention. The Democrats were in office, so it would have been August.

That was the Chicago convention. I went out there a day before the convention to testify before this commission. Hughes's counsel running the hearings was a guy named Eli Segal, who died a year or two ago; he became very prominent and very successful. We knew each other from somewhere. He had been a McCarthy person in '68, so we may have met in the course of the McCarthy campaign or he may have been up on the Hill with somebody for a while and I may have known him from there. Anyway, I was through testifying and was in no rush to get back to Washington. I don't think I had a hotel room—The DNC must have paid for my flight or something—so I thought I'd hang around for a couple of days.

I didn't have any credentials, so the first night I was up in the hotel in Chicago and watched the first round of clashes. The next day, I was around the convention center, and kept running into reporters. By then, a year later, I knew many reporters. The reporters were all saying, "What are you doing here? Is Teddy running?" I said, "No. I came out to testify." "Sure, sure." It became a



little uncomfortable, but I wanted to see what was going to happen the next night on the streets, so I stuck around.

I think it was the third morning that I got a frantic phone call from somebody or I called somebody in the office and got a frantic reaction, “You have to call Steve Smith right away.” I got on with Steve and he said, “What the fuck are you doing in Chicago? Everybody thinks you’re there because the Senator’s running. Get the hell out of there!” That was my first run-in with Steve Smith. I gathered, from what I learned later, that he was in Chicago, but was hiding somewhere in the office out there.

Then I did some quiet stuff with some groups of lawyers who were meeting in Washington, but I didn’t do much in the ‘68 campaign. In January of ‘69, we were faced with our worst nightmare, Richard Nixon, so that started a whole new thing.

The Senator had to decide what subcommittee to take over. He was next in seniority for a subcommittee, and Ed Long had been defeated in the primaries in Missouri, and was chairman of the Administrative Practice and Procedure Subcommittee in the Judiciary Committee. He had used it to do anti-wiretapping investigations and hearings. He had done a lot of work on that subject in the committee. I think it was over his objection that in the ‘68 crime bill there had been provisions allowing wiretapping under certain circumstances, which we had opposed, but that issue was joined after Bobby had announced, so the Senator wasn’t there to do much on it.

We decided to take his subcommittee anyway, and I was to move from the main office to the subcommittee office. We sat down in late ‘68, because we knew we were going to be in charge of it—The first decision was whether we kept on any of Senator Long’s staff. We made a joint decision that we wanted our own people in there, so we let everybody go on the subcommittee.

**Heininger:** How many people were you talking about?

**Flug:** Probably two lawyers and three support staff. The chief counsel was a very well-known guy named Bud [Bernard] Fensterwald, who was identified with Long, so there was no way he was going to stay. The question was with the other one or two lawyers and the other staff, but we decided to just start anew because we didn’t know these people very well. We were starting anew in terms of what we were going to do with the committee.

We had a wide-open discussion of what we would do with the committee. It’s a committee that has actual jurisdiction over almost nothing—the Freedom of Information Act; the Administrative Procedure Act, which the Freedom of Information Act is part of; and one or two other very minute things—but it also has jurisdiction over the administrative practices and procedures of the Federal Government, which is everything. We took a very aggressive position as to the extent of our jurisdiction, and whenever we were running afoul of somebody else—

For example, in ‘69 there was a big problem with noise at Logan Airport, so we wanted to have hearings on noise at Logan Airport. It was fairly easy to turn that into an Administrative Practice issue, because it had to do with the FAA [Federal Aviation Administration] and a lot of other federal agencies. We decided we’d have to hold those hearings, but the Senator said, “I can’t hold those hearings without clearing it with the Commerce Committee,” which was then headed by Senator [Howard] Cannon of Nevada. The Senator had to go to him and persuade him that we

were not ousting him from jurisdiction over airlines and aircraft, and that we were just holding a very small hearing. That was a very localized hearing.

At the same time, we had some very broad hearings. We had a hearing on equal employment opportunity, where we had the head of the Equal Employment Opportunity Commission, Cliff Alexander, who was a holdover from the Johnson administration, and we had—I think John Volpe—the head of the new Transportation Department, talking about affirmative action on federal contracts. We had hearings on Presidential commissions, which largely involved health and medical commissions that were run by the AMA [American Medical Association] and did nothing.

