



EDWARD M. KENNEDY ORAL HISTORY PROJECT

Interviewer's Briefing Materials **Tom Susman Interview, 05/23/2007**

Robert A. Martin, Research Director

Miller Center Documents¹

- Tom Susman Fact Sheet.
- Nixon Impeachment Timeline.
- Indian Education Overview Memo.
- Omnibus Judgeship Act of 1978 Overview Memo.
- EMK Chairmanship of the Judiciary Committee 1979-1981 Overview Memo.

Secondary Source Materials

- Tom Susman bio, Ropes & Gray.
- Tom Susman bio. <http://www.jamesmadisonproject.org/thomassusman.html>.
- *1969 Congressional Staff Directory* (Mount Vernon, VA: Congressional Staff Directory, 1970) p. 131.
- "Freedom of Information Veto Overridden," *1974 Congressional Quarterly Almanac* (Washington, D.C.: Congressional Quarterly, Inc., 1975) pp. 648-654.

Oral History Interviews

- Burt Wides interview, Kennedy Oral History Project, Miller Center, University of Virginia, 02/02/2007.

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EMK CIVIL RIGHTS STAFFER FACT SHEETS

Prepared by Rob Martin

Miller Center, University of Virginia, 03/05/2007

Tom Susman (1969-1980)

Positions w/ EMK:

- Chief counsel to the Senate Subcommittee on Administrative Practice & Procedure (joined in 1969 as asst. counsel and b/c chief counsel when Flug left the Hill)
- General counsel to the Antitrust Subcommittee (joined when EMK took chair in 01/77)
- General counsel to the Senate Judiciary Committee (when EMK b/c Judiciary Chairman from January 1979 thru end of 1980)
- Served as acting LD in 1980 when Carey Parker left to work full-time on EMK campaign

Issues that Susman worked on for EMK:

- 1974 Freedom of Information Act amendments
- Judicial selection
- There are also references to hearings Susman did with EMK on Native American Indians (possibly referencing the 1970 and 1971 legislation listed below; EMK also traveled to Alaska to visit Eskimo villages during Susman's first year with EMK)

Possible Adprac Issues:

- Early Watergate investigation with Adprac?

Issues that came up during his time w/ EMK:

- 1969 Philadelphia plan
- 1969 Haynsworth nomination
- 1970 Carswell nomination
- 1970 VRA extension (18-year old minimum voting age)
- 1970 Indian education bill/1971 Indian Education Act
- 1970 Mental Retardation & Developmental Disabilities Act
- 1971 Rehnquist nomination
- 1972 ERA
- Title IX of 1972 Education Amendments
- 1970s anti-busing legislation
- 1973 Rehabilitation Act
- 1975 VRA extension (language minorities)
- 1975 Older Americans Act extension/Age Discrimination Act
- 1978 Civil Rights Commission is extended for five years
- 1979 EMK takes chairmanship of the Judiciary Committee
- 1980 Stephen Breyer Circuit Court Nomination
- 1980 Protection of Rights of Institutionalized Americans
- 1980 Mental Health Systems Act
- 1980 Fair Housing bill

NIXON IMPEACHMENT TIMELINE

Prepared by Mark D. Nevin and Rob Martin

Miller Center, University of Virginia, 05/03/2006

1950s Edward M. Kennedy (EMK) first meets then-Vice President Richard M. Nixon at the Capitol while visiting his brother, Senator John F. Kennedy. Nixon invites EMK into his Senate office for a talk. (Theo Lippman, Jr., *Senator Ted Kennedy*, New York: W.W. Norton & Co., 1976, p. 199)

1969

January Nixon is sworn in as the nation's 37th president.

EMK becomes chairman of the Judiciary's Subcommittee on Administrative Practice and Procedure (Ad Prac).

EMK is elected Senate Majority Whip. The press begins to treat EMK as the presumptive Democratic presidential candidate for 1972. (Adam Clymer, *Edward M. Kennedy: A Biography*, New York: William Morrow & Co., 1999, pp. 132-33)

May EMK criticizes Nixon's Vietnam policy. In a Senate speech, he denounces the deadly fighting over "Hamburger Hill" as "senseless and irresponsible... madness." (Lippman, Jr., p. 65)

July In the aftermath of Chappaquiddick, Nixon instructs White House aide John Ehrlichman to send someone to Massachusetts to "make sure [Kennedy] doesn't get away with it." This is the first of numerous attempts the Nixon Administration makes to obtain more information about EMK's private life. (Clymer, p. 149; H.R. Haldeman, *The Haldeman Diaries*, New York: G.P. Putnam, 1994, 07/19/1969; Keith Olson, *Watergate: The Presidential Scandal That Shook America*, Lawrence, Kansas: University Press of Kansas, 2003, p. 13)

November The Senate votes 55-45 to reject Nixon's nominee to the Supreme Court, Clement Haynsworth. EMK plays a "central, even decisive role" in the action. (Clymer, p. 160)

1971

April The Senate votes 51-45 to reject Nixon's Supreme Court nominee G. Harrold Carswell. Again, EMK is said to have played a "central, even decisive role" in the action. (Clymer, pp. 163, 160)

Nixon secretly orders Deputy Attorney General Richard Kleindienst to drop the Justice Department's plans to appeal an unfavorable ruling in its antitrust lawsuit against against ITT (International Telephone & Telegraph).

