

## INTERVIEW I

Sidney A. Saperstein

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INTERVIEW I

DATE: May 26, 1986

INTERVIEWEE: SIDNEY A. SAPERSTEIN

INTERVIEWER: Janet Kerr-Tener

PLACE: Mr. Saperstein's residence, Silver Spring, Maryland

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K: I wanted to start out by asking you to recap your education and some of your career highlights prior to the Kennedy and Johnson years. I know that you had a long term of service in what started out as the Federal Security Agency and then became HEW. I should ask, were all of the elements of the Federal Security Agency shifted to HEW or was it divided up a little bit?

S: I think virtually everything was transferred to HEW. The main purpose of it was to convert what was the Federal Security Agency into the Department. This had been attempted several times before.

K: I did not know that.

S: Oh, yes. The Democrats, particularly I think when Oscar Ewing was the administrator, had made several attempts to convert it. But the Republicans--and conservative Democrats--were always very suspicious of the Democrat Administration and wouldn't agree--well, they felt it might expedite something like socialized medicine and that kind of thing.

K: Oh, you mean giving [it] cabinet status they felt would expedite--

S: Yes, giving cabinet status would do it. And so the attempts were unsuccessful. So when Mrs. [Oveta Culp] Hobby came in, or rather when

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Eisenhower came in, of course the Republicans then were less suspicious because it would be the Republicans who were doing it. And it was converted into a department.

K: What kind of functional difference did it make to no longer be an agency but a cabinet [department]?

S: Well, for one thing, the head of the Department became a member of the cabinet which meant you had that status. I think at that time the cabinet members had assigned to [them], a limousine, for example, which I don't think automatically came to people who are heads of the agencies. (Laughter) They didn't have the same status and they weren't members of the cabinet, so that was the main thing. I think actually as far as authority is concerned, it made no difference.

K: Well, Oscar Ewing had fairly close ties to Truman, didn't he?

S: Yes. Sure.

K: I mean, he had regular access to Truman, so--

S: Oh, yes. As far as access is concerned, you could get there, but it was not the same. You know, status is quite important in Washington and it made a difference.

K: Yes. I wanted to ask--maybe it's a little premature--but why has Eisenhower for so long been described as a conservative Republican when so many of the things that he either tacitly agreed to or up front promoted appeared not to be the types of issues that would have been on the agenda of conservative Republicans?

S: Well, two things that I remember particularly were his attitude toward Medicare, or what would have been Medicare, and his attitude toward

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the federal support of education. You remember the story about his refusing to make the phone calls which would have resulted in the enactment of an education bill toward the end of his term.

K: In 1957, I believe.

S: And it wasn't until Sputnik that he really became involved, or the White House became involved. The White House science adviser was very helpful in that.

K: James R. Killian?

S: Yes. As far as Medicare was concerned, we in the Department were always amused because here was a man who had benefited from public medical care in the army. Now, what could be more public than that? But he didn't want to have that available to everybody else. So those are two of the reasons. I don't remember any of the others, but there must have been others, too.

The thing about Oscar Ewing that is amusing--I don't know whether you have ever read about it, but his wife had medical problems and he sent her down to Duke and she was put on this rice diet and was helped considerably. But the Advisory Councils at the Public Health Service, made up of doctors who are supposed to be the big experts in the field, were not enthusiastic about that. So he was campaigning to change the membership [of the Councils] and get some laymen on as well as the doctors, but that's a side point, I think.

But Eisenhower until Sputnik was not very helpful in the education field.

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K: Yes. Was that because he felt constrained by the more conservative elements in the Republican Party, or was that, do you believe, a reflection of his personal philosophy?

S: I think it was probably a reflection of his personal philosophy. Remember, he had been president of my alma mater before he came here and so he had some experience in higher education at least. Again, I suppose when he was overseas, particularly, he had [had] subsidized education for his children. But this did not transfer over to the rest of the population, so that's what went on.

K: When you mentioned your alma mater, I guess we should for the record state where you went to school and when you graduated.

S: [Do] you mean to college?

K: Yes.

S: I went to Columbia College. I entered in 1933, the year Columbia won the Rose Bowl.

(Laughter)

The only time. And I entered the law school in the fall of 1936 after three years of college. At that time, and I think even today although it may be slightly different, Columbia allowed you, if you had enough of what they called maturity credit courses--courses that were difficult or involved certain subject matter--you could go into the graduate schools after three years, and, if you passed the first year, you were awarded your B.A. degree. Of course, at Columbia Law School in those days, they had an entering class of about two hundred and fifty and the professors used to begin their freshman classes by saying,

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"Look at the fellow next to you. At the end of the year, he won't be here."

K: Oh, God. (Laughter)

S: They flunked out 50 per cent of the first year class, which I think is an awful waste of effort and energy, and I don't think they do that anymore.

But anyway, I got my B.A. degree in 1937 and then my LL.B. from Columbia Law School--which was subsequently, many years later, converted to a J.D.--in 1939.

K: Then when you finished your law studies, you stayed around Columbia for a while?

S: When I finished my law studies--well, about six months before, my wife and I came down to Washington so I could look for a job, and jobs were just not available.

K: This was the Depression era.

S: It was the Depression era. An opportunity became available for me to remain at the Columbia Legislative Drafting Research Fund under a grant to study the workings of the Federal Communications Commission and how they were arriving at decisions and what sort of philosophy they had and what their precedents were and so on. And I did that, although it was never published. Ervin Stewart, who had been an original Federal Radio Commission member, was then with the Carnegie Foundation, and he had a grant to do that. But I don't think he ever fulfilled it, because the war came and so nothing was ever published, so far as I know, of that. So I stayed on there, and in February of

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1941 I came down again looking for a job. Jack Tate was general counsel of the Federal Security Agency.

K: Was he a Columbia alum?

S: No, he was Yale. In fact, he went back subsequently to be the dean of the Yale Law School.

Fowler Harper had been the General Counsel, but Fowler Harper went with Paul McNutt to the War Manpower Commission and Jack Tate became the General Counsel. And Leonard Calhoun was the Assistant General Counsel for Legislation and Litigation at that time. They interviewed me and they needed somebody in legislation, drafting and so on, and decided that they wanted to hire me, but I had to take an examination. At that time the only examination available--there was no examination for lawyers; this is also another story. But I took the examination for junior professional assistant. They then put in a request for someone who had a background in drafting and that kind of thing, and I was the only one, so they were able to hire me.

The reason there was no examination was that the Appropriations Committees that were responsible for the Federal Security Agency [among others] were very annoyed with the fact, I think, that so many Ivy League attorneys were being hired in the government, and they would not appropriate funds for the Board of Legal Examiners [to conduct examinations], even though there was legislative authority for it. The result was that for some time lawyers didn't have what they called civil service status. I never understood what difference this made anyway. But then in subsequent years when I was, I guess, deputy

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chief of legislation and then chief, when we were going out looking for good lawyers, the Department's General Counsel's Office developed its own examination which it gave to prospective [employee~] lawyers. But that's another story.

K: Its own special bar exam. So you started at the FSA in 1941.

S: In May of 1941.

K: That was under Roosevelt. What was happening in the agency at that time?

S: At that time, not a great deal was going on. One of the first things I remember doing was something on welfare for a Texas Congressman. I can't remember his name right now. I went up and worked with the Legislative Counsel's Office in the House to draft this bill for him, and one of the earliest letters in my file from people expressing appreciation for my assistance was from that Congressman. I don't remember his name. We did that kind of thing. And of course then the war came very soon. We also had the responsibility of drafting letters to the Congress [from the Agency or Department] commenting on proposed legislation that was before the Congress. We had that function as well as drafting any legislation for the [Agency or] Department. We did that, and then the war came and I guess I did some litigation work for them, and I do remember working on the War Mobilization and Reconversion Act--that's one of the things I did--and working with the Assistant General Counsel in charge of employment security. At that time the unemployment compensation and employment security functions were in the Federal Security Agency, not in Labor.

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Later the employment offices went to Labor and then the whole thing did.

(Interruption)

S: [I worked with] the Assistant General Counsel for Employment Security, Bernice Lotwin Bernstein. She of course was well established and I was just a young lawyer hardly dry behind the ears. I remember she made some demands of me which I felt were a little unreasonable, and I said to her at one point, "You know, if you want to stay here with me till midnight working on these things, I'll do what you want, but otherwise I'm not going to." Of course I wasn't working for her so I could say those things. But we became good friends after that. I mean, as was the case--and I hope you won't think this is--

K: I won't.

(Laughter)

S: --being a--what do you call it, a pig?

K: A chauvinist?

