

Norbert A. Schlei Oral History Interview – JFK#1, 02/20/1968-02/21/1968
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Biographical Note

Schlei, Assistant Attorney General, Office of Legal Counsel, Department of Justice (1962-1966), discusses the Civil Rights Act of 1963, passing immigration legislation, and the atmosphere of the Justice Department, among other issues.

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Norbert A. Schlei – JFK #1

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Oral History Interview

with

NORBERT A. SCHLEI

February 20-21, 1968
Los Angeles, California

By John Stewart

For the John F. Kennedy Library

STEWART: Do you recall when you first met Robert Kennedy [Robert F. Kennedy] or John Kennedy [John F. Kennedy] and exactly how you came to join the Department of Justice in 1962?

SCHLEI: Well, I had met President Kennedy back in 1957 when I was a law clerk to Justice Harlan [John Marshall Harlan] at the Supreme Court, but my coming to the Department of Justice, I think, was really attributable to a recommendation by Nick Katzenbach [Nicholas deB Katzenbach]. He had held the job that I was to take, and he became Deputy Attorney General when the President appointed Byron White [Byron R. White] to the Supreme Court, and I think that he recommended me to Robert Kennedy. And I went back to see Robert Kennedy in May, I think, it was early May of 1962, and we discussed the possibility of my being appointed to this job.

I came back here to California thinking that it was flattering of him to have been interested in me, but I didn't think I'd be appointed. I had the impression that he felt that he had all the youth that the Department of Justice needed and he really needed some older people around, people with perhaps greater experience and maturity. I was then thirty-two years old—he was thirty five—and I felt that my age would be an insuperable obstacle because of his youth. But about a month later Nick Katzenbach called up and

said, "The President wants to appoint you to that job, if you're still game."

STEWART: You say you had met the President in 1957?

SCHLEI: Yes, he came over to have lunch with the Supreme Court law clerks one day and stayed for perhaps two hours and talked to us about one thing or another. Oh, I'm sure I'd met him three, four times, speeches and public occasions sort of thing, but on that occasion in 1957, I really had an opportunity to talk and get some kind of impression of personality and so forth. He struck me then as being extremely guarded for a man who was in the situation he was in, having a quite lunch in a private place with perhaps ten young men, and yet he spoke as if the world were listening.

STEWART: Really?

SCHLEI: He was very careful.

STEWART: Of course, this was right at the start of the campaign, really.

SCHLEI: He really was then, I think, looking toward 1960. And I sort of came to the conclusion that I had to understand and sympathize with the need of a man, seeking that kind of an objective, to be careful and weigh his words and to avoid unnecessarily antagonizing anybody. And I just decided that I would have to make an appraisal of the man and his basic instincts and value systems and then permit him to say the thing that was politic to the world, I just couldn't reasonably expect him to be letting his innermost thoughts tumble out.

STEWART: Could you have been involved at all in the 1960 campaign or convention, or were you active in California politics at the time?

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SCHLEI: Yes, I was active here. I attended the convention. I was not a delegate. During the campaign itself, I was active in the speakers bureau here in Los Angeles and made a flock of speeches to Lions Clubs and people like that, but I'm quite sure that my participation in the campaign did not come to the attention of the President. It was very much on a local level.

STEWART: And there was nothing about the management of the campaign here in Los Angeles that you would be familiar with that possibly others wouldn't be? What I'm asking is were you close enough to the actual running of the campaign in Los Angeles to have any comments as to how well organized or poorly organized the thing was.

SCHLEI: No, I think you might want to talk to Dick Sherwood [Richard E. Sherwood]. Have you met him?

STEWART: No, I've never—the name hasn't come out.

SCHLEI: Well, he's a young lawyer, went to Harvard Law School and was a Frankfurter [Felix Frankfurter] clerk a few years before I was a Harlan clerk. And he was the head of the speakers bureau in 1960, and he did a lot of work on the side for Jesse Unruh [Jesse M. Unruh] and, I think, had a better vantage point to look at the campaign than I did.

I was a law partner at the time of Lester Ziffren, whose brother, Paul Ziffren, was then the Democratic National Committeeman. But there was a controversy, I guess it was at the time of the Convention. He was replaced by Stanley Mosk. And while Lester had been quite a good window for me to look through up to that point, from that point on he had no more insights than most people who'd been reading the papers. So I can't give you much information on that.

STEWART: Was it your impression that Paul Ziffren was for Stevenson [Adlai E. Stevenson] all the way? There's been some dispute about this, as you probably know.

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SCHLEI: I think he started out being for Stevenson just as, I suppose, almost every Democrat started out in 1956 liking Stevenson and seeing nobody yet built up enough to offer an alternative. And I think that as the country's mind changed, it did so in a westwardly sort of process, and California was the last to change. But I don't think that Ziffren was terribly inflexible about it. He was certainly not out in front for Kennedy, but he was not to the death.

STEWART: You mention this problem of your age when you went into the Department of Justice. Was this just your impression, or do you know this for a fact, that this was one of the considerations as to whether you would get the job or not?

SCHLEI: It's just my feeling. I seemed to sense that as I talked to the Attorney General about it. No, nothing was said about it expressly.

STEWART: You don't know off hand who the other candidates were for the position?

SCHLEI: No, I don't.

STEWART: It was quite a period when it was vacant, wasn't there? From about May till—well, about two months.

SCHELI: I think that Katzenbach's appointment to be Deputy Attorney General was made in February or March and I was not actually sworn into the job until August the sixth, but the interval from June to August was really my problem of getting extricated here. You know, I had quite a problem because I was a candidate for the Assembly, the California Assembly here, and I found out that the President wanted to appoint me to this job three days after I had won the Democratic nomination for the Assembly on June second. And I really didn't say "yes" immediately. I went to see the Governor [Edmund G. Brown] and some other people and asked them what they thought I should do. And

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the Governor was really very helpful to me. He said, "Look, if the President wants you for that job, you simply have to go. It's far more important than your running in this election. And I think you just have to go and let the situation take care of itself."

STEWART: Were there any serious problems in getting acclimated to the Department of Justice, bearing in mind that, of course, Robert Kennedy had been there for a year and a half and people around him had been there for a year and a half? Was there any problem in you getting into the swing of things with the rest of the people who had been there?

SCHLEI: Well, for a few weeks I did have the feeling that half the time I didn't know what people were talking about. They would refer in a very fragmentary way to things that had happened in their first period in the Department, just assuming that everybody listening knew all about that problem and how it developed, and I had not been there. I had read about it in the papers, but I... It took me a period of several weeks to really feel that I understood all the conversations.

I recall about the second day I was in the office I was talking on the phone to California, and the Attorney General just wandered into my office and stood around for awhile waiting for me to get off the phone. And when I didn't get off the phone right away, he left. And that startled me that he would just wander in. It was really a pleasant thing about the Department; there were no formalities, and anything was liable to happen.

STEWART: How well, if at all, were the relationships spelled out between yourself and the Attorney General in terms of the types of things that would definitely be brought to his attention and just what decisions needed his concurrence and which didn't? Was this just a matter of your feeling your way for a few months till you—or a few weeks—till you realized just how to operate with him, or was it spelled out in some way to you by him or someone else?

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SCHLEI: I don't recall ever having any generalized instructions on that score. The way the Department seemed to function was that Nick Katzenbach really tried to stay informed about pretty much everything. He did the daily top administration, and the Attorney General immersed himself in what seemed to be the most important problems of the Department, perhaps one at a time. He might spend several days on one problem. And he also spent a great deal of time on problems that had nothing to do with the Department of Justice that the President referred to him because he just was confident in his ability. I think we all simply felt that the Attorney General should be informed about anything that we were working on that might have public implications, might become the subject of attention by the newspapers and the TV, or that might have political repercussions of some kind.

My first contact in a working way, really, with the Attorney General was one of the most important things that I ever did. He called me in and said that he wanted me to do a study for the President of what the United States could do as a matter of international law in the event that the Soviet Union should try to put missiles in Cuba or some other equivalent thing: atomic weapons or God knows what, but offensive weaponry, I guess. He said that the thought was that the President ought to make some kind of warning statement so that they would not do any such thing in the belief that we would not take any action about it. Before we did any threatening or any announcing, we ought to know for sure what we were going to be able to do. So...

STEWART: This would have been in August?

SCHLEI: This was August of '62, probably from....I know it was done before Labor Day because Nick Katzenbach and I met with Dean Rusk on Labor Day in his office in old tennis shirts. It was a holiday, and all the air conditioning was off. So it must have been done by something like the late twenties of August. I'm sure it's in the file.

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And then we went over and met with the President and Dillon [C. Douglas Dillon] and some people from the CIA [Central Intelligence Agency], Ed Martin [Edwin M. Martin] (the Assistant Secretary for Inter-American Affairs), Bundy [McGeorge Bundy] and some others, in early September. And the President later that day did make a statement, a warning statement, telling the Soviet Union that—well, it began by noticing that certain things had, the problems that had arisen in Cuba up to that time were limited what they were limited to, short range missiles and so on, but the statement went on to say that if these other things that it mentioned were to occur, then the gravest questions would arise. The strong implication was that then we would really become exercised and take action.

STEWART: Specifically, what questions were you asked to answer, the legal problems of a blockade or just the general problems of other alternatives?

SCHLEI: The question really was what could we do if the Soviet Union put offensive weapons in Cuba? First, could we do anything? And the study said, "Yes, we could do something." And it was based on the law of self-defense. But the study said (I said) that while I would assert the proposition that the United States could legally take action in the event that—unilaterally—in the event that the Soviet Union put offensive weapons in Cuba, it would be infinitely better if we could arrange to have whatever action was to be taken done by the OAS, the Organization of American States, because then it would not be a unilateral exercise of self-defense. It would be collective self-defense within the meaning of the U.N. [United Nations] Charter, and it would be very much easier to sustain as a matter of law as well as to defend as a matter of policy in the world community.

And secondly, I said that what we could do depended—should be viewed in light of the idea of proportionality, which is at the root of the law of self-defense. In other words, we should do the least necessary to accomplish what we felt we had to accomplish, and we should do it in as unabrasive a way as possible. And I talked about what I called a "visit and search blockade," which would not be a blockade which shuts off all traffic but a screen that would

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prevent the passage of any traffic bearing offensive weaponry, what we would be prepared to characterize as contraband. And that, of course, is a quarantine, although that word was first applied to the thing, as far as I know, by the President himself. That was his own name for it, and that always struck me as a really startlingly important contribution because that word conveyed really to the whole world and to the people of the country what was happening in a way that "visit and search blockade" or any of that other inept language never could.

Anyway, in that memo I went on to suggest that if we did any such thing, we should make it clear that we would be willing to perform inspections before the shit started out on a voyage. We could issue navicerts, clearances, so that there would not be potentially explosive confrontations on the high seas. Also, we should announce the imposition of this thing at a time when ships could still turn back without being forced into a confrontation. That discussion was quite premature then, but it all turned out to be very much to the point.