Summer Nixon wants to increase surveillance on possible Democratic presidential nominees in 1972 and asks for “permanent tails and coverage on Kennedy and other Democrats.” (*Watergate: Chronology of a Crisis*, Washington, D.C.: Congressional Quarterly, Inc., 1975, p. 384; Clymer, p. 178)

The Justice Department decides not to appeal the ITT ruling. (*Watergate: Chronology of a Crisis*, p. 384)

1972

March-May EMK reportedly plays a lead role in Kleindienst’s confirmation hearings for Attorney General. The former Attorney General, John Mitchell, had recently resigned to move to the Committee to Re-elect the President. EMK questions Kleindienst and other witnesses about whether the White House had instructed him as deputy attorney general not to appeal the ITT ruling after the company allegedly pledged \$400,000 for the 1972 Republican National Convention. (Clymer, p. 191; *Watergate: Chronology of a Crisis*, p. 384; Lippman, Jr., 201-202)

June The Senate confirms Kleindienst 64-19 as Attorney General on the 8th. EMK had fought strongly against the nomination.

On the 17th, four men are arrested with bugging equipment, cameras, and \$2,300 in cash inside the Democratic National Committee’s headquarters in the Watergate office building. (Michael A. Genovese, *The Watergate Crisis*, Westport, CT: Greenwood Press, 1999, p. xxii)

EMK, as chairman of Ad Prac, begins an informal investigation of the Watergate break-in. EMK has to proceed slowly because of legal, political and Senate jurisdictional issues involved.

Summer EMK resists pressure from George McGovern supporters to conduct formal hearings on Watergate. Because Watergate is not yet on the public radar, EMK is reportedly concerned that his participation in a Watergate investigation would appear politically-motivated and be written off as election year politics. It could also look like EMK was misusing his subcommittee for partisan purposes. (Theo Lippman, *Senator Ted Kennedy*, p. 203)

EMK’s brother-in-law, Sargent Shriver, is named as McGovern’s running mate in the 1972 presidential election.

Fall *The Washington Post* and *The New York Times* begin reporting the existence of a White House “dirty tricks” campaign, linking the Watergate break-in to the alleged involvement of Nixon’s Chief of Staff H.R. Haldeman, Mitchell, and other Nixon aides. (*The Washington Post*, 10/10/1972; Lippman, Jr., p. 204)

- September* The Watergate grand jury only brings in narrow indictments against the individuals personally involved in the break-in. DOJ shows no interest in investigating possible ties to the White House. (Lippmann, p. 204)
- October* EMK, as chairman of Ad Prac, begins a formal investigation of the Watergate break-in after Representative Wright Patman (D-TX) fails to get subpoena authority for his House Banking Committee investigation on the 3rd and Senator Samuel Ervin (D-NC) decides not to conduct the investigation in his Constitutional Rights Subcommittee. Ervin instead urges EMK on the 10th to open his own investigation. Patman's efforts had reportedly been blocked by the Nixon White House by pressuring committee Republicans and vulnerable Democrats. EMK directs his Ad Prac investigation to focus on the White House "dirty tricks" campaign reported in the press and ignore the criminal investigation of the break-in which is pending. (*The Washington Post*, 10/10/1972; Lippman, Jr., p. 204; Clymer, pp. 192-193)
- November* Nixon defeats McGovern in the presidential election.
- After discussing with EMK less politically-charged alternatives to his Ad Prac investigation, Senator Mike Mansfield (D-MT) writes letters to Senators James Eastland (D-MS) and Ervin suggesting that one of them take over the Watergate investigation. According to Clymer, Mansfield wanted to find a prominent Democrat with no presidential aspirations to lead the investigation. Both Ervin and Eastland also reportedly have more conservative reputations than EMK. (Clymer, p. 194)
- December* Mansfield decides that a Select Committee should be specifically created to take control of the Watergate investigation.
- 1973**
- January* Ad Prac releases a public report of its Watergate investigation on the 23rd in preparation for the transfer of the investigation to a new body.
- February* The Senate votes 70 to 0 to create the Senate Select Committee on Presidential Campaign Activities (the Watergate Committee) to investigate the Watergate break-in and cover up, campaign espionage and sabotage, and campaign financing. Ervin is chosen to chair the committee. Ad Prac ends its investigation and turns over its materials to the Watergate Committee. EMK and his staffers provide the Watergate Committee "with a great deal of assistance." (Genovese, p. xxiv; *Watergate: Chronology of a Crisis*, p. xxii; Lippman, Jr., p. 206)
- March/April* During his unsuccessful confirmation hearings, acting FBI Director L. Patrick Gray III admits under EMK's questioning that an FBI investigation had shown that Nixon White House officials had financed the Watergate break-in with