S: A chauvinist. At that time it was hard for women lawyers, because you know how it was, most of the lawyers were men, and the women--she and her top assistant, Gladys Harrison, whom I also became very good friends with later on, had a tough time. And I think they were as a result more aggressive. I even found this a little later when I had a relatively young lawyer from Columbia working for me, a woman, whom I had to sit on a couple of times. I mean figuratively, of course. I think it was a reaction to the fact that they were so discriminated against.

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Anyhow, we became good friends and she [Bernstein] was a very fine lawyer. Later she became the Regional Attorney in New York, which did not have the same status, of course, but her husband [Bernard Bernstein], who had been in the service during the war, came out. He was a very fine lawyer and he went back to New York, so she did, too. The story about her was they always were afraid she was going to have her children right in the office, because she worked up till the last minute. But that was when---that's a digression.

But we worked on that bill [War Mobilization and Reconversion Act], which became law, as a matter of fact, and that was one of the early things that I remember.

K: And then you worked on the Public Health Service Act.

S: Oh, that was quite something.

K: That was 1944.

(Interruption)

S: That's quite a story. There was a Congressman who was chairman of the House subcommittee by the name of [Alfred] Bulwinkle. And each time the Service came up for something, I'm not sure what it was, whether they wanted more money or they wanted to do certain things, he would say, "I just can't find out what your authority is. You have so many different pieces of legislation that we don't know what the score is. You'd better spend some time on it and come back with it later on." At that time Alan [Alanson] Willcox was the Assistant General Counsel for Legislation---Calhoun had gone on someplace else---and his future wife was also working in the office. I think at that point she may

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have been working for him. And I was the other attorney. There were just the three of us. And there was a young lawyer by the name of Stan Drexler, who was the lawyer in the Public Health Division, so-called. The four of us worked on this. Stan Drexler didn't do too much, but Marjorie Champion Willcox and I went through all the laws from 1797 and so on, through all the statute books, to get the various authorizations for the Public Health Service. And we found conflicts--and things that had expired. And we drafted--I guess I primarily, with Mr. Willcox supervising of course--the Public Health Service Act. It was quite a chore. This took a year.

At that time Tom Parran was the Surgeon General, which is an interesting sidelight. I was having trouble with colds at that time. This was during the war. He said, "Well, you know, we've developed a kind of shot that may help you." So I started taking what became the flu shots.

We worked very closely with him and Dr. [L. R.] Thompson, who was his Associate Surgeon General. And we drafted this legislation and went up to Bulwinkle's subcommittee and had to make modifications. And I think Bulwinkle left; I think he was defeated or he didn't come back, and a fellow by the name of [J.] Percy [Priest] became chairman of that subcommittee, a very nice fellow from Kentucky or Tennessee, I can't remember; I think it was Tennessee. It finally went through, and that's the story of that. I had almost forgotten about that.

K: What about the--it's often referred to as the Hill-Burton Hospital

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Construction Act, which was first done in 1946. Were there amendments every few years to that?

S: That Hill-Burton Act, of course, is the--it's still referred to I think as that, although it's been expanded tremendously. Alan Willcox and I worked on the original drafts of that, and at the same time I was working on what became known as the National Institute of Mental Health Act, although it didn't establish it [the Institute] by name.

K: That's what it was.

S: Yes. So at one point, I think when it was in the Senate, Alan Willcox had to take over on the Hill-Burton Act and I had to concentrate on the other. He worked with Senator [Lister] Hill very closely on that. And although his name doesn't appear on the bill, Senator [Robert] Taft played a very important role. I mean, he was Mr. Republican at that time, but a very straightforward and able person. They had to make a number of modifications to satisfy him, but when they did, he supported it just as well as anybody else.

K: One of the things I'm curious about [concerning] that Act [which] you might have a little insight into is, if I'm correct, the Act provides construction funds for hospitals which are run by religious orders, which are in effect sectarian institutions. There was some discussion I believe in the late fifties about adapting that Act to the question or the issue of providing construction funds for universities and colleges, some of which, particularly at that time--there were more then than there are now--were religious-affiliated colleges and universities. Do you recall any discussion about, number one, problems

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with funding hospitals which were run by religious orders or which were affiliated with various faiths?

S: No, I do not. And now that you ask me, I can't remember that we had any problem in that area.

K: Yes, evidently not.

S: But they were required to admit people without discrimination. In other words, they couldn't be confined to that [religious group].

K: Right, right.

S: And it was not only the hospitals such as the sectarian ones, but also hospitals run by some of these organizations--I don't think they were actually involved--like the Elks or somebody who wanted to confine it to their own people. And we couldn't allow that; they had to open them up. But otherwise we had no problem.

An interesting sidelight is that a few years back, just after I stopped really consulting--I had retired already--a woman from a Los Angeles law firm called me. They were doing pro bono work for a sectarian institution which was a Hebrew home that wanted to get some Hill-Burton funds or had gotten some Hill-Burton funds. I don't remember what it was. But it really was limited practically exclusively to Jewish people because they observed the rabbinical laws, the food and so on, and so they didn't feel it would be appropriate for other people to come in. They [others] would feel out of place. And the antidiscrimination clause came into effect. Now, I had drafted that one when [Anthony] Celebrezze, I think, was Secretary [of HEW], and I had remembered that Hill was running for re-election then and

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Jack Forsythe was his main assistant. They said, "You know, we don't mind it, but if you make it too pronounced, Hill's going to have trouble down in Alabama." So she wanted to know the background of it, so I went down and checked my records and then gave her the background.

But the question of sectarian institutions getting funds did not arise, as far as I know. It may have in actual administration later on, but [not] in the drafting, because we said that you've got to admit other people, you can't be confined to--

K: You worked on the National Defense Education Act legislation and were the main character I guess there. What about the question that in the act somewhere there is provision for funds to graduate programs in colleges, regardless of affiliation? Was there any discussion at that point in time about whether this would be regarded as constitutional or unconstitutional?

S: There may have been a little. I don't recall too much discussion because in the higher education field the federal government had been providing assistance for a long time. The land-grant colleges, for example--

K: Since 1869 or something.

S: Now, those of course were state institutions but--

K: But not all of them started out as state institutions.

S: Right. And there had been a history of assistance of one sort or another to institutions of higher education. They felt, I think, that the students were mature enough that they wouldn't be persuaded to buy

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the religious-oriented courses or other aspects of these institutions. Also my recollection is we were very careful to advise them that the funds were not to be available for religious courses.

K: Or, for instance, building a chapel on campus as opposed to building a mathematics building or a science building.

S: Right, right. So although the question may have come up, we were able one way or another to--

K: Can you give me a little bit of any recollection you have on the federally impacted areas legislation for public schools? I believe those statutes are still in effect. That was PL 8--

S: 815 and 874, right. One was for construction and the other was for maintenance and operations. I can't remember the dates exactly now; It was in the fifties, I think.

K: I believe so.

S: In the early fifties, [during] the Korean War and stuff, there were large influxes of federally employed people into particular school districts, some of which had never existed before, and they had to provide education. I mean, they [the U.S.] plopped it [a Federal installation] in the middle of some place--

K: Army bases and that sort of thing?

S: Yes. Reg [Reginald] Conley and I--Reg was my boss then--went up to the Hill and worked with the House Education and Labor Committee. A fellow by the name of Diavies [?] and Al Lillywhite--Al Lillywhite was then with Housing and Diavies was from the Office of Education--they

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were up with us. And we worked with that committee drafting the legislation.

K: But this was a congressional initiative as opposed to an administration initiative, these programs?

S: Oh, I'm not sure. I can't remember. Isn't that something? I would have to go back and look. I just don't remember.

K: Why is it that presidents who tried to cut back on these programs--I think Kennedy wanted to transfer the funds from these programs to do other things--why were presidents so unsuccessful, once programs were established, in making any changes in them?

S: It was because the school districts had good representatives in Congress who were very influential. Also I think the people in the service, even though the President may have been opposed to it, gave support to them [the programs] and pointed out what would be the results if--

R: But these funds went strictly to public schools. If there was, say, a Catholic or Episcopalian school in the neighborhood, they weren't eligible for funds.

S: I think so. I'm trying to remember, but I don't recall any funds that were made available to them [parochial schools].

K: Well, up this point, really--I'm sort of getting up to the Kennedy education initiatives--there was really no clear precedent for federal aid to sectarian or independent elementary and secondary schools the way there was a precedent for aid to higher education.

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S: The National Defense Education Act, we had something in there for the parochial schools.

K: Like funds for buying equipment for teaching science and foreign languages.

S: Yes. You see, in order to get the support of the people in Congress who were influenced by the religious institutions and their religions, there had to be some sop to them.