When the problem actually arose, I was in Oxford, Mississippi, and I came back to Washington on a late flight from Memphis, arriving in Washington about five o'clock in the morning. I called the Department to see if there were any messages, and the operator said, "No." And I said, "Well I don't suppose there's anybody in my office," and she said, "Wait a minute. I'll ring." She rang, and my assistant picked up the phone. I said, "What are you doing in the office at five o'clock in the morning?" He said, "I can't tell you over the phone. Why don't you come over and see?" And at that point, he and a second assistant, Leon Ulman, were working with Nick Katzenbach to redo the study, in effect, and make it applicable to the exact facts.

That was the Saturday after the Thursday evening when the President got the photographs from the U-2's, and he went on television the following Monday. I spent Monday in John McNaughton's [John T. McNaughton] office in the Defense Department working on the blockade—the quarantine proclamation and the Executive order and the other

subordinate orders that had to be issued to get all the action taken by the Navy and everybody affected.

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STEWART: As far as the original study was concerned, was there much in this that was new in terms of the basis on which your recommendations were being made, or were there in fact—had all this data pretty much been accumulated in your office and it was a matter of putting it down into the context of the situation as it existed then?

SCHLEI: I'd say it was pretty new stuff...

STEWART: Excuse me, what I'm saying, was there any kind of a contingency plan, or were there things in your files or in your records to indicate what could be done in situations like this?

SCHLEI: Well, I found a lot of historical data on the Monroe Doctrine, what the United States had done at various times in the past, and I found a memorandum by Nick Katzenbach on—it had a very interesting paragraph about blocs, the development of power blocs in the world, and how it might make a legal difference just what position a given territorial area had with respect to the bloc, what you could do there. For example, it would be one thing for us to put missiles in, oh, say, Italy or Greece, and another thing if we were to go into Hungary and put missiles there. It might be one thing for us to help a Hungarian regime and establish good relations with it and send it food and medicines and so on, but it would be quite another if we got right in amongst the Soviet Union with offensive weapons. The idea was really just touched upon and the thought expressed that possibly the law ought to give recognition to the obvious importance that these factors had in the world today. That's really all I had. And I think that—I don't think anybody ever expressed quite those ideas before.

The idea of the study was that there was a special application of the law of self-defense that had developed in the Western hemisphere, growing out of the Monroe Doctrine but really a matter of hemispheric security, that no European nation should be permitted to take over any new territory over here or to create an offensive capacity here. They could send an infinite quantity of defensive weapons to Cuba, but if they installed an offensive capability we had the right to prevent the consummation of that.

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I think that if the United States had acted unilaterally that would have been a very controversial thing, but since it was able to act through the OAS, I think the whole world accepted it. And it was extremely important that we act through the OAS. I think that if President Johnson [Lyndon B. Johnson] had acted through the OAS in the Dominican Republic, it would have been a vastly more successful operation. People have trouble with the idea of a nation acting singly in such a drastic way.

STEWART: Was there any question as to why you were asked to do this study rather than the General Counsel at the State Department?

SCHLEI: Well...

STEWART: It just seems to me, without being that familiar with it, that this would be a question that would normally be handled by the people in the State Department.

SCHLEI: Well, the Office of Legal Counsel in the Justice Department is kind of the President's outside law firm.

STEWART: Right.

SCHLEI: One of the duties of the Attorney General is to be the legal advisor to the President, and another duty is to be the government's chief courtroom lawyer. All of the divisions of the Department of Justice, except one, have some litigation responsibility: the Civil Division, the Criminal Division, Tax, and so forth. The Office of Legal Counsel helps the Attorney General with that duty by being the legal advisor to the President, and at any time it's liable to get into anything that the President is concerned about.

But under Attorney General Kennedy, the jurisdiction was even more all-embracing than it usually is because the President consulted his brother about everything that was important to him, and when his brother looked for help in generating a reply, he looked more to the Office of Legal Counsel, I would say, than to any other office, although

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he also used individuals for their ideas and sometimes even for legal work at a high level. For example, he might ask Lou Oberdorfer [Louis F. Oberdorfer] to work on the Cuban prisoner exchange, although Lou Oberdorfer was the head of the Tax Division.

STEWART: Were there ever problems between you and Abe Chayes [Abram Chayes]—wasn't he the Legal Counsel at the State Department?

SCHLEI: No, he's a close friend.

STEWART: I mean as far as who should be doing or who should be handling these questions.

SCHLEI: Well, no.

STEWART: No.

SCHLEI: Not really. I think that the State Department sometimes felt that there were people in the foreign affairs area that oughtn't to be there, but in the Kennedy Administration, they didn't complain very loudly about the President asking his brother's advice about foreign affairs because obviously he was going to do that and he didn't too much care whether they liked it or not. I think that so far as Abe is concerned—well, Abe and we in the Justice Department, Katzenbach and I, really tended to agree. Sometimes there would be a dispute within the State Department on these issues, and more often than not, Abe was glad to have the support of people in the Justice Department who usually saw eye-to-eye with him. But I think that on this particular question Abe was very much alarmed that people would begin to talk out loud about the Monroe Doctrine, which had a lot of enemies, so his rationale for what the President did, as I recall, was somewhat different from the original one. But I think the actual one was the one that was proposed through the Justice Department.

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There was a draft of the warning statement to be issued in September that mentioned the Monroe Doctrine, and the President snorted when he read that. He said, "The Monroe Doctrine, what the hell is that?" I initially interpreted his question as meaning, "What are people going to think we mean by the Monroe Doctrine?" So I said, "Well, we thought that was indicated by the specific listing of things that we would object to that follows in the draft." And he said, "Well let's not—we don't have to mention that. We don't have to talk about the Monroe Doctrine."

That meeting in early September adjourned for about fifteen minutes, and a number of us went down to Bundy's office, Bundy and Dillon and Martin and Kennedy, for awhile, and me.

STEWART: This is the Martin from the State Department?

SCHLEI: Yes. Something was dictated, for the most part by Bundy and we all shoehorned in a word here and there, and then we went back up. The meeting resumed, and the President said, "Okay, that's good enough." He made some changes in it himself, and then I think he had a press conference at about six or seven p.m. that evening and released it.

STEWART: Were you completely informed right from the start as to what was going on? Were you totally aware of what the U-2's had seen there and so forth?

SCHLEI: No. No. When the Attorney General gave me this job, I asked him whether I oughtn't to bone up on exactly what seemed to be the problem. And he said, as I recall, to talk to John Nolan [John E. Nolan], who was working with him on the Cuban problem—on foreign affairs problems generally; I think his title was Confidential Assistant to the Attorney General. And, as I recall, John told me that there really were no hard indications of any offensive weapons, that

there were a lot of wild reports but they didn't check out, and the question really was what are we going to do if some of them turn out to be true or if they actually do try it? But at that point in August there were no indications

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of any real offensive developments there.

Now as soon as this warning statement was issued, not later than 15th of September, I was completely removed from that problem and was concerned on a daily basis with the Mississippi problem, the Oxford, Mississippi problem, which was developing then. And I didn't hear a single word more about Cuba until I got off that airplane at 5 o'clock in the morning on about October the nineteenth.

STEWART: Uh huh.

SCHLEI: Beginning about the, well, I guess it was about the middle of September, when Meredith [James Howard Meredith] got his judgment requiring the University of Mississippi to admit him. We were all constantly concerned from that moment on with these negotiations looking toward some kind of voluntary compliance by the state of Mississippi. The President and the Attorney General both felt that it was extremely important not have a big fight about this, that everybody involved would be better off if we could get the state of Mississippi somehow to agree to carry out what the court said to do.

There were endless meetings and conferences with emissaries, and we got down to Saturday, the 29th of September, '62. I was drafting the Executive order and proclamation that the President would have to sign in order to call out the troops, and about 7 o'clock Burke Marshall came in—I think it was about seven. He said, "We've got a deal with Barnett [Ross R. Barnett]. You can forget about that and go on home because he's going to let Meredith register." But somehow I had listened to some of the telephone conversation and been in a lot of meetings about this problem, and I just didn't believe that any deal was going to stick. So I kept my secretary there, and I finished those documents, and I got home about, maybe, 10:30, 11 o'clock.

I made myself a drink, and I got about half way through it, and Burke Marshall called up, and he said, "The deal is off. The President wants to sign those documents. Go on down and see him." He said he had ascertained that I had them, which I did. So I went down there and was taken by somebody over to the residential part of the house and up to the third floor. And the President took me into a small room with a long conference table kind of thing. It's catty-

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corner to your left as you go up the main stairway and arrive at the third floor, if you know where that is. And he turned on a little table lamp and sat there and read the documents and asked me a few questions about them, then he signed them.

STEWART: Do you remember what kinds of questions or....

SCHLEI: Well, he said, "Is this pretty much what Ike [Dwight D. Eisenhower] signed in 1957 with the Little Rock thing?" And I said, "Well, it's essentially the same. We think we've improved upon the language, and, of course, we've had to change the recitals so as to relate to this situation and key it to the events here." We went over it, and I showed him where the language changes were, and it really only took two or three minutes, and then he signed them. He said, "Where do I sign?" I showed him, and he signed them.

STEWART: Had this been gone over by anyone else, by Katzenbach or the Attorney General or Sorensen [Theodore C. Sorensen] or anyone?

SCHLEI: No. The Office of Legal Counsel is supposed to certify as to the form and legality of all documents that have legal effect signed by the President. And I think there is an Executive order that gives the head of the Office of Legal Counsel equal authority with the Attorney General for purposes of doing that. But this certainly short-circuited all the usual ways of transmitting the things, sending them around.

And then I asked him, I said—well, I'd looked at my watch, and it was one minute after midnight, and I said, "What date do you want to have on these?" And he said, "Oh, let's date it when we did it. When did we?" I said, "Well, I'm not certain when we did, or if there's any desirability in having it be one way or the other side of midnight, I really couldn't say which side it was." And he said, "Oh, that's immaterial, whatever we do." And to this day I don't remember what date I put on, whether it was the night before or the next day, but it really was not clear.

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So we got up, and he snapped off the light, and we started out. There was light coming in from the hallway. And he was obviously struck by a kind of wry thought, and he bent over the table and rapped on it with his hand. He said, "You know," he said, "that's General Grant's [Ulysses S. Grant] table." And he had just signed an order calling out the United States Army to enforce the Constitution in Mississippi, and he did it on a piece of furniture that was brought there by General Grant.

STEWART: That's interesting.

SCHLEI: So we went out, and I started down the stairs to go tell the press what had happened, and he had taken a few steps off, and he came sprinting back to the top balustrade and called down to me. He said, "Don't tell them about General Grant's table." I said I wouldn't.

So I went on down and called Bob as he had asked me to do—I guess Burke had asked me to call Bob when it was all wrapped up. And I told him what had happened. And General Clifton [Chester V. Clifton, Jr.] was there because I guess he was supposed to do

something about the Executive order, and he told me how these Executive orders always seem to get signed in the middle of the night. He remembered when Truman [Harry S. Truman] had relieved MacArthur [Douglas MacArthur]...

STEWART: Oh, really.

SCHLEI: ...at 5 a.m. or something. I guess he had been in the Truman Administration and was then back again. He couldn't have been there that whole time.

STEWART: No. I was just trying to think.... Yeah, I guess he was.

SCHLEI: So, in any case, I went on home, came in to the office the next morning about 9:30, and at about 11:30, I guess it was, the Attorney General said, "Norb, why don't you go along? I want you and Nick"—and these various others, whom he named—"to go down there and see what you can do."