campaign funds. Convicted Watergate burglar James McCord reveals that he was pressured not to reveal the names of others involved in the break-in. (Lippman, Jr., pp. 207-208; *Watergate: Chronology of a Crisis*, pp. xxi-xxii)

- April* On the 30th, Haldeman, Ehrlichman and Kleindienst resign and White House Counsel John Dean is fired. Nixon announces that he will nominate Elliot Richardson to replace Kleindienst as Attorney General and that a special prosecutor will be appointed to investigate Watergate.
- May* EMK helps draft legislation creating a special prosecutor to investigate the Watergate affair. Archibald Cox, President Kennedy's former solicitor general, is appointed special prosecutor. EMK reportedly played an important behind-the-scenes role in Cox's selection and the writing of Cox's mandate, convincing Richardson that the Senate would not confirm him as Attorney General unless he agreed to select a strong, independent prosecutor. EMK had also advised two of Richardson's earlier candidates, U.S. District Judge Harold Tyler and Warren Christopher, a former Deputy Attorney General in the Johnson Administration, to decline Richardson's offer unless Richardson agreed to strengthen the powers of the special prosecutor position. Both Richardson and Cox are confirmed and sworn-in on the 15th. (Clymer, pp. 200-201; Richard Nixon, *RN: The Memoirs of Richard Nixon*, New York: Simon and Schuster, Inc., 1990, p. 910)
- June* Dean testifies before Ervin's Watergate Committee that Nixon was involved in the cover-up.
- July* A White House aide reveals the existence of a White House tape recording system to the Watergate Committee. Nixon refuses to hand over the tapes to Cox because it would jeopardize the "independence of the three branches of government." (Genovese, p. xxv) Nixon also declines to turn the tapes over to the Watergate Committee.
- September* EMK makes a speech on the Senate floor demanding that Nixon obey a court order to make available the White House tapes or face possible impeachment. He says, "If Nixon defied a Supreme Court order to turn over the tapes, a responsible Congress would be left with no recourse but to exercise its power of impeachment." (Keith Olson, *Watergate: The Presidential Scandal That Shook America*, Lawrence, Kansas: University Press of Kansas, 2003, p. 112)
- Fall* The White House discloses that there is a 18^{1/2} minute gap in the tape of a June 20, 1972 meeting between Nixon and Haldeman. EMK persuades other senators to begin preparing for a trial in the event Nixon is impeached. (Genovese p. xxvi; Lippman, Jr., p. 212)
- October* Vice President Spiro T. Agnew pleads no contest to tax evasion and resigns from office on the 10th. Nixon nominates Representative Gerald R. Ford (R-MI) as Vice President on the 12th. EMK unsuccessfully argues that Ford's confirmation

hearings should be held in the Senate Judiciary Committee, where they are held in the House. They are instead held in Rules. (*Watergate: Chronology of a Crisis*, p. xxii; Genovese, xxv)

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

Nixon orders Cox on the 19th to accept a White House proposal in which Senator John Stennis (D-MS) would listen to the tapes (once) and prepare his own summaries. Cox, who had already declined this proposal once before, declines it again. (Clymer, pp. 200-201)

In what later comes to be known as the "Saturday Night Massacre," Nixon fires Cox on the 20th, abolishes the special prosecutor's office, and accepts the resignations of Richardson and Deputy AG William Ruckelshaus, who each in turn refuse to follow Nixon's orders to fire Cox. EMK publicly criticizes Nixon and calls for hearings in the Judiciary Committee. The House Judiciary Committee starts consideration of possible impeachment procedures. (Genovese, pp. xxv-xxvi)

After EMK attends a series of meetings to discuss possible responses to the Saturday Night Massacre, it is announced on the 29th that the Judiciary Committee will hold hearings and that Cox will be the opening witness. The possibility of a censure resolution had also been discussed. Richardson is also called to testify in the hearings.

November EMK meets with Senator William Saxbe (R-OH), Nixon's soon-to-be-named-nominee for Attorney General, on the 1st, to discuss the powers that should be given to the next special prosecutor. Nixon announces that same day that Leon Jaworski will be the new special prosecutor, who is reportedly given powers similar to Cox.