K: So if there was a little bit of a precedent in the National Defense Education Act, why was it so difficult to get Congress to pass on the idea of additional funds for the education of parochial school children.

S: Well, when you went beyond that to support for the teachers or for support for construction, you were getting into the field where you were supporting the religion, so to speak. Whereas here the idea was, well, we're supporting the kids and in the math and science--

K: A clear national purpose.

S: Right, national purpose. No one successfully challenged that on a constitutional basis. But, as you know, ever since then there have been attempts to devise devices which would enable the parochial schools to get some support for what they're doing for the kids, you know, for special education and things like that. In New York, where there are questions of sending public school teachers into the religious institutions, well, you can't do that, so they are trying to devise ways of getting around that.

(Interruption)

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K: Kennedy gave a lot of attention to the issue of aid to education in his presidential campaign in 1960. In fact, it was I think aid to college students and aid to public schools that were major planks in the platform. Was there some sense of anticipation in the General Counsel's Office in HEW when the administrations changed over that there would be some new legislation in the education field?

S: I guess there was. I must say that at that point I don't think I was involved too much in that aspect of the legislative proposals. I think Ted Ellenbogen was doing a lot of the work at that time. I became involved later in education, particularly that bill I drafted where Celebrezze wanted some minor thing changed. I remember that particularly. But I was working on welfare and on Medicare at that point.

K: Okay. And Kennedy had been converted to the idea of Medicare before the election?

S: Oh, yes--well, not just converted. I mean, he'd been for that for some time. I don't know that I mentioned to you when you were here the last time, the story about my being on the floor during the debate, the floor of the Senate.

K: You can tell me again.

S: Well, this was still at the end of the Eisenhower Administration. No, wait a minute, let's see, this was 1960. That was Eisenhower, yes. Nixon was Vice President and he was not favorably disposed toward Medicare as the Democrats had it, but he was sort of on the line. [Arthur] Flemming, who was the Secretary [of HEW], was working with

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him to try to get something in there, and [Jacob] Javits was also interested in some of it, Senator Javits. I can recall, after having worked on the House side on the predecessor of Medicaid, which the House passed, I was on the Senate side working with Javits' man up in the Legislative Counsel's [Office] of the Senate, trying to modify the Nixon-Flemming proposal so that Javits would go along with it--this I think was one where we would be making grants to the states and they would have all sorts of programs--when I got a call from my office to come back. I came back to the office and they said the Democrats, Senator [Clinton] Anderson particularly, with the help of the AFL-CIO people, have called for a lawyer who knows something about what was then the predecessor of Medicare and the other aspects of it, to come up and sit on the floor of the Senate during the debate on that and the predecessor of Medicaid. So they said, "You're it."

So I went up to the Hill [Senate] and sat in the gallery and after some goings-on down on the floor which I couldn't hear or understand, they motioned for me to come on down. I went down and I sat between Anderson and [Robert] Kerr, Senator Kerr. Bob Myers was also there; he was then the Chief Actuary of Social Security. And Kennedy got up and made this speech in favor of Medicare, and Kerr waited to the end and he made his speech against it and in favor of what was Kerr-Mills. They asked me a few questions while I was on the floor, not much. It really wasn't worthwhile, my being there, I didn't serve. . . . But I had gone out several times during the proceedings when they were talking about other things, to call my wife, to tell

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her to come on down to see what was going on; this was a historic moment. Her mother was visiting then and they were out sightseeing with the kids. Finally I reached them but it was then almost too late. Well, they came down anyway. They came down when the debate was all over. But Ted Sorensen came out--he was Kennedy's assistant then--and I introduced them. Ted had been, as I think I mentioned to you, a lawyer on the staff of the Department.

K: No. I didn't know that.

S: Oh, yes. That's another interesting story. Ted Sorensen was on the staff of, I think, the education part of the General Counsel's Office, and we had a reduction in force. This I think was during the Democratic Administration; we kept having reductions in force because we couldn't get enough money. Under the Republicans we fared very well, but with Democrats we kept having that [the reductions], and he was let go for that reason, because he was a junior member of the staff. So he got a job with Kennedy. So I knew him and when the debate was over and he came out, I introduced him. Of course, then he became quite important in the Administration when Kennedy was elected.

But one of the things was that Kerr and Anderson had a bet as to what the vote would be. (Laughter) They had sealed envelopes. I don't know who won. It [Medicare] was defeated by about 3 to 5 votes, I think. And they were very good friends, even though they were opponents on that.

Also I remember that the vote was to occur at 6:00 p.m. They had [inaudible]. They held it up for about ten minutes because the

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Administration had sent air force planes out to get a couple of the Senators who were out in the boondocks, to get them back for the vote. Either the Administration did that or the Democrats; I don't remember who was responsible. But they waited for these--

K: --people to get back.

S: So Kennedy was of course in favor of it, and when he was elected, one of the first things I started working on was Medicare. We had Bill [William] Stewart who was then the Surgeon [General]--or was he assistant? I forget now whether he was Assistant to the Secretary for Health or Surgeon General, one of the two. And Ida Merriam, who was with the Social Security Administration, and a number of other people would meet in my office or elsewhere and we would start trying to get up the proposal.

K: Were the welfare amendments of 1962 part of--? That was part of changes in the Social Security Act.

S: Well, that was a change--that's also very interesting.

K: Can I have a little background on that?

S: All right. First, maybe I ought to tell something that I noticed in your notes about what happened when [Abraham] Ribicoff came in [as Secretary of HEW]. When the election was over but before the administration came in, it was thought to be a good idea for some people to go up and orient Ribicoff as to what was going on, the personnel [of the Department] and things like that. Reg Conley, who was then my boss, and Rufus Miles, who was Assistant Secretary--

K: He had been in the Budget Bureau under Truman.

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S: Rufus Miles had been in the Budget Bureau and, as a matter of fact, a brother of his was there later. And he came over--he was Assistant Secretary for Management or something like that, operations [Director of Administration], and the two of them went up to Connecticut and started briefing Ribicoff on various aspects of personnel and so on. This will have to be, I think, closed [to the public] for a while, what I'm going to tell you now. I think they persuaded Ribicoff to reappoint Willcox as the General Counsel. Willcox had been the General Counsel when the Republicans came in. I think Ribicoff wanted Jon Newman to be his General Counsel, but they worked it out so that Jon Newman became his Executive Assistant and Alan Willcox [became General Counsel]. That was a very salutary thing for the Office of General Counsel because Willcox was a very able person, tremendously able, a sweet guy and just wonderful. That was one of the things that they accomplished, and they also told him [Ribicoff] about the other personnel and things.

Then Ribicoff came down, of course, and somebody or other put a bee in his bonnet about--well, this was at the end, I think, of his first year. Wilbur Cohen had worked hard on various things and he was going over to Greece with some of his family. Before he left, he called me in and he wrote out nine or ten things, just cryptic notes. He said, "I want you to work on these nine or ten things for a welfare bill. I don't want you to talk to anybody about it, because if you start talking to those social workers, they'll find all sorts of reasons for not doing it," because services were going to be provided.

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This was the first time [for inclusion of services]. I said, "Well, please at least let me talk to Charlie Hawkins," who was then one of the assistants on welfare who had come in with the Republicans but was a very good man. He wasn't exactly a social worker, but he knew the field. He said, "Okay, nobody else." So he was gone about a month and during that period I worked, with occasional help from Charlie, on drafting a bill. When he came back we went over it and we made some revisions and I forget--he talked to some people and then after maybe one or two more revisions we circulated it to the various people, the social workers and the administrators.

K: What was the essence of the program?

S: I think you got it from that [study]--

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S: --which allowed the state and local administrations to provide services to the people who had been or might become welfare recipients, and the kind of services. And that's where I raised these questions with Wilbur about what might happen if we didn't have some kind of a handle [limit] on it. And I think he finally let me put in something about "to the extent prescribed by the Secretary," or something like that, so that the Secretary could limit it. But that's where you said, well, when Martha Derthick asked about why he didn't let me put in more restrictions, he said, "Well, you know, Sid would come in and ask four hundred and fifty-three questions." He exaggerated, of course, but that was part of my function, an important part of my function, to make sure that Wilbur or whoever happened to be setting

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the policy realized the implications of what they were suggesting and what might happen, and the more of those problems I could think of, the more we would be able to avoid problems in the future.

K: But it went through Congress essentially in this form.

S: Yes.

K: The people on the committees weren't particularly concerned about it.

S: No, as I say, I was able to put in those limitations so the Secretary could limit it if he wanted to.

Did I tell you the story about the findings on that?

K: No.