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STEWART: Did you have any idea exactly what you were doing to be doing down there, or was it just a matter of....

SCHLEI: Well, I was really pretty much in the dark because I had not been involved in any of the tactical discussions. There were people in the Department who had spent weeks thinking about just who was going to be where and what kind of forces were going to be used and how many troops were going to be in Memphis and the helicopters and so on. I was not involved in that, and I think it was just an after-thought on the part of Bob Kennedy—he just said, "I want you to go, too." And there were Nick Katzenbach and Ed Guthman [Edwin O. Guthman], Joe Dolan [Joseph F. Dolan]—although Joe Dolan was already there—and what's the name of the fellow who got killed with Ethel's [Ethel Skakel Kennedy] brother [George Skakel, Jr.]?

STEWART: Oh, uh...

SCHLEI: Dean Markham [Dean F. Markham].

STEWART: Markham, yes.

SCHLEI: Dean Markham came up to go with us, although he was not then even working for the government. He was just a friend of Bob's, had helped, I think, at the time of the Freedom Ride crisis, so he went down with us. We went down in a Lockheed Jet Star that left from Andrews Air Force Base. And it just barely was able to get into Oxford, Mississippi, because they have a very short runway. We really only had about thirty or forty feet left.

STEWART: They had to jettison some fuel, didn't they?

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SCHLEI: So I understand. They dropped it in the swamp. What kind of detail you want me to go into?

STEWART: Why don't, if you could, just try to relate some of your own feeling as the whole thing developed. Were you, for example, aware from the start of the grave danger of the whole thing, and the possibilities that it could explode into something quite dreadful, really?

SCHLEI: Well, the danger really only became apparent to me—that is, the physical danger to those of us who were on the scene—as it began to get dark. And somehow the crowd turned ugly. For quite awhile, it was noisy and raucous and so on, but somehow essentially good humored.

STEWART: You were—just to establish, you were in the Lyceum building...

SCHLEI: The Lyceum building, yeah.

STEWART: ...with Katzenbach for the whole time?

SCHLEI: Yes, as a matter of fact, Katzenbach and John Doar [John M. Doar] and, I think, Guthman went out at some point to get Meredith at the airport, but I didn't leave. I stayed there. The riot broke out, as I recall, about 8 o'clock, just about 8 o'clock on the head. I went outside at something like 8:30, and I heard a couple of bullets, probably .22 bullets, hit the pillars somewhere near me. From then on when I went outside, I kept my head down and stayed behind something if I could. There really were people out there with firearms. Somebody was killed by a .38 accidentally, but I think the shells, the bullets that I heard hit were .22's. They were little spitting kind of sounds.

You know, we had two pay phones inside the Lyceum, one of which had the President's office on it and the other of which had the Department of Justice on it. After the thing was over, somebody in the Signal Corps, a General in the Signal Corps, came up to Nick Katzenbach, and he said, "Mr. Katzenbach," he said, "we in the Signal Corps have some of the best equipment in the world and the highest trained people,

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and yet you were beating us to the White House with intelligence by forty-five minutes." Nick said, "Well, General, when you come on these expeditions you have to remember to bring a dime. Then you put it in the phone, call National 8-1414 and say, 'Mrs. Lincoln [Evelyn N. Lincoln], don't hang up!'"

STEWARTS: Were you ever really fearful that the mob was going to totally physically enter the building and take it over or...

SCHLEI: No, there....

STEWART: ...were you always confident that...

SCHLEI: They were totally unorganized, and while they could pepper us and hurt individuals—and they sure did hurt a number of individuals, as you know—it never seemed to me that they had the capacity to come in and overwhelm us. There were just too many people and, of course, if it came to that, we were armed. Nobody was doing any shooting, but if it came to just maintaining custody of the place, then maybe our people would have unsheathed their weapons.

The thing that sticks perhaps most clearly in my mind is the way the thing ended. As the night waned, the number of clear-eyed student types decreased and the number of real redneck, slope forehead types increased—the people who flocked there really in response to General Walker's [Edwin A. Walker] call on the radio the previous two days. And it must have been about five o'clock when the troops finally arrived...

[BEGIN SIDE II, TAPE I]

...and they marched into the oval in front of the Lyceum building behind a border patrol car driven by a guy named Chamblee [Charles Chamblee]. And they were at right shoulder arms, and they were marching behind this automobile, and the mob was milling around about fifty yards ahead of them—quite a large number of people, at least five hundred, I'd say. And one of the men in the lead of the group had a Molotov cocktail made out of a pop bottle, and he threw it, and it landed under the rear of the automobile. The flames sprang up under the rear of the automobile, and the automobile slowly moved away, over the top of the flames. Then the troops came to the flames, and they marched right through without breaking step.

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STEWART: Really.

SCHLEI: And there was a kind of a visual, almost a physical impact on the mob. They fell back a couple of steps, and there was kind of an exhalation of breath, as if they had each been punched by the troops marching through the flames. And that really was the end, right there. There were later encounters in the village, but the mob just melted away into the fog. And it was—it's always made me feel that when people are really in a mob psychology, gone mad the way people do in mobs, you should not spare the horses. You should get enough force there to really break through and show them that they're in a situation where it's useless to resist. Without anybody having any physical contact there, the riot was just ended.

STEWART: Were there any real problems among the Justice Department people and the other government people who were down there as far as who was in command and as far as the whole command structure was concerned?

SCHLEI: Well, I think that it was clear to everybody that Katzenbach was in command, really. I think Nick used Jim McShane [James J. P. McShane] as his tactical commander, sort of. McShane was telling people where to stand and what to do and so on. But in terms of resolving questions that arose, Katzenbach was the highest authority on the scene. And he used me and Ed Guthman—by the way, are you going to see Ed while you're here—and Harold Reis [Harold F. Reis] and various other people to take care of particular situations.

Starting at some hour during the night, Nick asked me to set up something, some kind of way of dealing with the prisoners we were starting to take. People would be grabbed after some charge or something and just confined somewhere, but nobody knew who picked them up or why or under what circumstances, and it was impossible to tell what kind of charges ought to be placed or what. So I got a couple of marshals who were supposed to keep a record of the name of the person, take his personal effects so that they would be safe, get the names of the people who brought him in, and a general description of what the circumstances were of his

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apprehension. And then the following day and evening we pored over those things and decided which ones we ought to try to indict. We actually did bring some people before a commissioner there Tuesday night—or no, it was Monday night, I guess, Monday night, the first of October.

STEWART: Pretty speedy in, you know, considering the fact that there was no structure, no setup to do this. You just went ahead and did it.

SCHLEI: Yeah, well, we did that before we, before anybody had any sleep.

STEWART: And you stayed down there for what, the next couple of weeks?

SCHLEI: Well, I think that I came back to Washington briefly in the meantime. I stayed down there, I think, for about four, five, six days, something like that. I could tell you by looking at the written records, but as I recall, I went down for a period of time, like five or six days, came back for a day or two, and then went back, and all in all was there for two and a half weeks.

STEWART: And what were you doing primarily during this time?

SCHLEI: Well, one of the problems that I spent a lot of time working on was the problem of the disciplining of students who were involved in the affair. Ramsey Clark and I had lots of discussions with the dean, and we would—he would ask us for certain materials, you know: Which are the cases that you feel are cases deserving of discipline? And what are the people accused of doing? And who could we use as evidence, as witnesses, if we were to have a hearing? And, of course, each one of these things was potentially a major case, so it soaked up a lot of time.

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And it was necessary, of course, to take care of Meredith there. His life was thought to be in danger; probably was. And we had these patrols that constantly followed him around, trying to remain to some extent unobtrusive but still keep him under close observation and protection. And so we worked with the Army on that, worked with the dean on the discipline problem, and just generally dealt with the problems that had arisen as a result of the whole thing.

STEWART: Okay, to get back then, I've heard it said by other people in the Department of Justice that the Attorney General rarely, if ever, reversed anyone's decision on the basis of the legal questions involved. Would this be your conclusion in the time you were there?

SCHLEI: Yes, I would. Sometimes he would be a little skeptical as to whether the law required some result that seemed to him harsh or foolish or wrong in some way, but basically he would accept the legal assertion that he was confronted with and make his contribution on the level of the policy question.

STEWART: Were there any major changes that you initiated in the office? How large is the Office of the Legal Counsel?

SCHLEI: Well, I think that when I came in there there were twenty-two lawyers and forty-four people. It's a sizeable law office when you consider that it handles no litigation at all. There was one person who spent all of his time handling the routine Executive orders and proclamations, and there were perhaps two or three other people who had sort of long standing assignments that soaked up most of their time, but in excess of fifteen people were available for the work of the moment, whatever was on the front burner. And rather a large volume of high-level legal work came out of the office.

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STEWART: Could you say a few words about your relationships with, in general, with the people on the White House staff? I think you touched on the matter of the unique situation that you people in the Department of Justice had because the President's brother was your boss. Was this a factor in many of your

dealings with people on the White House staff?

SCHLEI: Well, in retrospect I suppose it was. The basic relationship between the Office of Legal Counsel and the White House staff is one of lawyer-client, and the White House people are the clients who really determine what your flow of business is. But if you were dealing with, say, Mike Feldman [Myer Feldman] or Lee White [Lee C. White], and you were able to tell them, "The Attorney General thinks that we ought to do it this way," I'm sure that you got a different response than if you were in the Interior Department and you said, "I think Secretary Udall [Stewart L. Udall] wants to do it this way." They might feel freer to disagree with him than with the Attorney General. I really didn't notice anything then, and in retrospect I don't think of any obvious examples, but it was just part of the conditions that obtained in the government then.

A lot of the people on the White House staff had worked with the Attorney General for years in campaigns, in some of which he was carrying their briefcase. So they were not particularly awed of him, but they had all come to respect him and his ability to make a contribution on a lot of these issues and they also had come to know that the President respected his views very much. So there is no doubt, there was no doubt in anybody's mind, that he was the second most important person in the government.

STEWART: Did this, too, influence your relationships with the legal people in other departments and agencies that, I assume, you were continually dealing with?

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SCHLEI: Well, it may have, but I really don't think so, at least I don't think it was an important impact. The Department of Justice pretty well dominates the legal world of the federal government anyway, so that if it's the Attorney General's opinion that such and such is the law, that prevails over the view of any general counsel of an agency. So maybe it was a little heightened, but basically the Department of Justice is the center of the legal universe in the federal government anyway.

STEWART: A lot, of course, has been written about the atmosphere at the Department of Justice during Robert Kennedy's tenure, the informality of it all and the dedication of people. Would you generally agree with this?

SCHLEI: Sure. I don't think anybody was working any harder anywhere in the government than in the Department of Justice. It was great to have the Attorney General sitting in there with his sleeves rolled up and the dog in the office. It just made life more interesting, added some savor. I certainly never worked any harder or with more enjoyment, really, more feeling that we were really biting into the problems in a way that really counted, really getting something done. And we felt that we were kind of, in a way, a kind of an elite corps. You know, everybody—your colleagues were first rate, obviously had not been picked on any kind of crony basis. And it was just a great

compliment, a great lift to the ego to be included in that bunch, and that caused you to work harder than ever, I suppose.