December Ford is sworn in as Vice President after he is confirmed by the House and the Senate. (*Watergate: Chronology of a Crisis*, p. xxiii)

1974

January A panel of technical experts determines that the 18^{1/2} minute gap in the Nixon-Haldeman tape is the result of manual erasures. (Genovese, p. xxvi)

Saxbe becomes Attorney General on the 4th.

February The House votes 410 to 4 to give the Judiciary Committee the authority to "investigate fully and completely whether sufficient grounds exist" to impeach Nixon. (Genovese, p. xxv)

- March* EMK attends the hearings of Dita Beard, an ITT lobbyist.
- Several key former Nixon Administration and campaign officials are indicted for their alleged roles in Watergate and/or other crimes. (Genovese, p. xxvi)
- May* The House Judiciary Committee begins formal hearings on the possible impeachment of Nixon. (Genovese, xxvii)
- July* The Supreme Court rules 8-0 on the 24th that Nixon must hand over subpoenaed tapes of Watergate discussions to prosecutors. The House Judiciary Committee adopts three articles of impeachment against Nixon – obstruction of justice, contempt of Congress, and abuse of presidential powers. (Genovese, pp. xxvii; *Watergate: Chronology of a Crisis*, p. xxvi)
- August* On the 5th, the White House releases tapes which show that Nixon personally ordered a cover up of the Watergate break-in only days after it had occurred. This revelation contradicts Nixon's earlier denials of involvement. (Genovese, pp. xxviii-xxix)
- On the 9th, Nixon resigns from office and Ford is sworn in as the 38th president. (Genovese, pp. xxviii-xxix)
- September* Ford grants Nixon a "full, free, and absolute pardon" for any crimes he may have committed as president. EMK gives a speech criticizing Ford's pardon of Nixon, calling it "the culmination of the Watergate cover up." (Genovese, p. xxix; Clymer, p. 225)

INDIAN EDUCATION

Prepared by Anne Mariel Peters

Miller Center, University of Virginia, 02/25/2006

After the assassination of RFK, an early champion of Indian education issues in the Senate, EMK assumed RFK's chairmanship of the Labor and Public Welfare Committee's Special Subcommittee on Indian Education to oversee the completion of a comprehensive study of Indian education issues. By the time EMK became Chairman in January 1969, the committee had already compiled some 2500 pages of testimony from nationwide hearings on educational opportunities for 150,000 Indian children on and off federal reservations.

As hearings continued during the spring of 1969, disagreement emerged over the proper role of the federal Board of Indian Affairs (BIA), which directly managed Indian schools funded by the federal government. Critics such as Ralph Nader, Senator Barry Goldwater (R-AZ), Mondale, and EMK expressed concern that Indian populations did not have enough input into their educational system, and suggested that BIA authority should be devolved to Indian school boards. The BIA fired back, claiming that most tribes did not want Indian school boards, fearing that they were unprepared for the responsibility. The hearings culminated in a well-publicized congressional fact-finding mission to poor Alaskan Eskimo villages in April 1969. The bipartisan mission was led by EMK, who was accompanied by Senators Harold Hughes (D-IA), Henry Bellmon (R-OK), George Murphy (R-CA), William Saxbe (R-OH), Ted Stevens (R-AK), and Mondale, as well as Rep. Howard Pollock (R-AK), staff assistants, and members of the press. One day into the mission, Murphy, Bellmon, and Saxbe refused to continue, claiming that the visit was an orchestrated political junket. During the visit, Eskimo leaders told the delegation that the BIA was doing an inadequate, unimaginative job managing native schools, and made repeated requests that the BIA hire and train bilingual teachers and build regional high schools so that children would not have to travel hundreds of miles from home to go beyond the 8th grade.

In November 1969, the Subcommittee on Indian Education released its report, which was dedicated to RFK, and sixty recommendations. At the press conference, EMK was flanked by Senator Peter Dominick (R-CO) and Mondale. However, because the BIA was not within its jurisdiction, the Labor and Public Welfare Committee did not report legislation incorporating these recommendations. Rather, in May 1970, the Interior and Insular Affairs Committee reported a resolution that would have:

- Allowed the Department of the Interior to contract with state and local education agencies to build or acquire classrooms and other facilities near Indian reservations.
- Specified equal standards of education for Indian and non-Indian students.
- Encouraged boarding schools to be eliminated from the Indian education program at the earliest possible date.

The bill was opposed by the Nixon administration, but it was passed by voice vote. The House took no action on the bill in 1970.