S: Well, Ribicoff had working for him as his public information person a lady by the name of Natalie Spingarn, who was married to a classmate of mine from Columbia Law School, as a matter of fact. I didn't realize it at first. She was a very able person, but she thought up this brilliant idea where--you know, like this current administration has these catchwords and things. Well, in the findings she would say, "The Congress hereby finds and declares," and so on, and then there would be a series of indented paragraphs starting out with the letter S and then the next paragraph P-I-R-I-T; it spelled spirit. You know, they were going to get some spirit into it. My understanding with Wilbur and some of the others was always: I don't care too much what you put in that section as long as it isn't too outrageous. Because I always felt that the substantive [part of the] legislation was important and you would draft that as well as you could, and the findings gave some embellishment to it. So as long as it didn't do any harm--

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but when I saw that, I went over and I said, "This is ridiculous."  
And Wilbur said, "Now, now," you know, "take it easy. Ribicoff likes it," and so on. So I said, "Okay."

When we got up on the Hill, I worked very closely with the Legislative Counsel's Office. We had a very special relationship with them, I think better than any other executive agency had.

K: Who were some of the key people there?

S: There at that time was Larry Filson. Now, he was the junior member of the firm, so to speak, of the Legislative Counsel's Office. And he and I had a special relationship because he came from the Legislative Drafting Research Fund up at Columbia Law School. He was the only one outside of Allan Perley, who was then gone, who had had any training with any of the people from that [Law School] office. He came down I think it was in 1956, a young lawyer, and they threw him into the welfare and social security field, and he was just new at it. And I was working with him and I gave him the benefit of my experience. So we had a very fine relationship between us. He was, of course, assigned to this. At that time Ed Craft, who was also a very good friend of mine, that I had worked with in the very early years--in the early forties, before he went into the merchant marine during the war--was the Deputy [Legislative Counsel] at that point. And Ward Hussey was the other senior member. The three of them and I used to work on social security and welfare together, Ward Hussey particularly on tax legislation. They also had a man by the name of Lincoln Arnold

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up there for a while, who worked on the tax aspect because he was a tax man.

But I went up and Larry Filson looked at this [findings section], "What's going on here?" I said, "I had nothing to do with that, Larry." So Larry took it and he revised it. I think I mentioned to you last time the letters that he substituted [spelling a very earthy word], and he showed it to [Wilbur] Mills, who was Chairman of the Committee. Well, that was eliminated; that's the reason.

(Laughter)

But, anyhow, that's the welfare amendment and it went through substantially [without major change.]

K: What was the cause of the problems in the seventies that Martha Derthick wrote about in her book, the uncontrollable grants. The cost suddenly shot up. Was there any explanation?

S: Well, there were several states, California and New York [for example], who had very sharp people on their staffs who figured out that they could use that money for all sorts of services, some educational services and other things like that that were really not contemplated [originally]. But it was difficult for the Secretary to put a clamp on that, to limit it, and that's why it ran higher. There are only a few states who did that. It burgeoned tremendously.

K: But they were some of the states with big welfare rolls.

S: Oh, yes, and who were very liberal with their grants. Well, liberal in the sense that living was more expensive there anyway. So they were--so I think incidentally--

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(Interruption)

K: This is a gap I guess in my background. But what was Ribicoff's connection to Kennedy to begin with?

S: (Laughter) That's something I really don't know much about, except he was, I assume, a big help in swinging Connecticut to him. He was the governor and very powerful there, and I guess that was it.

K: Okay. I had thought maybe there was an additional connection.

S: I don't know. Of course, it was a neighboring state and that kind of thing, so they may have--

K: What kind of leadership did Ribicoff provide the Department?

S: Now, I was in the legislation field. I don't know about the other aspects of it. In legislation, Wilbur Cohen did the stuff. I worked with Wilbur. I did have some meetings in Ribicoff's office with Alan Willcox on some things I had worked on. I don't remember what piece of legislation it was. It may have been Medicare or something else, or maybe welfare. I just don't remember, but I remember being in his office when there was some kind of a crisis with the Food and Drug Administration. Ribicoff was a very earthy person; Willcox, on the other hand, was a very gentle sort of person and strong language was sort of anathema to him. I could see him cringing when Ribicoff was expressing his views about what the Food and Drug Administration was doing. But I just don't know what sort of leadership he provided, because I worked with Wilbur.

K: But he didn't have the sort of aura around him that John Gardner, say,

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had at least in the eyes of people outside the Department. Gardner was regarded as a semi-god in education and things.

S: Yes, but I don't think Gardner was the effective politician that Ribicoff was. And that's always important. For example, one of the most capable and I mean absolutely brilliant persons to be the secretary, in my opinion, was Elliot Richardson.

K: Yes.

S: But Elliot has some difficulty sometimes with the political people.

K: That remark has been made about him even in his most recent run for--I guess when he ran for the Senate in Massachusetts.

S: Against [John] Kerry.

K: He's very, very brilliant and dedicated, but he is not the roll-up-your-sleeves politician, get down there in the trenches with the--

S: And he's so absolutely honest.

K: Yes, yes.

S: He won't skirt the truth.

K: Well, Ribicoff left after, what, two years?

S: Well, I think he--this is just an impression. Wilbur Cohen could probably tell you more, or some of the others. Jon Newman, his assistant, incidentally, became a judge. He went up to private practice and then became a judge. Ribicoff, I sort of felt, was somewhat frustrated in that position. He didn't feel he could accomplish what he wanted to and I think felt he could accomplish more as a Senator. Also he was a political animal, you know, and you're somewhat limited when you're Secretary in the kinds of political involvement--

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K: Is it true, or did you hear the rumors to the effect that he wanted to be Attorney General?

S: Attorney General, not on the Supreme Court?

K: No, Attorney General instead of HEW Secretary.

S: That I don't know. I had no knowledge about that at all. I would also point out one of the reasons is, particularly at that time, I was not Assistant General Counsel, or deputy even. And I confined myself to the technical legal aspects of things. I didn't try to get involved too much in what were the political aspects. In fact, I made a very special effort not to get involved.

K: Is that why you were there for so long, because you were successful?

S: Well, I was, and as a matter of fact when Mrs. [Oveta Culp] Hobby came in, I was concerned because I did not feel we had any protection in our jobs. And in early 1954--I guess it was 1953--we sold our house and rented a house instead, so that if the ax fell I could pick up and go to California where my wife's family was, or something else, because the General Counsel was Parke Banta, who had been a Congressman in the Eightieth Congress. He was a small-town lawyer and a very conservative Republican from a small town in Missouri. Ironton [Arcadia], I think is the name of it. And we all had apprehensions about that. It turned out he was a wonderful guy. We did better under him than we had done under the Democrats, even though we had all come in as Democrats, most of us there. He recognized his differences with us, but he was a lawyer to the hilt and so he supported us in our legal position and was a really very sweet person. And [he] recognized that

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status was also important, so he made sure his status was elevated to a position where his position was mentioned in the statute and he had a certain grade, and that elevated the rest of us.

So I always tried to confine myself to what I considered--and whether it was a Republican or a Democrat in power, I would try to exercise my responsibility as I saw it, which was to point out to them all of the implications of what they wanted to do and to express my doubts about the validity of certain of their assumptions, and then to draft it [the resulting legislative proposal] as clearly as I could. So I could work with Elliot Richardson, who was the Assistant Secretary for Legislation; with Bob Mardian, who became the General Counsel; and with other people who were conservative Republicans, just as well as with the Democrats.

K: When Celebrezze came in after Ribicoff had left, did that change the atmosphere at all?

S: Well, again we had premonitions, we had premonitions about him. He was from Cleveland and one of our close--my wife and I went to high school together--one of our close friends was in Cleveland. He was the coroner, I think. His wife was also a close friend of ours. He wrote us a letter when Celebrezze was appointed to express some reservations about him. Celebrezze had been in the state legislature and things like that. So we were apprehensive about what would happen. And I think I mentioned to you what happened when I drafted that omnibus education bill.

K: No.

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S: Didn't I mention that? One of the first things I did when he was there, I drafted an omnibus education bill.

K: This was 1963?

S: 1963, probably. I don't remember the exact date, 1963 or 1964. Wilbur was then the Assistant Secretary for Legislation, and he came back to me after we had the final bill all approved I think by the OMB, Office of Management and Budget. I think it was then the Office of Management and Budget rather than the Budget Bureau. And he said, "Celebrezze has approved this but he wants to make one little change." I don't remember what the change was, but I said, "Wilbur, it doesn't make any sense to do that." He said, "Will it do any harm?" I said, "No." Well, he said, "You know, Celebrezze was in the state legislature and he was chairman of a committee that was responsible for revising the judicial code or something like that, so he thinks he knows something about drafting, and he would like that change to be made." I said, "Okay," so we made the change. (Laughter) That's about all.