In '69, I don't think we had hearings on the riots in that committee, but to skip ahead a little, eventually we took over the subject of the federal handling of demonstrations, so that every time there was a demonstration in the District of Columbia, we would have our own people out at the hearing. I developed a relationship with the chief of police of the District of Columbia, so that any time he was going to arrest people, he would call us first, so we could be there to watch the arrests. May Day 1970 we were there. There are some stories there.

The Senator was terrific. Whatever ideas we came up with that weren't completely off the wall, he would do. He gave us free rein on all this demonstration. We had a hearing on the federal policies on use of force in the District of Columbia. There were 23 police departments in the District of Columbia, ranging from the Government Printing Office Police to the FBI [Federal Bureau of Investigation] to the Capitol Police, just dozens of police departments, the Park Police. They all had different policies on the use of force. This was after Kent State, so we're into '70. Those are the kinds of things we did with the committee; at the same time, we were waiting for other opportunities.

Our committee was also, in a sense, the counter Judiciary Committee. That is, when something came up where Eastland was on one side and we were on the other side, the subcommittee staffs—Phil Hart had the Antitrust Subcommittee; they didn't really have the kind of staff that would work on these things. Bayh had the Constitutional Rights Subcommittee that provided resources, so we had our own sort of shadow staff for the Judiciary Committee, and he used the committee that way. Hart, Bayh, and Kennedy operated as a triumvirate, as the Democratic side of the Eastland Judiciary Committee.

**Heininger:** What was the attraction for Kennedy, for taking this subcommittee? Was it knowing that it had this huge responsibility that could be broadened to cover lots of things?

**Flug:** Probably. At the time, it may have been the only one open.

**Heininger:** Or was it the only one open? OK.

**Flug:** Thinking about it, at that time, Ervin was head of the Constitutional Rights Subcommittee, and Dodd was head of the Juvenile Delinquency Subcommittee. Probably McClellan was head of the Criminal Laws Subcommittee.

**Heininger:** So Long's may have been the only one open.

**Flug:** That might have been the only one open, or if there was another one open, it didn't seem as desirable. Also, we considered it a wildcard: it would enable us to do a lot of different things, and we did them. By the time I see you next, I will try to go back into my own recollection.

**Young:** Was he personally fully connected at that time? Was his grieving over?

**Flug:** Yes. By January of '69, he was ready to get involved. I'll be interested to see what the chronology of our hearings was, but I think the equal employment hearing was in February of '69, because I remember Cliff Alexander was still the holdover head of the commission; he couldn't have been there much longer than that.

**Heininger:** Who else did you have staffing the committee besides you?

**Flug:** I had two other lawyers. The first one I hired was a guy named Tom Susman, who remained after I left, and then the next one I hired didn't last very long. He's teaching with me at Georgetown now. The next one I hired is now Nancy Pelosi's senior counsel, and then—

**Heininger:** You hired Joe Onek.

**Flug:** Yes.

**Heininger:** Oh, my.

**Flug:** Do you know Joe?

**Heininger:** It's an interesting constellation of people at this point. You were really stacking the committee with heavy hitters.

**Flug:** We had some very good people.

**Young:** Jan [Heininger] was on Senator [Robert] Byrd's staff for a while.

**Heininger:** Six years.

**Flug:** Which years?

**Heininger:** Eighty-five to '93.

**Flug:** So the fence was already up in the back of the Senate floor when you got there?

**Heininger:** Yes.

**Flug:** I'm responsible for the fence.

**Young:** What are you talking about?

**Flug:** There are couches in the back corner of the Senate, where the staff is, and there used to be just couches. Now there is a fence around the couches, and there are women who sit there on behalf of the Sergeant at Arms; maybe they're doorkeepers, but anyway, they enforce, strictly,

the rules: You don't go up to the fence. You don't stand up. It's very rigorously policed now. That was because after the [George Harrold] Carswell victory, there was a demonstration on the floor by the staff. We went crazy, and Senator Byrd was not happy about it. He was probably Whip then, and he was not happy. The first chance he got when he became the leader, he put that fence up. They also had a rule for a while that you needed unanimous consent to get any staffer on the floor.