In February 1971, EMK, Mondale, and thirteen other senators introduced the “Indian Education Amendment,” and in August, the Labor and Public Welfare Committee attached similar Indian education provisions to an expansive aid-to-education bill. These included:

- Incentives for Indian participation in planning that employed federal funds.
- An amendment to the Elementary and Secondary Education Act (ESEA) to provide funds. improving educational opportunities for Indian children.
- The establishment of a Bureau of Indian Education within the Office of Education to take over administration of Indian education programs from the BIA.

The aid-to-education bill was unanimously approved by the Senate under the condition that the Indian education provisions were deleted from the aid-to-education bill and reintroduced separately. The separate bill, called the Indian Education Act of 1971, was approved 57-0 in October 1971 *without* the provision establishing a Bureau of Indian Education. Some Indian groups had opposed this provision, fearing fragmentation of the BIA. Thus, the legislation primarily affected the 70% of Indian students attending public, rather than BIA, schools. Both EMK and Mondale voted for the legislation, and EMK called the bill a culmination of the work of the Special Subcommittee on Indian Education. The House did not act on the Senate bill in 1971.

OMNIBUS JUDGESHIP ACT OF 1978 - BACKGROUND

Prepared by Hilde Eliassen Restad

Miller Center, University of Virginia, 02/19/2007

Summary

Shortly after taking office in 1977, Attorney General Griffin B. Bell established a new Office for Improvements in the Administration of Justice, which generated numerous legislative proposals aimed at increasing the efficiency of the federal court system. The most far-reaching achievement was the Omnibus Judgeship Act of 1978 (hereafter OJA), creating 117 new district court positions and 35 new spots on the courts of appeal. The bill had been called for to relieve overloaded court dockets, but a Democratic Congress was waiting for a Democratic president before passing a bill that would entail such a “patronage bonanza”.

The bill included a House amendment requiring the president to issue standards and guidelines for merit selection of federal district judges. Carter’s Executive Order 11972 of February 14, 1977, which created the United States Circuit Judge Nominating Commission, had established such guidelines for the circuit courts, but did not cover district courts. The House amendment was an effort on the part of liberals and Republicans to “force Carter into a strong position on merit selection.” However, the language adopted was vague and non-binding, allowing the Carter to “waive such regulations with respect to any nomination by notifying the Senate of the reasons for such waiver.” (*1978 Congressional Quarterly Almanac*, pp. 163-164, 175)

The bill was deadlocked in conference for four months due to a Senate proposal to divide the southern Fifth Circuit into two circuits. The proposal was eventually rejected and new ambiguous language substituted, which allowed circuits with a large number of appeals judges to experiment administratively with ways of operating the courts more efficiently. The Fifth Circuit issue dominated the conference, but the most significant feature of the bill was its addition of 152 federal positions to the existing 495 judgeships. Before OJA, the federal court system was divided into eleven circuit courts with 97 judges and 94 district courts with 398 judges.

Timeline

1977

- May* On the 3rd, the “Omnibus Judgeship Bill” is reported by the Senate Judiciary Committee. It provides for 146 new judgeships.
- On the 24th, the Senate passes the bill (S 11) by voice vote after amending the bill to provide for two additional judgeships.
- November* Overriding the plans of its Chairman, the House Judiciary Committee orders reported a bill (HR 7843) on the 30th recommending the creation of 145 new judgeships. Chairman Peter W. Rodino (D-NJ) wanted to limit the number to 115. House action is held over until 1978.

1978

- February* On the 7th, the House passes HR 7843 by a vote of 319-80.
- April* On the 11th, the eight Senate and House conferees begin meeting. They agree to create 117 new district judgeships and 35 new appeals court positions. The Senators convince the House conferees to accept a watered-down version of the House merit selection provision, an amendment sponsored by Representative John F. Seiberling (D-OH). The issue of the potential division of the Fifth Circuit bogs down the conference, however, and they do not reach an agreement until September 20th. The underlying issue of the split is civil rights. The proposed division would separate Texas and Louisiana from the rest of the Fifth Circuit (Georgia, Alabama, Mississippi, and Florida) to create a new 11th circuit, which Senate Judiciary Committee James O. Eastland (D-MS) favors. However, the fear is that the new Fifth Circuit consisting of the Deep South will not be vigilant enough in favor of civil rights. (*1978 Congressional Quarterly Almanac*, p. 176)
- May* On the 11th, Carter issues a revised executive order (12059) in order to encourage the merit panels “to make special efforts to seek out and identify well qualified women and member of minority groups as potential nominees.” The original order establishing the merit panels did not emphasize affirmative action, although the panels themselves were made up of 45 percent women and 24 percent racial minorities. (Sheldon Goldman, *Picking Federal Judges*, New Haven, CT: Yale University Press, 1997, p. 239)
- September* On the 19th, Attorney General Griffin B. Bell irons out a compromise acceptable to both Chairman of the House Judiciary Committee Rodino and Chairman of the Senate Judiciary Committee Eastland. The compromise, consisting of two parts, states: 1) “Any court of appeals having more than fifteen active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of U.S. Courts” and 2) “may perform its *en banc* function by such number of members of its *en banc* courts as may be prescribed by the rule of the court of appeals.” (*1978 Congressional Quarterly Almanac*, p. 176)
- October* On the 4th, the House votes in favor of the compromise by a vote of 292-112.
- On the 7th, the Senate votes in favor of the compromise by a vote of 67-15. EMK votes in favor.
- Carter White House Counsel Robert J. Lipschutz and Bell begin drafting guidelines for the selection of judges created by the OJA. Lipschutz and Bell disagree on several issues. For instance, Bell wants Carter to sign the executive order on selection guidelines immediately, whereas Lipschutz wants key senators, particularly EMK, as the incoming Chairman of the Judiciary Committee, to review the draft. Carter agrees with Lipschutz. EMK reviews the draft and