The other thing I remember about Celebrezze was that he had to testify on the Hill-Burton program when we expanded it substantially. And he had to sort of defend the antidiscrimination clause that we had in there in the Senate when Hill was there [inaudible], when Hill was saying, "Even if you don't put this language in, you can do that kind of thing," and Celebrezze saying, "Well, I guess so, Mr. Senator," and that kind of thing. That I remember, that he had to go up and face that.

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That was the time, I believe, when Wilbur and I had to devise something. We were expanding it [Hill-Burton program] to include other facilities besides hospitals, and Hill and some of the others were very concerned about that, that would we be taking something away [from hospitals]. So I had a brainstorm one night. I went in to Wilbur and I said, "Suppose we put in percentages [of funds] for the various types of facilities that will result in the hospitals getting the same amount of money that they would [under current law.]" And the bill had these ridiculous-sounding percentages and nobody could ever figure out how we arrived at that. The reason was we were trying to preserve the status of hospitals. And Wilbur said, "Let's try it," and sure enough, they [Congress] went along with it and it went through that way. The silliest brainstorm I ever had, but anyhow it worked. That's while he was there.

K: Was Cohen still sort of the big political operative even when Celebrezze came in?

S: Sure. You see, Wilbur had been there from the beginning. He worked with [Arthur] Altmeyer and some of the others in 1935 on social security, and although his major field had been social security, he expanded to other fields. And he had a reputation on the Hill, in the Congress.

K: This was what I was going to ask about.

S: Oh, yes, he was respected by everybody up there, his knowledge and so on, and he could work with people. Unlike Elliot Richardson, he didn't have the sort of academic approach. He wasn't a Boston Brahmin;

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he was one of the people. And people respected him. He could speak in terms that people understood.

K: Yes. I came across a couple of things describing him particularly in his negotiations over the years on the Medicare question: that he was a pragmatist, that he was willing to give a little, take a little, and he wanted to reach some kind of a compromise, he wanted to produce the legislation, he wasn't an ideologue. And that that gave him a lot more bargaining power or leverage than some of--

S: Well, Wilbur I think was brilliant in his way at being able to anticipate what might happen in the future. I'll tell you one story about him and me which precedes all this. It was 1952, I think, and I was then, as usual, working up in the Legislative Counsel's Office on the Senate side on social security amendments.

K: You did this often, you went up and worked with--?

S: Oh, yes. They considered me almost as a part of their office. And, as I say, I had that special relationship where they had confidence in me, and trust. I always tried to justify that when I worked there. In fact, once I remember when I drafted something and Ed Craft had called me about it, I warned him that there was a certain aspect of it which he hadn't been aware of, but I felt it was a booby trap if I didn't [warn him]. And Wilbur reprimanded me afterwards--he was on the phone--he said, "Why do you have to--you're talking too much." I said, "Wilbur, I have a relationship with Ed Craft. I will not jeopardize that for anything. I think it's for your benefit as well as mine and I think it's important."

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Anyhow, in this year--it was 1953 or 1952, I think it was 1952-- in those days there was no automatic increase in social security benefits. So every two years just before the elections, the Congress, if the financial condition of the country and the taxes [collections], justified it, would increase social security benefits. Well, I think this social security bill had some provisions in [it], from the Senate side, I guess, on disability benefits [freeze]. You may recall that disability benefits were not in effect then; it was purely cash benefits for retirement and survivorship. The other house, whichever didn't have it [this disability freeze provision], didn't want it. And they were at an impasse. Maybe this was 1952, I'm not sure. So they went to conference. I didn't attend the conferences in those days. Later on I was always part of the conference.

But John Simms, who was the man from the Senate Legislative Counsel's Office, and Bill Pierce, who later became the head of the University of Michigan Law School project on legislative drafting and revision of the Michigan code of law, was there being educated in drafting process. He was there and I forget who was on the House side, I think Ed Craft. They came back with Wilbur and they said, "The disability benefit [freeze] provision is in. However you have to put in a provision which says that this section ceases to be effective on June 30, 1953"--whatever the next year was. And that provision didn't become effective until July 1 of next year [1953]. I said, "Wilbur, this is crazy! I mean it ceases to be effective before it becomes effective." He said, "That's what the decision was." So

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we drafted it and that's why in 1956 they got disability insurance benefits. It was just a disability freeze [in 1954]. A freeze was that that period [of disability] would be expunged from your record; it wouldn't count against you if you didn't have wages. But in 1954 it went into effect because they had the provision [already drafted in 1952] and it became effective. And Wilbur figured that would happen eventually. And that's another story.

K: Is it true that in the negotiations on Medicare with Wilbur Mills, who was chairman of the House Ways and Means Committee, that he and Wilbur Cohen would sit down and sort of talk a little bit, and then Wilbur Cohen would come back and say, "It has to be this way because Mills won't go any further than this"? And people would be saying to Cohen, "Well, can't you go back and get him to give a little more or do a little more?" He sensed where the limit was when he was negotiating with people and he would--

S: Well, he was very good at that. He was very good at that. I don't remember the kind of thing you are mentioning, but I do remember negotiations in 1964 when--

K: Was this in the conference, the executive conference, or--?

S: This was in the conference on social security. It was while it was in conference, and we were trying to get Wilbur Mills to go along with it [Medicare]. He was still opposed to it; he had been listening to the AMA in Arkansas. And Wilbur [Cohen] and I went to the Parliamentarian's office with Wilbur Mills and some other people with something we had devised. We were trying to separate the Medicare [collections] from

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the others, but because of the way the conference was situated you couldn't have a completely separate tax. So we tried to devise separation between the amount that was being collected for Medicare and the rest. We went to the Parliamentarian to see if that wasn't legal, you know, to get a ruling from him. I don't remember what the ruling was, but Wilbur Mills wouldn't go along with it; he still felt that way [opposed]. The Parliamentarian said it was okay, but Wilbur Mills said there wasn't enough of a separation or something. He wouldn't go along. But he had sort of indicated shortly after that in a speech that he was more favorably disposed, or not as strongly opposed to it as he had been previously. That's why in 1965 we had this situation, and the coup he pulled is still amazing to me.

K: Who? Cohen or Mills?

S: No, Mills. The coup he pulled. I mean, I think it surprised Wilbur Cohen, too.

K: Yes. What was that? [Inaudible].

S: That's the case in which Johnny Byrnes and the Republicans had a proposal as an alternative to Medicare which, instead of being confined to hospital and similar institutional care, covered medical care across the board, but only for those who were needy. So when we got up to the executive sessions of the House, we went through our bill and then the Republican bill. Then Mills started saying to us in this session, "Suppose you did thus, thus and so, what would it look like, how would it be?" Wilbur Cohen said, "Well, we could see." And at the end of that session he said, "Well, how about having some

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specifications made and come back with it tomorrow morning to show us what it would look like?" He said, "I just want to see what it would look like."

So we all went back to the Legislative Counsel's Office on the House side and worked on it. I was tired already. I had been quite ill in 1963 and I still wasn't running on all eight cylinders. So I quit about nine o'clock and the rest of them worked on it until two o'clock in the morning or something like that. They came back the next day into the executive session and ran through this list of things. These were specifications, not a draft of the bill. At the end of the session Wilbur Mills said, "Okay, let's have a draft [bill] of this tomorrow morning." Wilbur Cohen at that point said, "Well, did I hear you correctly, Mr. Chairman? Tomorrow morning?" Wilbur Mills said, "Yes." So Wilbur Cohen said, "Well, you know, we worked till the early hours of the morning on this last night and the same people would be involved." At that point Wilbur Mills turned to Ed Craft, who was there from the Legislative Counsel's Office, and he said, "Ed, did you work till all hours?" And Ed said, "No." And then he turned to Larry Filson from that Office who was also there, "Larry, did you?" He said, "No." He said, "Sid, did you?" And I said, "No, Mr. Chairman." He said, "Let's have a draft tomorrow morning." Well, Ed and Larry went up to him and said, "You know, Mr. Chairman, we'll have a draft, but it will reflect the amount of time you give us." And Wilbur Mills said, "Yes, but I have my own reasons for wanting it. You'll have a week to work on it if they approve it." Which is what

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happened. And that took the wind out of the sails of the Republicans, because he then had a comprehensive bill even though it was [largely] employment-tax supported.

K: One of the main concerns that he had all along was that he didn't want to alter the way social security was funded. He was worried that Medicare, or something like that, would take general revenues and that somehow that would throw off--

S: Not general revenues. He didn't want social security funds being used for that. He wanted a separation between the two. And Part B, of course, which was the expansion, is supported by general revenue funds and the premiums that the people pay.