**Heininger:** That still was in effect when I got there, except that, because I worked for Byrd, when he was both minority and then majority leader, and then President Pro Tempore and chairman of Appropriations, I was on the floor almost all the time, because we were the exception. His staff members were the exceptions. We could wander in and out, but it was very difficult for other staff to get onto the floor.

**Flug:** Right. You had to get individual, unanimous consent. That turns out to have been something that was my most notorious and honorific—in the story I tell.

**Young:** That was your other eye patch?

**Flug:** No. This was Watergate. I am in the Watergate tapes because of that rule. John Dean and Richard Nixon were sitting in the White House, in March of '73 I think, when the Ervin Committee was being authorized on the floor. Dean said, "You know, this Ervin Committee is all a front for Ted Kennedy." Nixon said, "How do you know that?" Dean said, "Well, I went and I pulled out the *Congressional Record*. They have to get unanimous consent for the staff to go on the floor, and the only staff member who was on the floor during the resolution to approve the Ervin Committee was Kennedy's guy Flug." Then they went into a riff on how Kennedy was responsible for all the bad things that were happening. There's a whole separate discussion there. Did we have that discussion before?

**Young:** No.

**Flug:** John Dean has a theory about the Watergate thing that involves Kennedy, and that ties the [Richard] Kleindienst hearings to the break-in, and then the craziness afterward.

**Heininger:** We have a whole interview on that.

**Young:** That's not on the record yet, you see.

**Flug:** We started in seriously in '69. We had a bunch of hearings. We probably had at least one or two hearings a month during early '69. We had a list of things we wanted to do.

**Heininger:** Kennedy's staff, with Long, had a reputation for being assertive go-getters, coming up with many ideas, being able to implement them, etc. Is this one of the places where that reputation begins?

**Flug:** Some of those hearings were prosaic, but were important. For example, Logan Airport noise is a big issue around Logan Airport, so that was an important hearing to him. We probably had that hearing more like in 1970, which, of course, was an election year. We had the FAA, the airlines, the engine manufacturers, the Massachusetts Port Authority, the pilots union, all sitting

at one table. “Why is there so much goddamn noise to all these homes around Logan Airport?” They were all pointing the finger at each other, and we found out things that nobody knew before.

The end of the runway at Logan Airport is displaced by 1,000 feet. You don’t use the last 1,000 feet. We discovered that when we looked at a map of the airport, and we said, “Why don’t you use the last 1,000 feet?” They said, “Because there are ships passing in the harbor.” “How often do those ships pass?” “Oh, sometimes once a day.” I said, “You mean you close that down 24 hours a day because once a day there’s a ship passing there? We don’t have radar? We don’t have radios? We can post a guy out on the end of the runway to see if there’s a ship.” It was that kind of hearing. It was a fun hearing, and they promised to make all sorts of changes. The last time I was in Boston, I looked to see. I think the 1,000-foot displaced threshold is still there.

Some of the hearings were local; some of them were national, but not very exciting. They were to make a point, like on the fact that the AMA was interfering with progress in the health field. Every time there would be a Presidential commission in the health field, the AMA would take it over, and either produce nothing or shelve it.

In the winter of ‘70, we went out and did one of his favorite things—one of Bobby’s favorite things that he picked up—American Indians. We can do that one when we get to 1970, but we went out in a government plane and did three hearings a day at three different Indian reservations, for three days.

### **Young:** Schools?

**Flug:** We did it combined in the Indian Education Subcommittee and the Administrative Practice Subcommittee, and had a barnstorming trip. We’d hold these hearings—It was the most moving thing you’ve ever seen. Wherever he showed up, everybody in the tribe would be out there at the meeting house. They’d tell about all the terrible things that were happening to them, and the ways that the government was continuing to beat down on them and not fulfill those responsibilities. Some of the hearings were carrying on Bobby’s legacy on some of these issues, until we got to the Kleindienst hearings, which were in ‘72, which is jumping ahead.