STEWART: This could be contrasted to the situation after July of 1964?

SCHLEI: Well, I think that a little bit of the problem would have existed anyway because a lot of the people who came to work for the Kennedy Administration could only stay a limited period of time and they began to go. Even if President Kennedy had remained, he would have begun to have a manpower problem. When he came in

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it was after eight years of Republican government; lots of talented, able Democrats were eager to work for the government, to do their bit. President Kennedy had a very wide acquaintanceship in the academic world, intellectual community; he was able to call on those people as few other people could. So there would have been a problem anyway. I think maybe it was heightened by the fact that President Johnson [Lyndon B. Johnson] doesn't seem to appeal very effectively to the intellectual community. Some things that happened frosted particular elements of the community. At any rate, it did get to be a different kind of place; I think it really did.

STEWART: Were there ever any significant feuds or factions among the top staff during the three years of the Kennedy Administration?

SCHLEI: Well, feuds, no. There was a very tense situation that arose at the time of the poverty bill—which was really after the Kennedy Administration was over—between Shriver [R. Sargent Shriver, Jr.] and Wirtz [W. Willard Wirtz], but that really is after the period that we're concerned with, isn't it?

STEWART: Yes, yeah. No, I was referring particularly to the Department of Justice, among the people there. What I'm getting at is: Was, in fact—again, all the stories portraying the one big, happy band of people—was this, in fact, the case all the time, or were there certain discontented people?

SCHLEI: Well, I've heard a few things about difficulties with the immigration service before I got there, but when I got there, Ray Farrell [Raymond F. Farrell] was the Commissioner of Immigration and Naturalization, and everything was fine. There were clearly constant tensions and difficulties with the FBI [Federal Bureau of Investigations], and they, I gather, got considerably worse after the President died. But we all were just simply aware of the fact that the Bureau was a special part of the Department, that Mr. Hoover [J. Edgar Hoover] was very jealous of certain prerogatives and points of view of his, and that we had to be very careful in dealing with the Bureau accordingly

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because that was just a troublesome relationship. But apart from that tension that was constant, the people in the Department of Justice got along beautifully, really remarkable.

There were a couple of old-timers who'd been with the Department for many years at a high level: Walt Yeagley [J. Walter Yeagley] had the Internal Security Division, Sal Andretta [Salvador A. Andretta] had the...was the Administrative Assistant Attorney General, budget matters and so forth. I think there were occasional difficulties with Sal because he had some loyalties to, I think, people on the Hill and he had been around a long time and had roots, but he was a very nice man. Basically, we got along with him fine. Basically, we understood and approved of his contacts on the Hill and the things that caused him to create some problems for us. We knew that we were going to have that problem one way or another, and maybe we were better off having it with Sal than with somebody else outside the Department.

We ate lunch together at least twice a week. Tuesdays and Thursdays. All very quickly got on a first name basis.

I really am the wrong person to talk to about this, but I gather that there did come to be some considerable tension between Bob and Lee Loewinger.

STEWART: Yeah, yeah. I know about that.

SCHLEI: I am sure that I can contribute nothing to that that somebody else can't contribute more about.

STEWART: You mentioned relationships with the FBI. Can you think of any more detail of exactly what types of problems you personally had with the FBI?

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SCHLEI: Well, my contacts with the FBI, for the most part, related to these racial emergencies. I would be calling up the FBI on behalf of the Attorney General, wanting to know the latest word on what was cooking in some area that was thought to be a trouble spot, and we would run into things like the duty officer of the FBI would not give you any information unless he had an okay from the Director. Even if the Attorney General of the United States himself was asking for the information, he had to clear it with his boss before he could give you any information. And usually, if you got a hold of the top man on duty, you could say, "Now, that's absurd. I'm calling on behalf of the Attorney General, and you can call me back and make sure I'm phoning from his extension and it isn't phony, and we want this information in a hurry." You could usually break through somehow. But it was obvious that you were dealing with an entity, an enterprise that considered itself separate and apart from the Department of Justice, and that an effort had been exercised to make it separate and give it separate loyalties and identifications. And there was resistance to being supervised by the Attorney General and the

Department of Justice.

Apart from those sometime contacts, the only time I ever talked to Mr. Hoover, apart from a social occasion, was when the President was killed. I was trying to draft an Executive order for the President to sign, the new President to sign, establishing a National Day of Mourning. It seemed to me that it made a difference to what you said in that order, what type of person killed the President. If he'd been done in by right-wing racists, you would say one thing. If he'd been done in by somebody else, you'd say something different. So I called up Mr. Hoover and told him what I was doing and asked him if he could tell me what the indications were, who had done it. And he told me about Oswald [Lee Harvey Oswald] and his background. He seemed quite convinced that they had found the right party and that was before President Johnson was half back to Washington from Dallas. I was really very much surprised that they had progressed as far as they had.

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STEWART: Have you, speaking of the assassination, were you interviewed by Manchester [William Manchester] at all?

SCHLEI: No. He spoke to Harold Reis, who was my first assistant in that period, and never got around to me.

STEWART: I assume there are some things that might be of some significance. For example, where did the—how did you get started on this Executive order? Where did the instructions come from to get going on that?

SCHLEI: Well, we just did it. We sat around after the word of the President's death came through in sort of appalled silence for half-an-hour or so, and then it suddenly occurred to me that, my God, there were probably a lot of things that ought to be being done for the new President because of what had happened. And I grabbed a couple of people, and we began looking up what happened at the time of Lincoln's [Abraham Lincoln] death and at the time of some of the other assassinations, what had been done, what ought we to be preparing to do and so forth. Actually, I drafted an Executive order and took it in the rough down to Nick Katzenbach and several other people, and we all sat there and revised it until we really thought it said exactly what we wanted said about our fallen chief.

I personally carried it over to the Vice President's office and gave it to George Reedy [George E. Reedy]. And the proclamation that he issued was totally different. Apparently the State Department did one for him, too, and he just signed that one. So that our effort, unless—we may have called attention, Reedy's attention, to the fact that the President ought to be issuing this kind of an Executive order, but in terms of drafting one, we didn't accomplish anything for him. It was more for our benefit than anybody else's.

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STEWART: I assume a draft of that, a copy of that is in the files some place. It would be a very interesting document.

SCHLEY: I may have one somewhere, but I know that there is one in the Office of Legal Counsel file.

STEWART: Look at, do you want to go on timewise, or...

[INTERRUPTION]

STEWART: Why don't I just ask you the general question if you recall how you originally got involved in the Executive order on housing that was under consideration when you came there, right?

SCHLEI: Yes. The Executive order on housing is a subject that really had been troubling the Administration since it took office as a result of the "stroke of the pen" remark that had been made during the campaign. And, of course, as you know, the Office of Legal Counsel is concerned in the development of all Executive orders and proclamations, and it was engaged in studying various legal questions that related to this particular Executive order. Beginning when I arrived, there was a major study just in the process of beginning then. All this began to reach a head sometime in late 1962. It was felt that the President simply had to cut some of these knots and issue the order, issue some type of order.

Now, I worked primarily with Lee White—on that project—of the White House staff. In late 1962 in the Office of Legal Counsel we began working with White and with people from the Housing and Home Finance Agency, primarily Milton Semer [Milton P. Semer], who was then the General Counsel, and we finally arrived at the order as we wanted to propose it to the President. And there came a time, I think it was in November of '62, when we were to meet and discuss the problem with the President.

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I spent the better part of two days, at Lee White's request, trying to get the essence of the problem down on two sheets of paper. It really was terribly complex. It involved the differential impact that the order would have or might have on various kinds of financial institutions: it was possible for the federal government to reach certain institutions clearly and certain institutions pretty clearly not, and the possible scope that the order could be given had an impact, not just on the problem of discrimination but on the ability of various kinds of institutions to engage in the business. The complexities were tremendous.

STEWART: You were concerned with the whole variety of problems, for example, going so far as to get involved in the economic repercussions of the order?

SCHLEI: Oh, absolutely. That really...

STEWART: I mean, it wasn't limited, your role wasn't limited, to determining whether it could apply to commercial banks or to savings and loan institutions. It went beyond that?

SCHLEI: Well, sure. Yes. Obviously, as a law office we were going to probably have the determining voice in deciding whether it could, that order could have various possible scopes, and we would not be, necessarily, be decisive as to the economic considerations, but we had a view about it. We really had the whole problem, and we regarded it as our responsibility to call the attention of the Attorney General or the President or whoever we were working with to these problems that were raised by the order and to express a view about it. We did get the Secretary of the Treasury into the act; it was Secretary Dillon then. We had at one point gone to see the Comptroller of the Currency [James J. Saxon] to see what his attitude would be toward various possible Executive orders.

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In any case, we went to see the President that day, and there were present Lee White....

STEWART: Yeah, I think I...Would that have been November 13, that meeting?

SCHLEI: That sounds about right. Yes.

STEWART: Yeah, that was included in the book, and the Attorney General, Dillon, Weaver [Robert C. Weaver], Burke Marshall, Sorensen, Donahue [Richard K. Donahue], Lee White and Henry Wilson [Henry Hall Wilson], according to the book. Does that sound...

SCHLEI: That sounds right. Yes. In any case, having turned out this very careful two page statement of this terribly complex problem, I expected the meeting to begin with what being given to the President or I expected that he would have it beforehand, but evidently Lee White neglected to do that. And so the President started the meeting with no background reading. And Lee White pulled out the piece of paper and thought better of it and started to orally express to the President the problems that were presented. Well, inevitably, he was interrupted, and the President heard about the problem in a tremendously disorganized fashion from everybody that was in the room—people would interrupt each other and they would talk about different aspects of the problem. It was the most incredible demonstration I've ever seen of ability on the part of a man to absorb information, to order it in his own mind, and to sift out what was important from what was unimportant. He really listened to this, perhaps, fifteen minutes of completely disorganized comment, and then summarized the important issues himself in probably fewer words than were on those two pages that I had cranked out after two days. He personally picked out the issues that needed resolving, and he resolved them in a very sensible fashion.

STEWART: Do you recall what these were?

SCHLEI: Yes, one of the questions was whether we should attempt to cover savings and loans institutions in order or just loans made with the assistance of federal agencies, the problem being that we probably could not cover banks, and if we covered savings and loan institutions and not banks, particularly in certain parts of the country, we would have a differential impact on them that might be very harmful to them. Actually, our power to cover the savings and loan institutions as a matter of law was not all that certain, but the arguments were much better for the savings and loan institutions than they were for the banks.

STEWART: Could you have defended the banks though?

SCHLEI: Well, it's kind of a cross between having no argument at all and having an argument. The chap that worked on the problem in my office was flatly of the view that it could not be done. I wouldn't go that far, but it would certainly have been a very far reaching assertion of authority. It really would have been very difficult to justify, and a lot of people who would be sympathetic with the objective would oppose what was done because they would think of legal reasons that it was wrong. And I think the President made the right decision not to shoot for the banks. That's something that ought to be done by legislation.

STEWART: Were there people at that meeting arguing for the inclusion of the banks?

SCHLEI: Yes.

STEWART: Namely....