persuades Bell to agree to delete one paragraph because it is not sufficiently sensitive to affirmative action concerns. (Goldman, p. 248)

November

On the 8th, Carter signs the executive order. Bell devises a questionnaire for the senators or their selection commissions to complete when recommending one or more persons for a district court judgeship. Bell reports to Carter that he has tested the questionnaire on a few senators, including EMK, and that he is satisfied they have a workable system. However, most Democratic senators ignore the message from the White House on affirmative action. Carter writes each Democratic senator urging that they recruit women and minorities. (Goldman, pp. 248-49) After the EO is signed, several newspapers report that senators had sent in their lists of preferred candidates before the merit standards were set. Senator Lloyd Bentsen (D-TX), for instance, is quoted as saying, "I am the merit commission for Texas." EMK as well is reported as sending in his list before the standard has been set, although he did utilize a "voluntary commission" to pick the 15 finalists. (*The Washington Post*, 11/09/1978)

OJA creates a new position on the First Circuit that is speculated to go to Massachusetts, the largest state in the circuit and EMK's home state. Later in the month, *The New York Times* reports that EMK's choice for the new circuit judgeship is expected to be former Watergate prosecutor Archibald Cox. However, due to Cox's age (he is sixty-seven) he would receive a "non-qualified" rating from the American Bar Association. The Judicial Selection Commission panel for the First Circuit unanimously supports him, however, and EMK openly pushes for his nomination. Carter resists, and the seat remains unfilled for two years because of the deadlock. That EMK challenges Carter for the Democratic presidential nomination in early 1980s further complicates the matter. (Goldman, p. 261)

December

On the 8th, *The New York Times* reports that Senator Harry Byrd (I-VA) and the Carter administration are fighting over the fact that Byrd's two commissions have nominated nine white males to the four judgeships positions created by OJA. Carter is reported as saying he will use all his influence to have the Senator's list expand to include women and minority nominees. (*The New York Times*, 12/08/1978)

1979

January

When EMK becomes Chairman of the Senate Judiciary Committee, the Senate judicial confirmation process changes significantly. EMK makes it clear that senators who withhold the "blue slips" of persons nominated from their states can no longer rely on the Chairman to kill those nominations. Every nomination will be discussed by the full committee, and the committee will determine whether or not to proceed with the nomination by holding a hearing. This will give the administration a little more leeway on its dealings with obstinate senators and modifies the tradition of senatorial courtesy afforded the senator from the

nominee's home state. EMK also quietly informs the Carter administration that he will support an administrative effort to circumvent Senator Harry Byrd's commission, which has nominated nine white males to four Virginia judgeships. Other innovations implemented by EMK include adopting a questionnaire that all nominees have to complete, and, with the exception of a limited number of questions, are publicly available. Furthermore, the Committee begins to publish its nomination hearings, and EMK establishes the Committee's own investigatory staff to examine the nominee's backgrounds independent of the Justice Department. (Goldman, p. 263)

June On the 3rd, *The New York Times* reports on the stalemate between EMK and the Carter administration regarding the candidacy of Archibald Cox to a newly created position on the United States Court of Appeals for the First Circuit. Both EMK and Carter's merit commission support his nomination, whereas Attorney General Griffin Bell does not, arguing Cox is too old (he is 67, three years above the guidelines from the American Bar Association). According to *The New York Times*, part of the problem is the fact that EMK announced his support for Cox before the merit commission had convened. Furthermore, the Justice Department is displeased with the procedure utilized by the commission. It recommended Cox along with four other names without Cox's legal reputation, as opposed to forwarding the list of five names to the Department of Justice and the White House for a final decision as it was supposed to. (*The New York Times*, 06/03/1979)