The first part of ‘69, we used the committee pretty thoroughly. I don’t think we did too much earth shaking. We held some actual Administrative Practice hearings. We might even have had a hearing on the Freedom of Information Act, but then came June of 1969.

I had driven up to my parents’ house in Connecticut for the weekend of the moonwalk. I was sitting in my backyard on that Saturday afternoon. The phone rang, and it was Dick Drayne. He said, “The Senator’s been in an accident and you should get up to Boston right away.” I hopped in my car and drove up to Boston. I spent all day Sunday in a law office, reviewing the Massachusetts law on automobile accidents. I came to the conclusion, from what I knew of the facts, that he had done what Massachusetts law required; that is, when he was able, he had secured help and gotten somebody to go to the scene of the accident, and that, having done that, he fulfilled his legal responsibilities. That was not the position that was ultimately taken, because he, as I recall it, pleaded to leaving the scene. Technically, I thought under the Massachusetts

case, technically he hadn't left the scene. He had left the scene and gotten somebody back to the scene.

That's all I had to do with it. I did not go down to the Cape. In fact, I was due at a wedding Sunday night in Easthampton. I missed my plane to Easthampton, so I walked around to the terminal at the airport where the private planes were, and got some pilot to fly me from Boston to Easthampton. He had never flown to Easthampton before, so he took a roadmap of Long Island with him [*laughter*] and was swooping down, trying to find the Easthampton airport, and flew back that night.

As I got off in Boston, there were pictures of the moonwalk. Maybe I invented this memory, but as I recall it, there were pictures of the moonwalk interspersed with pictures of Chappaquiddick.

**Young:** Yes, that's true.

**Flug:** Then I drove back to Connecticut, I guess.

**Heininger:** Were you, at that point, considered his most senior lawyer on the staff?

**Flug:** Yes. I had the dual position, as I did when I came back, of being chief counsel of his subcommittee. It was different then, because we were in the majority. You didn't need to be any more than you were as the chief counsel of the subcommittee. When I came back, I was chief minority counsel of the subcommittee and his chief counsel, but there really was no difference in those days. Whoever was the chief counsel of the Judiciary Subcommittee was his chief counsel.

I remember a picture in *Time* magazine, sometime late summer, maybe even September, where he came back for an AdPrac [Administrative Practice and Procedure Subcommittee] hearing, and there was a picture of me and Tommy Susman behind him. I forget what the subject of that hearing was, but that would be interesting to know. There was a time when he came back and we had a hearing.

**Young:** He made his first public speech—The one immediately after Chappaquiddick was about staying in the public—He wasn't going to resign, or something like that.

**Flug:** Oh, yes, but he didn't come back right away.

**Young:** He must have been very concerned about what would be thought of him when he came back, given all the rumors and all the stuff at this point.

**Flug:** By the time he came back, he had clearly decided to stay, and was demonstrating that by chairing a hearing. I know I have that *Time* magazine article somewhere; I'll see what they said the hearing was about, but I remember the picture.

**Young:** He was welcomed back? He was by Mansfield anyway.

**Flug:** I think so.

**Young:** There's something in one of the books, that as soon as he came on the floor, Mansfield said, "You belong here."

**Flug:** Such a gentleman, such a friend—I think somewhat of a father figure to him. Charlie [Ferris] was also a tremendous help to him, because Charlie ran the floor. Charlie was long gone when you got there. Charlie was a Bostonian, so we were all very close to Charlie.

**Heininger:** But you had also had two years in a row in which he was absent from the Senate: from the middle of March, when Bobby announced his campaign, through much of '68, after Bobby's death; and then in '69, from June until the fall.

**Flug:** As I say, we kept him informed of what was going on. It would be interesting for some researcher to see how many times he had live pairs on the votes when he wasn't there. Obviously we didn't have any hearings when he wasn't there, but we were preparing for hearings. We had a whole list, a backlog, of hearings that we wanted to hold, so we started planning for those hearings.

**Heininger:** Work didn't stop?

**Flug:** No.

**Heininger:** You expected him to come back in '69?

**Flug:** We hoped he was coming back, and after that speech, we expected him to come back.

**Young:** I'm going to have to leave at this point.

**Flug:** OK.