SCHLEI: Well, I think that was the position of the H.H.F.A. [Housing and Home Finance Agency]. They thought if you grabbed the whole problem that would simplify it. And indeed it would simplify it. But you would immediately, I think, have been tied up in litigation that would have lasted for many years. You would have seriously alienated large segments of the community that basically were on your side, would like to help, but would object to the attempt to exercise power without a legislative base for it that really was adequate. So the President decided that we should not try to reach the banks—on the basis, really, of the legal reasoning. That being true, he felt that we could not conscientiously reach the savings and loan associations because the differential impact on them would be unfair.

STEWART: Were there any political considerations in not including the savings and loan associations?

SCHLEI: No, I don't think there were. I think that perhaps the President may have felt—I don't know whether I'm remembering this or not, really—but the Administration had done something that had an adverse impact on savings and loan institutions in the recent past. I think it had increased the taxability of their earnings.

STEWART: Right. Right.

SCHLEI: And there may have been some thought that this is a poor time to hit the savings and loan associations with a low blow when we have already given them a blow in the recent past. But there was no real political consideration of the impact on them. It was just a matter of the fairness of it.

There was another question about whether an attempt should be made to make the order retroactive. And there were very serious legal problems involved in that, and the President felt that we should not impale ourselves on those problems. In any case, we came out with the order as it is in the Federal Register today.

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STEWART: Were there any questions at that time of exactly how this would be enforced, questions that were presented to the President, or were these the only three questions really that the President had to decide personally?

SCHLEI: Well, I don't remember. Somebody probably took notes of that conference. And it did last, I should think, at least fifteen or twenty minutes. Probably the kind of enforcement there would be was discussed, but I don't recall that there was any particular issue on this.

STEWART: This hadn't been one of your main considerations or a major problem for you in drafting the Executive order, exactly how—what enforcement mechanism would be put into effect?

SCHLEI: Well, that had been one of the problems. I gather that, well, as I recall, we decided that there would be a standard term in the contracts, made with whatever agency we were going to extend the regulation to, that would give both the potential purchasers and the federal agency involved the opportunity to protest against discrimination and, if necessary, bring an action. If you were going to use banks as a fulcrum for regulation—you see, you would not be reaching discrimination by banks; you'd be trying to reach discrimination by people who borrow from banks. It's as if you tried to reach discrimination in employment by people who send freight on federally regulated interstate carriers.

There was some discussion of the question whether the order should cover discrimination by lenders, and my recollection is that Bob Weaver opposed that because that was, he thought, a halfway measure. He wanted the banks to be regulated in the thoroughgoing way, discrimination by their borrowers covered. And I think that I may have responded to that by saying, "One thing we could do in the way of reaching toward banks would be to prohibit discrimination by them in the making of loans based on race." And my recollection is that the order does not now do that, and I think it's a shame it doesn't. I think Weaver wasn't really opposed to it. He was simply opposed to backing off from the full scope of

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proposed regulation. But as it came out, he seemed to be opposed to that, and that idea fell out of the Executive order. And, as a result, it didn't go as far as it might have.

STEWART: I would assume that at least a minimal amount of legal thought had gone into the speech that the President made during the campaign when he got himself into the bind. Did you, in fact, check with anyone to see on what basis they had made the statement originally, or was this at all a factor?

SCHLEI: We did look into that. The background of it was that a memo had been done by J. Lee Rankin's office. J. Lee Rankin [James Lee Rankin] had been in the Office of Legal Counsel in the Justice Department before he became Solicitor General in the Eisenhower Administration. And his office did a memorandum which came to the attention of Richard Nixon [Richard M. Nixon], who made some remark about it, as I recall, in 1959. Well, somebody got a hold of that memo, and that memo was really very limited. It really did not provide a basis for the "stroke of the pen" speech, but in being sifted from one person to another and from—by the time it got into the speech, the speech said rather more than the memo sustained. And for some time in the Kennedy Administration, we struggled with the promise of that speech versus the reality of what could be done. The housing order when it emerged was a disappointment, and no matter what we did, it was bound to be a disappointment.

STEWART: But that was the basis, this memo by Rankin which went back, probably, to '57 or '58 or something like that?

SCHLEI: Well, I guess, come to think of it, it was not Rankin's memo. It was a memo by the last fellow who had the Office of Legal Counsel. He's the dean of the law school at George Washington University.

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STEWART: We can find his name easy enough.

SCHLEI: Yeah. It was really a very cautious memo, and he didn't say anything....I think that it seemed very adventurous to them at the time. By the time we issued the order, what they said sounded very conservative. But that memo, I think, was the basis for the whole development of the "stroke of the pen" idea, which went far beyond what was possible or desirable.

STEWART: There was always a good deal of kidding as to who really got the President to say that during the campaign.

SCHLEI: Oh, really?

STEWART: Okay. If there's nothing more on housing, why don't we move on to the immigration bill. You mentioned that yesterday as one of the important things that you'd...

SCHLEI: Yes, well, some short time after I came to the Department, either Nick Katzenbach or the Attorney General listed off some things that I ought to consider long range projects, and one of those was the development of an immigration bill carrying out the promise of the 1960 platform. And, of course, that was regarded as a very tough nut, was something that was almost hopeless, abolishing the national origins quota system. I began working on the thing by having some preliminary discussions with a fellow named Abba Schwartz [Abba P. Schwartz], who was the Director of the Office of Security and Consular Affairs in the State Department and was reputedly very close to Francis Walter [Francis Eugene Walter], the Chairman of the subcommittee number one of the House Judiciary Committee.

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And there had been some work done on immigration by Nick Katzenbach. He had some sort of a bill, I think, that would have, I think, abolished the quota system as to half the immigrants over a three year period. But the basis on which he would let the immigrants in if they weren't coming in on the quota system was obscure. I don't think he had a bill. He just had a sort of an idea as to what might be the basis of a compromise.

So we began to work in the Office of Legal Counsel. I put to work on the problem—well, maybe this was in a later stage, but before the end of it—I put to work on the problem a young fellow named Adam Walinsky, who is now, I think, a legislative assistant to Robert Kennedy. And I had Leon Ulman working on it in the Office of Legal Counsel.

STEWART: Right. Why don't you stop there for a...

[BEGIN SIDE I, TAPE II]

STEWART: You were saying you had these two fellows working.

SCHLEI: Walinsky and Ulman working. Well, anyway, it was really astonishing, in view of the fact that people had been complaining about the immigration law for forty years, how utterly useless all the bills were that had been introduced to take its place. If you went to get, you know, the twenty bills or so that had been introduced from time to time to take the place of the national origins quota system and you took a look at what their actual impact would be on immigration from around the world to the United States, it was absurd. You know, you couldn't possibly enact any of those bills because all our immigration would come from two countries and nobody could come in from any place else or it would just be chaos.

So it became apparent that one of the great problems of getting a bill passed that would abolish the national origins quota system was to think up some system that would not produce chaos to take its place. And the idea that we came up with—and I think essentially this was my idea—we should start with “first come, first served” because that’s an unanswerably fair kind of basis. But we should make the

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“first come, first served” principle apply within preference categories that would be based on such things as the usefulness of the proposed immigrant to the United States or his relationship to people already here, American citizens or permanent resident aliens. So it would be “first come, first served” within preference categories.

And then we would have to have some additional rules to deal with some of the accumulated injustices from the old system. For example, there was such a backup of people in Italy and Greece that you would have to impose a maximum on the number of immigrants that could come from any one country or for several years nobody could get into the country from anywhere except those two countries. So there were a lot of other features to it, but basically it was “first come, first served” within preference categories with a ceiling on immigration from any single country. But we would abolish the national origins quota system.

I'm not certain at this moment whether the idea of doing it over three years was in our original bill or whether we took it out and put it back in—we played with this business of whether we were going to do it over five years or three years or right away, and it made a certain amount of difference because it takes a certain while to effect a translation. Well, we wound up in a fight with the State Department, which was resolved by Mike Feldman, over what kind of a bill the Administration was going to propose.

STEWART: In 1963?

SCHLEI: This was in 1963. Abba Schwartz on behalf of the State Department was adamantly opposed to any attempt to abolish the national origins quota system because he thought that would be hopeless, the bill would go down to defeat, it would never get anywhere, Francis Walter would be alienated, we'd be wasting our time. And we in the Justice Department, on the other hand, felt that even if the bill went down to defeat, it would just be unthinkable for the Kennedy Administration to propose a bill that would perpetuate the national origins quota system, that would not even

try to do anything about it.

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STEWART: Because of this specific pledge in the 1960 platform?

SCHLEI: Because of the pledge in the platform, because the national origins quota system was the only thing left in the law of the United States, really, that expressly discriminated against people on the basis of their race or their place of birth. And it was just something that we felt as a matter of principle the Administration should not be in a position of defending, and even if, you know, if Congress was determined to have that principle in the law, then they ought to amend the bill, but we should not put forward as our proposal something that would perpetuate that system.

And Mike Feldman really was the arbiter of that. I don't know the extent to which he discussed it with the President, at least in the preliminary stages, but he decided that we should go with the Justice Department proposal. So that became the Administration bill.

We worked out in some detail what the impact of that would be on the immigration to the United States. It was seen that there would be certain problems created for certain countries—for example, Germany. After thinking about the problem of Germany, we added a feature to the bill to solve that problem. The President was interested in that. I recall discussing that briefly with him. The thing is that the immigration from Germany showed an illusorily high number of non-preference immigrants, and the reason was that the war brides did not seek and get their non-quota status because it costs an extra ten dollars, so that by abolishing the extra fee, we could really create an additional number of places, in effect, for immigrants from Germany.

We went to see Mr. Celler [Emanuel Celler], the Chairman of the House Judiciary Committee. He seemed reasonably pleased with the bill. We went to see Mr. Feighan [Michael A. Feighan], who was the Chairman (after Francis Walter's death) of the Immigration Subcommittee, and he was very cool. I think he felt that we had talked to him insufficiently in the early stages of the development of bill, he thought that—he felt slighted, I think, that we had gone to see Celler before we went to see him. He made us absolutely no promises about whether he would support it or whether he was sympathetic.

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In fact, he seemed very nettled and irritated and unfriendly. But we did our best. I explained to him that we were there to get his ideas and nothing was final, that we had gone to see Mr. Celler first out of feeling that that was the proper thing to do—you go to see the Chairman of the full committee first and then the Chairman of the subcommittee. “And actually, Mr. Celler,” I said, “had nothing whatsoever to do with the development of the bill, and he probably couldn't describe it at this moment.” I said, “We went to see him, we told him about it, but I'll bet you that he could not give you a precise description of what's in it.” That may have mollified Mr. Feighan some, but he seemed very cool then.

Then, I guess about the last thing we did was to go to the President and present to him what the bill said, what its impact would be, some of the early spade work we'd done about

it. We told about this business of the German immigration. And the bill was sent to Congress along with a message on immigration, I think, something like July the fifth, 1963.

STEWART: What were his concerns; do you recall any of the specific things that he was interested in?

SCHLEI: Well, I think probably his most basic concerns kind of got lost because we had taken care of those. He wanted to do something about the national origins quota system, and since that was the whole objective, we didn't talk much about that. I think his concern, the concerns I recall his mentioning, well, the one I recall his mentioning was concern that our bill not slap the friendly countries who have had a favored position in our immigration policy in the past. I guess that would include England, Ireland, and Germany.