1980 Once Carter wins re-nomination, he begins negotiations with EMK to obtain his support in the general campaign. One of EMK's conditions, which Carter agrees to, is that the First Circuit seat be filled by the Chief Counsel to the Judiciary Committee, Stephen G. Breyer. EMK wins support for Breyer's nomination from the ranking Republican on the Judiciary Committee, Strom Thurmond (R-SC) and Breyer is confirmed. However, seeing as both Cox and Breyer were EMK's choices before the merit selection commission even met, it appears as if the commission has become merely window dressing. (Goldman, p. 261)

EMK CHAIRMANSHIP OF THE JUDICIARY COMMITTEE 1979-1981

Prepared by Hilde Eliassen Restad

Miller Center, University of Virginia, 01/23/07

1978

March Senator James O. Eastland (D-MS), Chairman of the Senate Judiciary Committee, announces his retirement, making Edward Moore Kennedy (EMK) the next Chairman if the Democratic Party wins a majority in the midterm elections.

November On the 8th, *The Washington Post*, in a story on the retiring members of Congress, writes that with Eastland's retirement and EMK's takeover of the Judiciary Committee the days when civil rights bills were bottled up in the committee will fade into memory. (*The Washington Post*, 11/08/1978)

1979

January *The Washington Post* reports on the 1st that as the incoming Chairman of the Senate Judiciary Committee EMK will bring a "trio of his aides" to run the Committee staff. David Boise will become Chief Counsel and Staff Director; Edward Merlis will serve as Deputy Staff Director. (*The Washington Post*, 01/01/1979)

On the 25th, *The Washington Post* reports on the new Chairman of the Judiciary Committee, commenting on his ambitious legislative agenda for the new congressional session as well as his young age (46 years old). According to the article, EMK plans to act on legislation to deregulate the trucking industry, rewrite the federal criminal code, provide a new charter for the FBI, revamp the Law Enforcement Assistance Administration, revise antitrust laws, give consumers the right to file antitrust cases, set new standards for permissible mergers and takeovers, revise immigration and refugee laws, reform the federal courts, and more. EMK also states he will hold the Carter administration to its pledge to appoint 152 new federal judges according to merit, paying special attention to women and minorities. As opposed to Eastland's committee, the Judiciary Committee under EMK is expected to be more overtly liberal. According to *The Washington Post*, EMK and "his allies" succeeded in convincing the Senate's Democratic Steering Committee in putting three Democrats sympathetic to EMK on the committee – Max Baucus (D-MT), Howell Heflin (D-AL), and Patrick J. Leahy (D-VT) – supplanting the previous southern Democrats. This means that EMK's original plan of abolishing all but four of the ten original subcommittees must be abandoned, as Baucus and Heflin both will be given their own subcommittee. Leahy reportedly does not want one. EMK is rattling both Republicans and the Carter administration, Republicans because of his proposal to institute formal rules and Carter because of his potential rivalry in the 1980

election. (*The Washington Post*, 01/25/1979; *1979 Congressional Quarterly Almanac*, p. 361)

On the 26th, *The Wall Street Journal* reports that the new chairman of the Judiciary Committee is ending the “blue slip” system where senators from the state of the nominee can effectively stop the nomination by withholding the blue evaluation slip from the Judiciary Committee. (*The Wall Street Journal*, 01/26/1979)

- Spring* President Carter and EMK clash over the vacancy on the First Circuit Court of Appeals. EMK as well as Carter’s eleven member merit commission support the nomination of former Watergate prosecutor Archibald Cox, whereas Attorney General Griffin Bell argues he is too old. EMK accuses Carter of rejecting Cox simply because Cox had supported Representative Morris K. Udall (D-AZ) in the 1976 Democratic presidential race and that the President is using the age limit as an excuse. According to Adam Clymer, the relationship between the Carter and EMK staffs is icy and worn out with suspicion. (Adam Clymer, *Edward M. Kennedy*, New York: William Morrow and Company, Inc., 1999, p. 281)
- July* On the 26th, after cooperating with the Carter administration and the House Judiciary Committee, the Senate Judiciary Committee reports S 643 – the Refugee and Immigration Amendments Act - out of committee. This act triples the number of refugees allowed into the United States and would replace the Indo-Chinese Refugee Act as well as a number of temporary refugee assistance programs. (*1979 Congressional Quarterly Almanac*, p. 392)
- September* On the 6th, the Refugee and Immigration Act Amendments passes 85-0, with EMK as the chief sponsor of the bill. EMK characterizes existing refugee laws as “inadequate, discriminatory and totally out of touch with today’s needs.” Under existing laws, refugees are “admitted in fits and starts, and after long delays and great human suffering.” With the House passing a different version of the bill, a conference is expected to take part in the next session of Congress. (*1979 Congressional Quarterly Almanac*, p. 392)
- November* On the 7th, EMK announces his bid for the Democratic presidential nomination.
- December* On the 13th, Congress clears and sends to the President compromise legislation to restructure the “embattled” Law Enforcement Assistance Administration (LEAA). President Carter signs the legislation on the 27th. Under the restructuring plan, a new office of Justice Assistance, Research and Statistics (OJARS) is established to set broad program policies jointly with LEAA officials. The Attorney General will resolve any disputes between the two agencies. (*1979 Congressional Quarterly Almanac*, p. 370)