K: Yes. I should say for the record that you've discussed your role in the Medicare legislation in an oral history that you did in 19--I think it stretched out over 1965 to 1966, or 1966 and 1967.

S: You've probably looked at it more recently than I have.

K: This was done for Columbia University's oral history project on social security, and there is really an extensive--

S: It was on Medicare.

K: On Medicare, that's part of the larger social security oral history project.

S: Oh, it is?

K: You did an extended interview for that, for those that might be interested in looking at it.

I guess one of the things that has occurred to me in my brief acquaintance with the legislation passed in health and education

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during the Johnson Administration--when I look at the role that Wilbur Cohen played, I always wonder why wasn't Cohen HEW Secretary from the start? Why wasn't he appointed by Kennedy, or why wasn't he appointed by Johnson at the beginning? Do you think he would have been less effective, having been appointed to the cabinet position immediately? Would that have inhibited his ability to wheel and deal a little bit?

S: Well, of course, because he would be running the Department and that takes quite a bit of time doing that. You can't be working on these things. At one point in Medicare, for example, there was an issue as to whether he or [Ivan] Nestingen, who I think was then the Under Secretary, would be responsible for setting the policy. There was a big squabble about that. He [Wilbur] won out on that. I don't think Wilbur had the stature yet, also, to get that. It wasn't until later that they realized that he was really running the Department. He became Under Secretary and had the ability to do it, and he did it.

K: But in a way his being in this somewhat less visible position gave him some room to maneuver on some of these crucial pieces of legislation that he might not have--

S: Oh, sure. Yes. Definitely. He didn't have to concern himself with the administration of the programs later, although I'm sure he did. But he didn't have to get involved in the day-to-day operations in the Department at that time.

K: I also wonder about the political row that the Secretary of any Department has to hoe in the sense of sort of maintaining the rhetorical line of the Administration and whether one loses one's flexibility.

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When you are in effect being a spokesman for the Administration's policy, you can you really have as much bargaining flexibility or negotiating room if you are, on the one hand, having to make statements to the press and in hearings that this is the Administration's view of policy? [I wonder] whether that doesn't inhibit your ability to go behind the scenes and say, "Okay, well, this is what we really think we can do."

S: I don't know. I think it's a matter of time as well as the position.

K: Well, I was going to ask you, you bring up the question of the Administration administering a Department, particularly one that large, as being very time-consuming. One of the criticisms, or observations, I should say, I've heard about John Gardner as Secretary was that he really could not or did not manage the Department, that he was not a manager.

S: I don't know that any of them were really managers. Their ability to control a Department depended a good deal upon their other officials, who was Under Secretary. For example, when Gardner was there, Wilbur was Under Secretary and Wilbur knew what the score was; he knew how the various constituent units operated and could control them better than others. And so although Gardner himself had a very lofty view of things, he had Wilbur to run the Department for him. I remember I didn't work too much with Gardner except on the Public Broadcasting Act, which he was very much concerned with personally, and I was involved in the drafting of that. So I didn't work too much with him. I didn't work too much with any of the Secretaries except Elliot

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Richardson, and that was because I knew Elliot Richardson from his stint as Assistant Secretary and he had a special relationship with me that I value very much to this day.

K: You mentioned that Mr. Cohen gave you the list of things to do.

S: On the welfare amendment?

K: I guess I'm getting confused. I thought you had mentioned that you had worked on Kennedy's omnibus education bill.

S: I'm very hazy about it. One I remember is the one I drafted there for Celebrezze, when Celebrezze was Secretary. Another one I remember is when I was involved in part of an omnibus education bill. I think Ted Ellenbogen was then the Assistant General Counsel for Legislation. He was involved to some extent and we had several other members of our staff at that time involved. We also had another department of the government slightly involved, and we had the impossible task of trying to get these things ready in a hurry. Wilbur Cohen came down and said, "You know, we've got to get this to the White House tomorrow or the next day," and Ted turned to Wilbur and he said, "We can't do it." So Wilbur said, "The White House wants it." So he [Ted] said, "Why didn't you tell the White House we can't do it? Let them fire me." Wilbur said, "The trouble is that they won't fire you, they'll fire me."

Johnson and particularly [Joseph] Califano were very unreasonable about the deadlines they set for us, and I remember that particularly. The involvement with another Department may have been in connection with another education bill during that Administration, when we had this impossible deadline. I think I mentioned that in my article as

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one of the periods during which we just didn't have enough time to draft a decent bill. They set these impossible deadlines. But other than that I don't remember too much about it, and that's why I wanted to take a look at these files when I get a chance and see if they help.

K: I wanted to ask you a little bit about what the effect on the General Counsel's Office was when at the end of 1963 you had the passage of-- in 1963 and 1964 and 1965--several bills which directly impinged on HEW. First you had the Civil Rights Act, the 1964 Economic Opportunity Act, the 1964 Library Services and Construction Act. Just before that, Kennedy's Higher Education Facilities Act had gone through; the Vocational Education Act had gone through. We had the 1962 Manpower Development and Construction Act. Then in 1965, a year after Johnson's in office, a year and a half after, let's see, the Elementary and Secondary Education Act was passed and the Higher Education Act. What kind of an effect on the General Counsel's Office did this avalanche of legislation have?

S: Well, I think the General Counsel's Office had to expand. As to the Office of Education, I think the General Counsel's Office was more able to cope with this than the Office of Education was at that point.

On the civil rights legislation, that's a little interesting, and on the Economic Opportunity Act. Let me tell you a couple of stories there. On the civil rights legislation, Justice had the primary responsibility for doing the drafting. We felt that we should have some responsibility because they were going to control programs that we were administering under this. And Reg Conley and I drafted a

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provision, which I guess was one of the versions of Title IX, that went in and dealt with the grant programs. But we weren't successful in getting them to adopt that. So we were very--I shouldn't say very--we were a little unhappy about what happened there. But when it became law, Reg Conley worked very closely with the Department of Justice people in drafting the regulations. They respected him on that, and so we had something to do with that. I remember that. And I think at that point or soon thereafter, we created a Division of Civil Rights [in the General Counsel's Office].

As far as the Economic Opportunity Act is concerned, we didn't have a great deal of responsibility under that when it became law. I remember Wilbur and I went to an interagency meeting that was chaired by--I think his name was Adam Yarmolinsky, who was Sargent Shriver's man--in which we were trying to preserve some of our responsibilities. Not very successfully, as I recall. So that it didn't impose a great deal of responsibility on us.

The education laws--I think the division that had responsibility for its interpretation and regulation was expanded somewhat and I think eventually they split off the education function from the welfare function. They had always been together. So I don't recall, other than expansion, that it had a terribly difficult effect on us, or adverse effect. I do remember we had some trouble staffing the Civil Rights Division with competent people, and at one point Ed [Edwin] Yourman, who was a very able guy, was asked to be the Assistant General Counsel there, and he did very well.

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- K: Can you tell me a little bit about what--you were head of the Legislative Division of the General Counsel's Office.
- S: Only for the last three years before I retired.
- K: All right. You were deputy?
- S: I was deputy before that for some years.
- K: What was the relationship between that office and HEW's office of the Assistant Secretary for Legislation? That's a little confusing.
- S: Well, the Assistant Secretary for Legislation was responsible for the policy and political aspects.
- K: Okay.
- S: Policy, along with the Assistant Secretary who might have responsibility for that [the subject matter involved], like I think at one point Bill Gorham, for example, as an Assistant Secretary [for Planning and Evaluation], had more responsibility for policy. Also Lisle Carter at one point was an Assistant Secretary that had responsibility in that area [welfare.] There was always a bit of jockeying for position where these substantive Assistant Secretaries felt that the Assistant Secretary for Legislation was taking too much responsibility.

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- S: Our office had the responsibility of drafting legislation and assisting all parts of the Office of the Secretary in arriving at policy decisions, as I mentioned, by pointing out the implications and trying to coordinate the various policies within the Department, because sometimes the Public Health Service had a different view of some of

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the legislative proposals than the Social Security Administration, and that kind of thing. Also some of the constituent units would be trying to advance the positions they thought were desirable, which were not always consistent with the policies of the Administration. So we stood as counselors, lawyers, with the Assistant Secretary for Legislation and others, to point these things out.

I remember on water pollution control or--I guess it was air pollution--I had originally drafted the water pollution control act and some amendments to it before it was transferred to Interior and then became independent at EPA. Similarly, I had drafted the original air pollution control legislation. And we were involved in some air pollution control legislation when Bob Mardian was General Counsel. After we had a meeting with the people from the Public Health Service who were involved in that, he was fussing and fuming about the way he felt they were undercutting the policy of the Administration and I had to calm him down. Of course, he was younger than I was at that point and I'd been around for a long time, so he relied on me. Anyhow, that's beside the point.