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But I recall his being concerned about Germany, perhaps because Germany was very close to using its quota fully. It had a refugee problem, and perhaps they had been particularly helpful to this country right at that moment. I recall his saying something like, "They've been awfully good to us lately. I don't want to slap them gratuitously in the face with this thing." And we assured him that we had tried to work out the bill so that it did not have any harsh impact on any country, that it would gradually bring the immigration policy into a kind of equitable, reasonable thing that would not shut anybody off, and that it would give every country a reasonable prospect of sending immigrants here.

I think maybe as a result of what he said, the State Department went around in advance and explained to all the embassies what the impact of the bill would be. And they went armed with our Justice Department statistics as to what the probable immigration from each country would be under the new system, what it would be under the old, and sort of forewarned everybody so they wouldn't get alarmed and oppose the thing or let out a scream.

I think that the reason that bill passed was purely and simply that it was the first bill that ever was formulated that was checked out in terms of its statistical impact, that was systematically worked out to see if it was practical. I think that bill could have been passed twenty years earlier if somebody had done the same kind of work on it. But in prior years people had made emotional statements; they had called in dramatic terms for action; but nobody had gone and done the hard work until the Kennedy Administration came along. And we had the noble ideals that were stated in the platform, but we also had the determination to do the underlying work and to have ammunition to demonstrate to the rural Congressmen that it was a sensible thing, that it would implement the national interest. And as you know, a couple of years later the bill was passed by an overwhelming majority of both parties, and there was a voice vote in the Senate. They didn't even count because it was so obvious that it had passed.

Actually, the bill was substantially rewritten, but it was really a matter of stylistic changes, primarily. It's the basic scheme that President Kennedy sent up there July the 5th.

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STEWART: Other than the obvious fact of fulfilling a campaign pledge, were there any other domestic political considerations involved in the type of bill that you put together?

SCHLEI: Well, sure I guess so. President Kennedy had written a book about immigration.

STEWART: Right.

SCHLEI: I think probably Mike Feldman had a good deal to do with that. We in the Justice Department felt that if we were going to have a bill on immigration, from a political standpoint, we ought to have a bill that was worth getting even if we couldn't get it. If we were to cave in on this principle of the national origins quota system and put up a pallid substitute on the theory that, well, that's the best we can get, that would be a poor thing to do from a political standpoint, as well as from an ethical standpoint of principle. You know, if we were going to go into an election, we wanted to be able to say at least we tried to throw over the national origins quota system, we didn't cave in and acquiesce in the retention of the old deal.

We talked about those considerations, and Abba Schwartz—I think at that time Francis Walter was still around—Abba Schwartz was interested in proposing a bill that we could get for sure. We in the Justice Department were interested in, first, in shooting at what we regarded as a major evil, and secondly, doing something that could be effectively presented to the country, to the people who were interested in immigration. We could say, "Look, we shot for something that was good, and you ought to vote for us and against the people who prevented the enactment of this sound, desirable proposal." And we thought it would be a mistake to put in a second-rate bill just because it would get through Francis Walter.

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STEWART: I was thinking...Oh.

SCHLEI: I was just going to say, Mike Feldman and the President agreed with that, and we went on that basis. Now, actually, you know, in recent—about a year ago, there was a great furor upon the leaving of Abba Schwartz from the State Department. And somehow the impression is abroad that Abba was a leading fighter for abolition of the national origins quota system; whereas, in fact, Mike Feldman and the President really overruled him, and the source of the bill abolishing the national origins quota system was somewhere else entirely.

STEWART: Now, I was thinking in terms of groups that were helped or not helped as far as their political contribution or their political importance in the country, specifically Italians, and was...

SCHLEI: Well, the bill was a great boon in dealing with the Italian-Americans and Americans of Greek origin and all the—well, if you look at, say, a list of the groups that are members of the American Immigration and Citizenship Conference, the AICC, you'll see a list of all the hyphenated groups and the organization that are interested in the subject of immigration. The bill was helpful with those hyphenated groups, by and large, and we even wound up selling it to people like the American Legion. I went and met with the American Legion Americanism Commission.

STEWART: Oh, really?

SCHLEI: Yeah. When I went away, I think they felt that there was a good case to be made for the proposition that the bill was going to implement the national interest; it was not a crackpot scheme to flood the country with undesirables. I started out by saying to them that I thought a lot of their criticism of previous proposals had been unfairly regarded in some quarters, that there were legitimate criticisms to be made of some of the earlier proposals, but I said that we thought we really had

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the proposal now that was constructive and would stand any amount of analysis and we wanted them to analyze it and we'd give them all the statistics they wanted. We thought they'd have to agree with us that it was an improvement on the present system. I don't know that they ever really supported the bill, but they certainly never did oppose it with any strength.

STEWART: Were there any other groups like that that...?

SCHLEI: Yeah, there was a group called the Coalition of Patriotic Societies.

STEWART: Never heard of them.

SCHLEI: Well, they are people who defend the McCarren-Walter Act and who are in favor of keeping almost everybody out of the country. In other words, they're people who would support the national origins quota system and oppose any liberal substitute. Congressman Feighan had an assistant from Buffalo, Dr. O'Connor [Edward M. O'Connor], who was, well, disliked in some liberal quarters, but I must say he went out and rounded up people like the German-American groups and the Coalition of Patriotic Societies, and he was able to persuade those people that his bill was not a bad thing, you know, it made sense. And at least he blunted their opposition to a considerable extent. Dr. O'Connor helped in a major way to get the bill through the Congress.

STEWART: Okay, unless there's anything else, why don't we move on to the Civil Rights Act of 1963, which is probably a big story. Correct me if I'm wrong, but I think the decision was made at the end of May to definitely go beyond the proposals that had been made in the spring.

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SCHLEI: I thought it was earlier than the end of May, but I don't know. Early in the spring, as you know, there had been a really very disappointing civil rights legislative package—disappointing to some people. It was just a voting bill, as I recall, and a bill to extend the life of the Civil Rights Commission.

The next thing that happened, as far as I'm concerned, is shortly after the Birmingham crisis was over—and I'm talked about the one with Bull Connor [Theophilus Eugene Connor] and the police dogs and the fire hoses and the little girls that were killed in the church—as soon as that was over, the Attorney General called a meeting in his office in the Justice Department, and there were, perhaps, fifteen people there. And he said that it seemed apparent that major civil rights legislation ought to be proposed, and I sensed from him also that he now had the conviction that it could be enacted.

Before that it probably would have been irresponsible to send a major civil rights bill up there. It wouldn't pass; it would just bog everything down. But I think he sensed that as a result of the things that people had seen and heard, as a result of that Birmingham thing, the people of the country had really gotten an inkling of what it was like to be a Negro in the South and in some parts of this country, and they were prepared to support something important in the field of civil rights.

And really the question wasn't "Should we do it?" but, "What's going to be in it?" And we talked—there was a lot of talk about education. We started with our existing package of voting and Civil Rights Commission, something had to be done about public accommodations, something had to be done about education. It would be nice, we thought, to do something about employment, but that was very difficult, that was widely believed to have little or no chance. There was virtually no discussion of the withholding of funds in the event of discrimination because that was the Powell [Adam Clayton Powell, Jr.] amendment thing at the time and everybody thought that would be so unpopular in the Congress that that was something we oughtn't to try to get in.

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So at the end of a day's discussion of all the ins and outs of this—and one of the things the Attorney General wanted to know was, "Could we draft a public accommodations bill that would be constitutional?" And I told him that if we based it on the commerce clause I had absolutely no question about it. Conceivably, you could draft a constitutional regulation of discrimination in public accommodations on the fourteenth amendment, but if you based it on the fourteenth amendment, but if you based it on the fourteenth amendment and the commerce clause there just was no question about it at all. Doubtless, there'd be a lot of loose debate about it, but it was essentially a certainty.

At the end of that really whole day of discussion, maybe five hours, either Nick or the Attorney General asked me to form a drafting team with some people from my office and some people from Burke Marshall's office and got out a draft of a proposed bill by the close of business on Monday. This was Saturday night.

STEWART: Really.

SCHLEI: Yeah. So we went back to the drawing board and worked until sometime Monday night, at which time we produced a draft, and then there was more discussion of it, and we produced several other drafts in the course of the week. And then we finally got over talking to the President about it. And when we were pretty satisfied with what we had in the Executive branch, then we began to talk to legislative people about it. And we started with the Democratic leaders. We ultimately wound up with some of the Republican leaders.

And we began to get some very interesting playback from the Democratic legislators. Well, for one thing, all the legislators—Democratic and Republican—wanted to have a Powell amendment type of feature in the bill, what turned out to be Title VI. They said, "Please, let's get that behind us. Now, that comes up on every bill, and it just distracts the focus of attention from the bill." That was the Democratic legislators' argument.

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I think the Republican legislators, you could see that it appealed to them somehow on the basis that you were going to withhold funds, you were going to not spend money. They really didn't see it as a civil rights measure so much as somehow you were not—you were going to withhold the funds. It had some kind of an economy flavor to it. But we clearly had to get that in. That was a practically unanimous recommendation of all the legislators that we make the Powell amendment controversy obsolete forever by having a sort of a universal Powell amendment.

Ted Sorensen and I went up and talked to Dirksen [Everett M. Dirksen] about the bill one day. We gave him a—oh, I guess I went up on a Saturday, if I'm not mistake—and I gave him a copy of the current draft of the bill. And we went up late Monday, and he gave a really remarkable demonstration of his ability to absorb and understand things of this kind. He took the new draft that had been prepared over the weekend—it was about 5 o'clock Monday—and he shuffled through it about as fast as it was physically possible to turn the pages, and he observed and commented on every significant change that had been made in the bill. It was almost as if he were photographing the pages as he turned them and picking out the changes. In any case, Dirksen was totally noncommittal and his public utterances were extremely unfriendly, but he communicated somehow by osmosis—I had the impression and I think other people had the impression—that he was going to help us in the end. He was not unfriendly. He never gave us any grounds, really, for hope, but somehow it was clear to me that he was going to help us in the end.

As we got to rather a late stage in this development, there was a meeting at which all the legislators were present in the President's office. And the Vice President was there, and evidently he wanted to say something but he didn't want to say it in the presence of all the

other people because he might rock the boat. So he sent word down to Kenny O'Donnell [Kenneth P. O'Donnell] that he had some more to say on the subject of the discussion. Evidently he was a little bit nettled because he'd mentioned it to Kenny O'Donnell before and Kenny hadn't done anything about it or something.

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Anyway, he sent word down that he still had some more comments. And the Attorney General sent me up to talk to him and find out what his thoughts were about the civil rights bill. So I went up there and sat in his, the vice presidential, office on the Hill, in the Capitol building, for about forty minutes, and he talked to me about what he thought we ought to do.

STEWART: This, excuse me, was after it had been proposed, after...