According to the *1979 Congressional Quarterly Almanac*, only a handful of bills from the Judiciary Committee cleared Congress in 1979 and none of them

constituted major legislation. Highlights were legislation to revamp the much-criticized Law Enforcement Assistance Administration (LEAA), a bill to expand the authority of federal magistrates to hear civil and criminal cases, and legislation to postpone for one year enforcement of strict limits for conducting federal criminal trials. (*The Washington Post*, 01/25/1979; *1979 Congressional Quarterly Almanac*, p. 361)

1980

January On the 17th, the Senate Judiciary Committee's 400-page proposal to re-write and re-codify the federal criminal code is reported to the Senate floor. It is the third major attempt since 1973 to re-write the federal criminal code and represents a compromise between EMK, ranking minority member Strom Thurmond (R-SC), as well as Senator Orrin G. Hatch (R-UT). Immediately afterwards, the Committee reports a unanimous decision to re-establish the death penalty for federal crimes such as treason, espionage, and kidnapping that result in death. EMK had agreed to consider the issue immediately after the criminal code revision. In the end however, the revision of the federal crime bill is not considered on the floor. Having been shepherded through committee by EMK, the bill is left in limbo after he decides to challenge Carter for the presidential nomination. After EMK concedes the nomination to Carter at the Democratic national convention in the summer, Congress reportedly starts concentrating on re-election rather than passing legislation. (*1979 Congressional Quarterly Almanac*, pp. 363-369; *1980 Congressional Quarterly Almanac*, pp. 371, 393)

March On the 4th, after months of staff investigation and three days of hearings regarding alleged ethical misconduct, the Judiciary Committee rejects the nomination of Charles B. Winberry, Jr., a district court judge nominee from North Carolina. This marks the first time in more than 40 years that the Senate votes down a district court nominee, who traditionally have been hand-picked by Senate colleagues. According to *The Washington Post* the event marks a change in the Senate's "rubber-stamping buddy system" of approving federal judgeships. (*The Washington Post*, 03/09/1980)

On the 17th, Carter signs the Refugee Act of 1980, the compromise version of the Refugee and Immigration Act Amendments of last year. It nearly triples the number of refugees allowed to enter the United States each year, it establishes new procedures for admitting refugees and for resettling them once they arrive in the U.S. It marks the first revamping of refugee and immigration laws since 1965. (*1980 Congressional Quarterly Almanac*, p. 372)

June On the 20th, Congress clears the trucking deregulation bill supported and promoted actively by both EMK and Carter. Whereas the bill does not go as far as EMK and Carter want it to, they support the final measure and argue this will provide substantial regulatory relief. In an election year, this is one of the few measures EMK and Carter cooperate on. (*1980 Congressional Quarterly Almanac*, p. 242)

October Despite the failure of the criminal code bill, Congress clears a bill on the 1st that overturns a 1978 Supreme Court decision allowing surprise searches of newsrooms. Carter signs the 1980 Privacy Protection Act into law on the 13th. (*1980 Congressional Quarterly Almanac*, p. 372)

Also on the 1st, Congress ends a 30-year debate by creating procedures for disciplining federal judges short of removing them from the bench through impeachment. (*1980 Congressional Quarterly Almanac*, p. 372)

A third important piece of legislation passed on the 1st is the bill dividing the Fifth Circuit Court of Appeals into two smaller jurisdictions. Whereas such a proposal had met with strong opposition from civil rights groups in 1978 and had not been enacted, this time the bill passes. The legislation removes Alabama, Florida, and Georgia from of the Fifth Circuit and includes them in a new 11th Circuit. Neither the Legal Defense Fund nor the American Civil Liberties Union oppose the legislation this time around. (*1980 Congressional Quarterly Almanac*, p. 390)

December On the 9th, the major civil rights legislation of the 96th Congress dies in the Senate after an 11th hour compromise fails. The legislation, intended to strengthen federal fair housing laws, falls victim to a filibuster led by Thurmond and Hatch despite EMK's efforts on the floor, together with David L. Boren (D-OK).