As far as the Assistant Secretary was concerned, though, we were his counselors as well as the counselors to the others. And in Lisle Carter's case, he had major responsibility for the Juvenile Delinquency Prevention and Control Act of some year. I don't remember which one.

K: 1968.

S: 1968, is that the one? And I was drafting the thing and sending preliminary drafts to him and, as I usually did, I would point out

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things I had done [in order] to raise questions. He came back on one of the drafts and said--I think I had Juvenile Delinquency Prevention and Control Act Amendments or whatever it was--he said, "I think we ought to call this the Young Americans Act of so-and-so [19\_\_]." And that hit me like a ton of bricks. I wrote back and I said, "I see absolutely no relationship between that [title and the substance] and--it's a pure euphemism and I think it would be misleading and everything else." He was upset by that, but the name was [later] changed back to what I wanted it.

K: What brought this legislation about? This was sort of in the wake or in the heat of all the riots and things like that?

S: I'm not sure what it was. I think it was that they were very concerned about the inability to control this [juvenile delinquency]. And there was this jockeying between us and Justice. Justice, at about that same--no, I guess it was later when they were interested in the crime prevention legislation. But they always had that aspect of it, the criminal, and we of course had the social workers and the other people who were concerned about trying to do something without branding them [the youths] as criminals and that kind of thing.

K: I guess Justice had the Safe Streets--

S: Yes.

K: --Crime Control [Act] or something.

S: At that point I think Ramsey Clark was the Attorney General. And I remember going over with the lady who was the focal point of policy on that. She was not in the Assistant Secretary's office; I think she

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was in the constituent agency, whichever it happened to be. Going over to Ramsey Clark's office and meeting with him in his inner, private office, where he would go when he didn't want to meet with somebody, and discussing with him our concerns about what Justice was proposing. He was very sympathetic. I also remember in connection with that [legislation] sitting outside the House committee room when they were deliberating on this and trying to do something about it.

K: Did this bill have a hard time in conference?

S: I think it had some difficulty, as I recall.

K: I guess at that point, of course I'm really speculating, but people were--I guess I should ask a question rather than stating what I think. But was there an element of disillusionment sort of settling in at that point in the Johnson Administration about what social legislation could accomplish? There were so many scandals associated with the Job Corps program and things like that, or the Community Action Program and things of that nature. There were riots--

S: I don't know. I just confess I don't know whether there was or not. There was always this suspicion, on the part of the Justice Department and others, of the social workers, so to speak--that social workers were just do-gooders and things like that. So we always had to combat that. Similarly on the Hill we would have that kind of suspicions.

But I think Johnson knew how to work with the Congress better than anybody else before him. When he was the majority leader in the Senate before he became the Vice President, he knew how to pull the strings and he was able to do that. When he became Vice President and

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President he was able to do it, and particularly as President he could accomplish a lot. Of course, he was used to getting things done when he wanted them, and that's why we felt he was so unreasonable on his deadlines. And maybe it was he, maybe it was Califano, I don't know, but we had some--

K: I know there are stories that Wilbur Cohen circulates about getting calls at 4:00 a.m. in the morning to come up with ideas or a solution to a problem by nine, that kind of thing.

S: Yes, it was something.

K: Some of the people that I've interviewed recently are commenting on the same thing, that these deadlines would come crashing down and things had to done yesterday, even though they were only thought of today.

I wanted to ask a little bit about your role in negotiating things with the Budget Bureau on legislation. I guess I am trying to figure out where did you get reaction from the White House, I mean what was the medium that White House reaction came through?

S: Well, occasionally I went to the White House. I remember meeting with Ted Sorensen, with Wilbur on a few things. And Ted would say to me, "Well, Sid, have you got enough information now to revise the draft?" And I would usually say, "Yes." I remember that kind of a meeting and other meetings where we met with people on the White House staff.

But more often than not, particularly on subsidiary questions and issues, I would work with people at the OMB. Most recently, it was Naomi Sweeney, who was there, and other people before her. We would

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work with the OMB and they would say, "Well, we think you should change this and so-and-so," and frequently we'd argue back and forth. One of the things that surprised my secretary when I became Assistant General Counsel was my dealings with the OMB. She had been at the Defense Department, in their legislation section, and apparently the people in the Defense Department were always very accommodating to the OMB. Early on she would listen to me on the phone when I was talking to these people and at some point I'd say, "Well, if you want to make an issue of it, go ahead. I don't think our Assistant Secretary is going to give in on this. I know what his position [is]. And I'm not going to compromise on that. I think you're wrong." I mean, we had good relations. It wasn't that we were antagonists or anything, but I would not acquiesce on things which I thought were contrary to what my principals wanted, whether it was Wilbur Cohen or whoever it happened to be. And sometimes they'd realize it and they'd say, "Okay, we won't press this point."

K: Well, were their concerns with how something was going to be administered or what the language was as opposed to--I guess the basic policy issues had been settled by the time the draft got to OMB, or am I wrong?

S: No, sometimes there were some parts of the basic policy issues that were left unsettled, but on that kind of thing I would say, "Well, I'll go back to my principals and see what they say." But they would take their orders from higher up in the OMB and perhaps the White House. They would have people at the White House who would tell them

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things, and I would say, "Well, I don't think this is right and I think Wilbur will go talk to the White House or to your bosses and get it settled. I'm not going to do it."

I remember once when Elliot Richardson was in--and that's when this secretary was working [for me], when I was Assistant General Counsel--there was an education bill up [under preparation], and at that point I worked on some legislation, but mostly I was training my staff so that I could retire when I wanted to. And I had a young man who had achieved a relatively senior position in the education part of the General Counsel's Office, who came to work for me. He was working on this bill, and he came in on the morning that this bill was supposed to go up to the Hill. I guess I was there before he was, and I got this call from the OMB and they said, "We will clear the bill, but your Secretary agreed to certain changes in it last night." I took down the changes and I went in to Gaylen Powers, who was my man handling that, and I told him the changes and we looked at the bill and I couldn't believe one of the provisions that they had asked for. I called them back and I said, "Why was this put in?" They said, "Well, your Secretary thinks that the civil rights people want it." I said, "That's ridiculous, because if anything it's the kind of provision the civil rights people will not want, because it will delay the operation of one of the provisions that they're interested in. The states will be able to delay it by this device." "Well, your Secretary agreed to it last night," he said. I said, "Okay."

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So I went in to the General Counsel. I went into his office and his secretary said, "He's in with the Assistant Secretary for Legislation, Steve Kurzman." So I went in there. I mean, I had the kind of relationship with the Secretary that I could do that. You know, I had enough status I could break in on the meeting [when, in my judgement, the circumstances warranted it]. I went in there and I said to both of them, "This is what the OMB said the Secretary agreed to last night. I can't believe it. It will be completely contrary to what they [civil rights interests] wanted." So the General Counsel, Will [Wilmot] Hastings, said, "You call the Secretary. He's at the White House on a press briefing before this goes up to the Hill, but you call him and tell him your concerns about it. He'll listen to you." So I said to Steve Kurzman, "I may have difficulty. Will you have someone call and ask him to call me when he gets through." So he did that. And the Secretary called me and I told him my concerns, and he said, "Hold it up till you get hold of this person in the civil rights movement and see." Oh, there was one other person I had consulted before I did that, and that was Jonathan Moore, who was the Secretary's Executive Assistant, and he felt the same way. So we tried until about two o'clock to get hold of her, this person, and we couldn't. So finally Jonathan Moore said, "Don't put it in. Put it the way it was." So we did that.

But that was the kind of thing--the OMB would say this and I guess if it were the Defense Department, they'd say, "Okay, we'll put it in." Well, I was not about to do that. I'd been there long

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enough. I was already at that point eligible for full retirement if I wanted to take it, so I didn't care. (Laughter) But, aside from that, I felt that was my responsibility. I was willing to take the heat if I was wrong, but I was not willing to let something go through because they [OMB] told me to. On the other hand, we had very good relations with Naomi Sweeney and the other people at the OMB. They respected me and I--

K: Over the years generally?

S: Over the years. Well, more in recent years. In the earlier years I didn't have too much to do with them, because my supervisors did that, more or less. I did have some dealings but not that much. But we had developed a relationship where I respected them. They had some very good people, very good; they still do. Jim Frey and Naomi Sweeney are still there, Wilf [Wilfred] Rommel I think has--I know he's retired. So we would fuss back and forth at each other and we would compromise on certain things, and other things I'd always check with the Assistant Secretary.

K: Well, I have I think about six more questions.

(Interruption)

K: If we go back to the Kennedy education legislation, you did have a role on the Library Services and Construction Act. Is that the correct name?