SCHLEI: No, no. This was before the message, before the bill was finalized. And I guess the essence of what he had to say, the most important recommendation he had to make, was that he thought the President ought to make a series of speeches, perhaps preferably in the South, where he talked about civil rights in moral terms, maybe even religious terms. He ought to say that this is a problem that we have to do the right thing on, we can't equivocate any longer; and he ought to say that on moral, religious grounds it's just intolerable that people should be treated as some people are treated in our country; and he ought to talk about patriotism. And the Vice President reached out and grabbed the flag that was there, and he said, you know, "A man can be on his way to die for this country, and he can't get a cup of coffee in a public restaurant on an interstate highway." He said, "The President's got to tell people that." And he said, "Even people in Mississippi, you know, when they listen to him saying that, they can't disagree. You know, they....And nobody's ever said, ever put this thing on a moral, emotional basis. Let's talk about God and morality and goodness and simple justice and patriotism and get that involved in this thing."

And he said, secondly, he said, before the bill comes out, he thought we ought to go around and get ahold of all the natural opponents of the legislation and tell them about it and see if they won't tell us in advance what the grounds of their opposition is going to be so that we can blunt that or circumvent it as well as possible. He said, "I'd go get Dick Russell [Richard B. Russell, Jr.]" He said, "I'd tell him all about the bill, and I'd write down everything he

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said, and I'd see if I couldn't fix it in advance so that his arguments would misfire as much as they possibly could." Well, there's perhaps more. When I got back I dictated a memo to the Attorney General. But....

STEWART: Did you talk about the substance of the bill at all, do you recall?

SCHLEI: Really, really almost none. No. His point was that you had to prepare the country for this, and especially the South, and a lot more preparatory work could profitably be done to create a climate that would be friendly to the introduction of the bill. And he also thought more preparatory work should be done legislatively with the members of Congress who were going to be importantly concerned.

STEWART: Did this strike you as odd that he would be offering his suggestions as to something the President should do through you instead of through someone on the White House staff or someone who had a more direct relationship to the President than you?

SCHLEI: Well, it certainly was odd. On the other hand, I believe the White House understood that what he wanted to do was to make some comments about the specific provisions of the bill. The meeting in the morning had been about the bill. I was—I had the ball on the bill....

STEWART: Right.

SCHLEI: ...you know, I would go to the meetings at the White House, and whenever anybody had a suggestion, I'd go racing off and implement the suggestion. And I would collect views from every imaginable source and see that they got into the bill. And if the Vice President had comments about the bill, which is what the meeting had been about, it was not unnatural to send me. But on the other hand, he had wanted to talk to the President alone about it. He had wanted to talk to Kenny O'Donnell if he couldn't talk to the President. And I think that he was undoubtedly somewhat unhappy that he was talking to me instead of to somebody else. I was a substitute.

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But he certainly did talk. To this day I couldn't tell you whether he had hold of my lapels or not. He may have. He absolutely poured out his soul. He really—he must have been four inches away from me really telling it to me like he thought. And he did not hold these views lightly. And he really did reach out and grab the flag beside his desk to punctuate what he was saying.

It may well be—I don't know, it may well be—that his comments are partly responsible for the decision to make a major television address which, as you know, the President did about mid-June. And that was the occasion, which was the first occasion in the history of this country, when the President talked about civil rights on a moral basis. You know, Eisenhower always resisted that. He always said, "Well, it's the law," or "The Supreme Court says so," or something. President Kennedy really took off the lid in that speech. And it may be that the Vice President's recommendation had something to do with the timing and the substance of it.

Anyway, we finished up the bill and the message, and it was sort of all ready to do. And the night before, I began reading the bill, and I saw...

STEWART: The night before it was due to do.

SCHLEI: Yeah, the night before it was due to go, and I could see that we just had to do something with the definition of public accommodations covered by the bill because there had been various changes made, I think as a result of a conference in the President's office with McCormack [John William McCormack]. We had a complicated succession of exceptions in the original bill. McCormack said, "Take out those exceptions. You know, maybe you'll wind up with them, but why should we be in a position of proposing them. Let's say we'll cover the field, and when somebody comes up with a reasonable exception for Mrs. Murphy or somebody, fine."

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As a result of that, we wiped out a bunch of language that was in there. I was reading it the night before, and I saw that with that language simply excised it just didn't work. It didn't parse. So I rewrote it, and I called Sorensen late in the evening—because he might have needed to make a parallel change or two in the President's message—and read to him what I'd changed it to read and explained why I'd changed it. And he said, "Well, that sounds fine. That won't affect anything." But it was interesting to me that later the Attorney General and all the members of the Cabinet were sweating before congressional committees trying to explain the exact significance of each of those words. And I slipped them in the night before the message went without really consulting with anybody—just an interesting commentary on how some of this legislative language is born.

STEWART: From a legal point of view, how much of an issue or a real problem in the early stages of drafting was this whole matter of the federal-state relationships, as far as the courts are concerned?

SCHLEI: Well, are you talking about the public accommodations aspect of the thing?

STEWART: Well, I was thinking in general. As an overriding political constitutional problem, to what extent were you people concerned with the balance of powers between the states and the federal government?

SCHLEI: Well, I think we were concerned that we not take on any job that didn't have to be done by the federal government. I think we had a general bias in favor of having the states do it if they would, and so we tried to focus the bill on the areas of demonstrated unwillingness to do the job. Now, so far as from a legal standpoint, there were really no significant legal problems in the drafting of the bill. There was a huge congressional debate later, which was all a lot of political smoke. There is not a self-respecting lawyer in the country who would write you an opinion that that bill—who would have written you an opinion that the bill would be anything

but constitutional right from the beginning. This was the kind of constitutional question that can be talked about in a political forum but is absolutely spurious as a legal issue. There was nobody in the whole government, there was no good lawyer in the country, who would tell you that it was a hard problem. It just was quite clear.

Now, there were some liberal Republicans who made a great fuss about this business of basis the bill on the commerce clause or the fourteenth amendment. It seemed quite apparent to me that what they were doing was trying to lay a basis for voting with their fellow Republicans against the bill and having a liberal, pro-civil rights kind of reasoning to support that. And I refer specifically to John Lindsay [John V. Lindsay]. At the beginning he thought the bill was a hopeless exercise, and he was trying to work out a way of being for it and against it at the same time and solving all of his various political problems. Later, I think, it became apparent that the bill might make it, and then he became much more constructive.

There was a stage in the committee consideration of the bill in the House when a much more drastic bill was being proposed and the extreme liberals and the Southerners were ganging up to the support that, the Southerners in the belief that if the Committee reported out an extreme enough bill, it would all go down in flames, and the other people because that was their... [Interruption]

STEWART: About the concern or liberals, or the problems the liberals were having. The Republican liberals were trying to get out of it, get out of supporting it, and still...

SCHLEI: Well, I think at the outset they felt that it was going to lose anyway, and so the problem for them became how to get through the consideration of it and suffer the least harm. So if they could—I think Lindsay thought if he could take a liberal philosophic position and at the same time be voting with his conservative, Republican colleagues, he would have managed the best of all possible worlds. But as it turned out, the bill did have a chance, and I think probably more for that reason than for any other he abandoned some of these points he made at the outset and went ahead and supported the bill.

Before I forget, I really ought to tell you some of the things that the President had to say in the discussion of the bill that I recall. We were discussing the question whether there should be anything in the bill about employment, and he said that he thought that President Truman had made a great mistake and had done a lot of harm to civil rights by prematurely throwing FEPC [Fair Employment Practices Commission] at the Congress and that FEP legislation had been so disastrously defeated that it had scared people ever since, and he thought really it didn't—it was unjustly regarded as sensitive, wrongly regarded as the most sensitive of all subjects. He said it seemed to him that legislation on minimum wages, for example, was a far more drastic interference with a man's business freedom than a bill that said you can't reject people, who have all the objective qualifications you want, because of

their race, a bill that says you have to hire people who are good. He said he felt that labor relations legislation which required you to recognize unions and may minimum wages were far more drastic, regarded from any kind of neutral point of view, than anti-discrimination legislation in employment. But he said that he felt that Truman's throwing it at the Congress prematurely had sensitized everybody to it.

And in our original bill, as a result of those discussions, we had a title which simply provided legislative authority for the President's committee on discrimination in employment. It later turned out that we were being conservative there. We did get an employment title that was considerably better than that out of the Congress, but at that initial stage we thought that it might sink the whole project, and we were going slow in that area.

President Kennedy commented at one point that he thought the most sensitive thing in the whole bill was education, that that was something that really would affect people in an emotional way, far more personal a thing than job discrimination, which was part of the workaday world and away from the home and away from growing children and so on, and he felt that the really emotional—that the potentialities for a real explosion were the greatest in the education field. At the very beginning we had various proposed bills that would have required total integration within various time periods. What we wound up with, as you know, is a bill which permitted the Attorney General to bring

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suits—that could have been brought all along by private individuals—in circumstances where the private individuals weren't equipped to do it or were intimidated or some such thing.

STEWART: Wasn't there a fairly big discussion as to what power HEW [Department of Health, Education and Welfare] should have in this whole area of determining the pace of desegregation in schools, a general question of just exactly what role HEW would have in determining when there was discrimination or segregation in schools?

SCHLEI: Well, I guess that was in connection with the part of the education title which permitted them to give aid for the formulation of plans of desegregation, and I think the controversy related to how it was going to be administered rather than to the language of the bill. One of the pieces of language in the bill that caused a lot of problems was the business about racial imbalance. We started off giving HEW some funds to pass out to assist in plans designed not only to achieve desegregation but to remedy racial imbalance. I don't remember exactly how the language turned out, but there was some tinkering with it, and it caused quite a bit of problem for us in the Congress.

STEWART: Can you recall anything else that the President specifically was interested in or asked about?

SCHLEI: Well, let's see, voting, I don't recall his saying anything about that. He went all over the public accommodations thing with us, but I think that he agreed with McCormack, who suggested we take out the exemptions and let the Congress put them back in if they were reasonable. He participated in that. We've talked about education, his thought about that. We've talked about employment, the things he said about that. I think he shared the surprise of some others of us at the attitude on the part of the legislators of wanting the Powell amendment thing in. We all thought that was poison, and the legislators had an opposite...

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[BEGIN SIDE II, TAPE II]

STEWART: Did he always impress you as being completely well briefed on how the thing was progressing and what the real questions were?

SCHLEI: Extraordinarily. I have the feeling that he understood what was happening in a more detailed way than any executive I've ever seen. He knew more about where the commas were and what really the details of the work at a quite low level were. He was more informed about things like that than any executive of any kind that I've ever seen in a company or in an office, an institution of any kind. He really had an incredible ability to know about it all and to retain it all.

STEWART: As a general thing, and as a final question on this, can you think of any major mistakes that the Administration made in the handling of this that conceivably prevented it from being enacted sooner than it was?

SCHLEI: No, I don't. When the President was killed I felt that we were, in time, going to get the bill. We all, I think, felt that we were going to make it. It would take a long time, but we would. And I don't, in retrospect, think of any major mistakes. Maybe Nick Katzenbach could tell you of some. There was one day when the President met with the delegation of people from the, primarily, the Republican side of talk about what was going to be done about that wild subcommittee substitute bill. And the President told Halleck [Charles A. Halleck] that they could sink the bill if they wanted to, but they had just better watch out for the next election because he would hang it around their neck so that they'd never live it down, and that, you know if Halleck had any idea of killing that bill and escaping responsibility for it, the President had news for him, he was going to hang it on him but good. And the result of that meeting was that Halleck did not kill the bill, and I think he got a number of his people to vote for the Administration-favored version. And the bill that cleared the committee was one that we could live with and, obviously, could be passed and was passed. I heard

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only part of that meeting. Nick Katzenbach was there for all of it. You probably have got that from him.

STEWART: Okay, unless there's anything else that you can think of that you know hasn't really been discussed or....This whole thing had been gone over so much, I think there are very few details of it that haven't been documented one way or another.

SCHLEI: Okay.

STEWART: The TFX [Tactical Experimental Fighter] thing, you mentioned the whole problem of the conflict of interest of Fred Korth and Gilpatric [Roswell L. Gilpatric].

SCHLEI: Yes, well, one of the tasks of the Office of Legal Counsel was to work on avoidance of conflict of interest problems. We supervised the development of the conflict of interest regulations and the memorandum that was issued by the President, and developed the legislation, the legislation in that field and also, when people came to the government for important jobs and they had substantial holdings that might present conflict of interest problems, we would go over the situation with them and assist them in establishing relations that would, hopefully, insulate them from any problem. They would have a guideline as to when they should disqualify themselves and so forth. And conflict of interest problems were sort of our department.

And when the conflict of interest charges arose in the committee investigating the TFX contract, we were asked to look into the question and see if we could prepare some kind of utterance on the subject that would be precise and would take the thing out of the area of charges and smoke blowing and so on. And the first one that arose was Secretary Korth, who, as I recall, had an interest in a bank which was one of a number of banks that had participated in the making of a loan to General Dynamics. And we concluded with relatively little difficulty that there was no conflict of interest there. I think it was just something that had a sufficient remote flavor of possible conflict of interest

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that it could be used for some political furor purposes. We wrote a letter, as I recall, to Korth—I think it was addressed to Korth. He asked us for advice about it, and I think the letter ultimately wound up in the records of a McClellan [John L. McClellan] Committee.

Subsequently, Deputy Secretary of Defense Gilpatric was accused of having a conflict of interest because he had been a member of Cravath, Swaine and Moore in New York, which represents General Dynamics, and had been active in working on the problems of that company. And it was generally assumed that he would go back to the firm, although he had no legal relationship with them. And, again, we wrote a letter analyzing the problems and saying there were no conflict of interest problems either from a legal or from any of the common ethical standpoints with which we were familiar in this conflict of interest field.

I was not present at the hearing, but I was sent a copy of the transcript, and Chairman McClellan said something like, "What's this you say....What's this letter you have from this assistant attorney at the Justice Department, a Mr. Sly, S-L-Y. Assistant Attorney Sly at the Department of Justice has written this letter for you, you say?" Well, it was obvious that Senator McClellan had decided he was going to roust these people if he could. He was just going to hack and chop at that decision to make the TFX by any handle he could grab hold of, and this was just a defensive, a minor defensive action as to one of the backfires he created.

The Attorney General was informed and interested as to the progress of these things. I just don't know about the President. The Gilpatric thing was about two days before the President was killed, I think, because the night of that hearing was Bob's birthday. And I saw Gilpatric at Bob's house, and he told me about the hearing that had happened that day, the replay about my letter. And I think that was two days before the President's death.

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STEWART: Were there any other conflict of interest cases that came up that didn't have such favorable results as far as you were concerned?

SCHLEI: Well, I think there were a number of situations where we told people there would be a conflict of interest if they didn't take certain action. I don't recall finding any situation in which anybody was in flagrante delicto. That really....There probably were some lower level situations which were handled by the criminal division. Almost invariably our job was to look at the situation in advance and take some kind of preventive action, and we did that in about fifteen cases. I think a couple of Cabinet members; I don't know who off hand. Well, Bill Roth [William M. Roth], who was the Deputy Special Representative of the President for Trade Negotiations, I just talked to him the other day and happen to remember him. This fellow Gossett [William T. Gossett], who was the general counsel of Ford [Ford Motor Company, Inc.] was being appointed to something and had to arrange his affairs appropriately. Cutler, Lloyd Cutler [Lloyd N. Cutler], was going to be appointed to be Deputy Secretary of Commerce at one point. Maybe that was later.

STEWART: Probably.

SCHLEI: That was in the Johnson Administration.

STEWART: Were there any major changes in the Kennedy Administration's outlook on conflict of interests from what had been the general outlook or policy under the Eisenhower Administration? Or were you basically following the same guidelines or the same general criteria?

SCHLEI: Well, the Eisenhower Administration had been kicked around in the conflict of interest area because they didn't think about it really. They had some flagrant cases of conflict of interest, and having had those

cases, they turned around and were so utterly puritanical as to make it impossible for anybody to work for the government. And they were just really flailing and helpless and didn't make any systematic attack on it.

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And I think it was largely at the instance of Nick Katzenbach, maybe others, that the Kennedy Administration embarked on a real examination of the problem to see if we couldn't (a) prevent any wrongful conduct, any scandals from arising, and secondly, to confine the conflict of interest regulations to something that would make sense so we wouldn't preclude the government from getting the services of all kinds of people. They'd have to have some kind of outside business interests or they couldn't live and, therefore, couldn't work for the government unless they could know exactly where they stood.

So the Administration—first, the President issued a long, complicated, detailed memorandum on the subject of conflict of interests. Then, the Administration followed a practice of giving everybody a once over from a conflict of interest standpoint who was being appointed to a significant job. Thirdly, we proposed new legislation that would clarify and rationalize the situation. Finally, we replaced the President's memorandum with a detailed series of regulations. The whole decision to think the thing through and make sense out of it was one that was made by the Kennedy Administration. The Eisenhower Administration just was overtaken by it. They really never did take aim at it and try to make sense of it.

STEWART: Okay. The matter of the constitutionality of the aid to higher education bill, which would have been in—well, the bill failed in 1962, and then there was another bill in 1963.

SCHLEI: Well, as I recall that, the idea was that if there could be judicial review of constitutionality there would be people who would vote for that bill and say, "Let the courts decide whether it's constitutional. We don't have to grapple with this business of whether church and state relations are going to be unconstitutionally affected by the bill. We're going to vote for it on the provisional basis. The courts can review it, and if it's unconstitutional, obviously we won't continue it, but if it's constitutional, then I think the aid should be made available." In any case, there were bills or amendments introduced that would provide for a taxpayer's challenge to the constitutionality of the provisions for aid to church-related schools.

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And we in the Justice Department, obviously, wanted very much to save this bill, but we also were very much opposed to the idea of sanctioning suits by somebody whose only basis for bringing the suit was that he was a taxpayer. So we tried to draft up some way of providing for judicial review that would not sanction a taxpayer's suit. And the way we finally worked it out, we provided for a suit on behalf of an institution that got no aid or less aid because a church-related institution came ahead of it in the allocation of funds. That gave

no sanction to taxpayer suits. It provided a much smaller number of possible plaintiffs so that the courts wouldn't be inundated with thousands of challenges. There might be three or four and the case would in due course get to the Supreme Court—which, after all, was the major objective. And we talked to people like Edith Green [Edith S. Green].

And I recall telling the President about this with the Attorney General one day. He just acknowledged receipt of the information and sort of blessed the effort. I made a couple of appearances before the Education and Labor Committee, Powell's Committee, and explained what our objections were to the taxpayer's suit and the alternative that we offered. And I think that rode all the way through. I think that was part of the basis for compromise that got the bill through in the end. People were able to say, "Well, I'm voting for the bill, but I made sure that if there's anything unconstitutional in it, it can be knocked out by the courts." And that was apparently an acceptable position for a lot of people.

STEWART: Okay. That White House guide and the question of the copyright as far as the White House Historical Association was concerned?

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SCHLEI: Well, I guess on reflection, everything is in the memorandum on that, and that's part of the records of the library. There's a long standing objection to the government's having any copyright. And there's been criticism of various private people getting the benefit of information that really belongs to the government. It all goes back to Lewis and Clark and who was entitled to the royalties from their diaries and so on. There was potential criticism about the copyrighting of the White House guide by the White House Historical Association, but we, as I recall, analyzed the situation from every angle and concluded that it was all right, although we may have made some recommendations as to how things should be done.

STEWART: I guess the final item was that application of the Cargo Preference Act to sales under Title IV of Public Law 480.

SCHLEI: Well, that was a question whether there had to be a certain amount of preference given to U.S. flag vessels in shipping certain kinds of foreign aid. And a fellow in my office worked for months and months and months on that legal question. He finally persuaded me that the conclusion was inescapable that the Congress wanted the Cargo Preference Act applied, although that really was not very—that was kind of contrary to Administration policy which favored foreign aid. We had opposed, I think, the Cargo Preference Act; the Democrats always had.

The Attorney General just was kind of sour about the thing, and he asked me to check with the White House to see if our coming out that way would give rise to any adverse political ramifications. And I checked with Mike Feldman, and he said, "God, no. So far as political impact is concerned, the only impact is really on the shipping companies and the maritime unions, and they're delighted to have us come out this way. There is no political constituency for foreign aid, and really, the only thing that would politically have an adverse impact is if your opinion would have an adverse effect on barter deals." And we looked into

that, saw that it would have no impact at all, so the opinion issued forth. And I suppose the only

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thing that's significant about it is that that's the only Attorney General opinion that I recall where the Attorney General was very grudging about the legal conclusion on a policy or political basis. And he ultimately went through with it.

STEWART: Okay. Is there anything else you want to say while you have the....

SCHLEI: While I have the floor?

STEWART: While you have the floor.

SCHLEI: Well, I don't know. The predominant characteristic of the President, if you were going to tell what kind of person he was, based on the kinds of contacts that I had with him, the overwhelming thing about him was his intelligence, his ability to grasp instantly all these complexities and understand them and separate them out into the issues and reach into this mess and pull out the nub of the matter. He was just tremendously impressive from that standpoint. Very tough, too, very tough-minded man. He, you know, he looked like a handsome, light-hearted fellow, but he was just as hard as nails when it came to deciding something that was important in terms of the national interest.

STEWART: What about his attitude toward, or his general sympathies, with legal questions...

SCHLEI: Listen, I think he was a better lawyer than most of the people in the Justice Department, from the standpoint of Holmes' [Oliver Wendell Holmes, Jr.] remark that being a good lawyer is having an instinct for the relevant. He had that more than most lawyers. He really could sweep aside the irrelevancies and the smoke and pick on what really lay at the crux of the matter. He was very interested in and sympathetic to legal analysis. Some people don't like the talk, don't like lawyers' talk. He did, and he understood it, and he observed more of the details than really any client I've ever dealt with. And I think that there were various crucial times when having a legal approach helped. I think that in the Cuban situation,

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the legal spade work that was done far in advance was very helpful.

And, of course, he also had the ability to smile at you and make you feel that the sun had just come out. He could make your whole day by a big smile. He could just cheer you up for hours, and I don't know whether that comes to almost everyone who—I just don't think it

does. He had a gift for communicating with people without a word, just a look or a glance or a smile. It was a terrific experience to have known the man and worked with him.

[END OF INTERVIEW]

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