S: Yes.

K: And that was passed shortly before or shortly after Kennedy was--?

S: It was passed shortly after Kennedy was assassinated.

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K: After. Okay. I guess there was a [inaudible].

S: I did the drafting on that. It went through the House and then we went over to the Senate and I worked with [Senator] Hill's man, Jack Forsythe, over there. It was being debated on the floor of the Senate and Jack had asked me to come up and sit outside in the anteroom there so that they could come out and ask me questions or get me to prepare a redraft on something in case they needed it on the floor. And I was sitting there working on other things while I was waiting. There was a lot of activity going on. The Vice President's office was right there; in fact, I was sitting right outside his office. And all of a sudden there was a lot of activity. I couldn't figure out what was going on. Women came out and some of them had tears in their eyes and they were running around, and shortly thereafter Jack came out and he said, "The President's been shot and I think they're about ready to adjourn the session, to recess." So I stayed there and about five minutes later he came out and said, "Yes, they are recessing." I then went back to the department and I remember one of the younger attorneys we had came down the hall sobbing. He was very much affected by his [Kennedy's] death.

Then later on it [the bill] was passed, and I remember that the head of the national library association wrote a letter to Wilbur thanking him for my services and all that kind of thing, which happened very frequently. They were always so glad to get their legislation through, they were willing to thank anybody who had anything to

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do it. But that I remember about that piece of legislation. I'll never forget that day because of what happened.

K: Overall, although there was this trio of legislation passing immediately after Kennedy was killed, in part because, some explanations say, of the sympathy that people felt and because of Johnson's skill in exploiting the mood and the opportunity to pass this Library Services and Construction bill, the Vocational Education amendments, I believe, and then there was the Higher Education Facilities Act, all of which were passed, I believe, before the end of the session--that's right--and signed in December. Does that sound plausible?

S: It's possible. I don't remember the time.

K: But historians who have looked at Kennedy's record in education say if you really look at what was accomplished before then, there wasn't a whole lot besides amendments to the National Defense Education Act and reauthorization of PL 815 and 874. There was disappointment because more didn't get passed, particularly--

S: Yes, there was the feeling, particularly in retrospect when we saw how much Johnson could accomplish. Kennedy had the right ideas and so on and the spirit, but he just couldn't get it through.

I remember in connection with the early stages of the Elementary and Secondary Education Act where we put on amendments to 815 and 874--I guess it was 874. We added titles to that Act, sort of trying to get the flavor that, well, we're just expanding 815 and 874 somewhat by doing this. I remember Wilbur was working on that aspect, trying to get that across.

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K: Well, I think maybe it was in 1961 or 1962 when Kennedy offered his elementary and secondary education bill and his higher education bill, and they both fell flat, that Sorensen came out and said, "This is one of the great disappointments of the Administration, not to be able to get these pieces of legislation through." Yet at the same time editorials were appearing in the New York Times which were laying the blame at the doorstep of the President himself, saying that he personally didn't enter the battle, and if he had gone in there and really fought for them himself, he could possibly have gotten them through. Is that oversimplifying?

S: I don't know that that's true. You know, part of it was the parochial school issue. The parochial schools were fighting this because they were not included sufficiently.

K: And then there were, I guess, people on the House Education and Labor Committee who were representing the parochial school interests--James Delaney from New York.

S: Well, but also there were southerners who were dead set against any aid to parochial schools, and Wilbur was always trying to work something out. You know, we'd give them [the parochial schools] some equipment or something else like that, some technical education, whatever. As I recall, the first elementary and secondary aid provisions were enacted as part of Public Law 874, if I'm not mistaken.

K: In 1965?

S: I don't remember exactly when, but I think it was Title II of what had been Public Law 874.

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K: Oh, maybe so.

S: Then later it was changed, and Title II became the Elementary and Secondary Education Act. I remember that. They were trying to, you see, get some of the favorable disposition toward 874 to carry over to the Elementary--

K: To piggyback, sort of--

S: And that was one of the things they tried. But I guess Kennedy's religious background also was a problem, of course, and he had to be more faithful than Caesar's wife, you see. He had to lean over backwards to avoid any flavor of helping the parochial schools.

K: Yes. He felt that way, too, in the case of giving construction grants to higher education, I think. There was a lot of discussion--well, at the end of the Eisenhower Administration, Flemming and Richardson and the rest of you were involved in it, trying to put forward a program which would have allowed federally subsidized loans to higher education for construction purposes. Kennedy's task force, which was headed by this fellow from Purdue University, Frederick Hovde, said higher education needs grants, not just loans. Kennedy apparently thought that that was true, that grants were really the answer, or a combination of grants and loans, and yet he felt constrained by his Catholicism [inaudible] and didn't feel that he could directly propose construction grants for higher education.

S: I just don't know that now. All I remember about that Eisenhower period was that the Department people felt that all they needed was a

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few votes and that Eisenhower, if he had come out strongly for it, could have gotten it through, but he wouldn't do it.

K: You mentioned something about the Civil Rights Act, I guess the Title IX--

S: I think it's Title IX. I'm not sure of the title, but the one that has grants where we can--

K: Were there other issues that your HEW General Counsel's Office worked with the Justice Department attorneys on, things like church-state, desegregation of the schools and things like that? Do you recall any?

S: Well, I recall that our General Counsel wrote an opinion on the constitutionality of that.

K: For the Senate?

S: No, no. I guess it was--yes, we were asked for it, but that of course was cleared with the Department of Justice. But I was not involved in that very much. I got involved only in that one instance where Reg and I drafted a provision that we thought ought to go in the Act relating to grant programs. We were singularly unsuccessful in getting them to adopt it. But then afterwards when it was enacted, Title IX, if that's the right title, was in there.

(Interruption)

K: I wanted to ask, too, whether you had any sense of why it was that Commissioner of Education Francis Keppel fell from grace over the Chicago school desegregation issue.

S: I was not involved in that; I have no idea. Wilbur Cohen probably knows. I've heard about it; I've heard about the problem. You know,

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we did have that problem, but I didn't know Keppel was involved or what his role was or what actually---

K: Do you have any recollection of any discussion within the General Counsel's Office over this whole idea of using punitive measures to force desegregation? Did Keppel ever come to you all, do you know?

S: Not to us. Now, he may have come to the General Counsel's Office, but I just wouldn't know about that. That wouldn't be legislation--

K: Okay. Also, did you have any sense of the turning tide in HEW, I would say roughly around 1966 to 1967 as a result of the budget shortfalls? Up until that point the Department had been fairly responsive to the White House's insatiable appetite for new program ideas across the board in health, education and welfare. Then, particularly in the Office of Education, there was sort of a small revolution or resistance or tide of resistance that swelled up. People began saying to the White House, "We just can't afford to keep authorizing new programs and then not provide any funds for them. We've got programs on the books which are grossly underfunded. We're under pressure from Congress. We're under pressure from clientele groups. We just can't go on this way." And as I recall, there was a particular instance which brought all this to a head. It was some proposal by a White House task force to give colleges and universities unrestricted institutional aid grants that were not tied to anything. It was sort of a formula on how many students were enrolled and how much their education would cost at that particular institution.

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S: I don't remember that particularly. What I do remember is that we would come up with our legislative proposals with authorization of funds to be appropriated. And Wilbur Cohen particularly was responsible for this approach. We would say, "It is authorized to be appropriated for the fiscal year ending so-and-so," which would be the first year of the program, a specified amount of money, which would be a small amount of money, "and for each fiscal year thereafter such sums as may be necessary." Then we'd come back the next year and want a lot more money; this was to get the program started. And some of the people on the Hill finally were getting a little upset about that. I guess the Office of Education was finally getting to the point where they couldn't handle it either.

The Office of Education when John Studebaker was there, one of the earliest Commissioners I remember, was a very small outfit that was devoted primarily to research and that kind of thing. Then Public Laws 815 and 874 expanded their responsibility somewhat to make grants for elementary and secondary education [in Federally-affected areas]. Then these laws came along that were gradually expanded, the National Defense Education Act and some of the others. And they [Office of Education] weren't, in my opinion, able to cope with it. It took them quite a while to do it. That may have been part of the reason, too. I just don't know.

K: You mentioned talking about the legislative program development and recommendations for authorization. Did your office have any direct role in that, the right each year of developing--?

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S: Of developing the legislative program?

K: Yes.

S: Until Wilbur Cohen came and for the early years, our office would have the responsibility of preparing that. We would get general instructions from the policy people and so on. Also, in order to enable them to get their program done, we would send around a request to the various constituent agencies as to what they wanted, what their legislative program [would be]. I don't remember whether we gave them some kind of limitations or not. But then they would get that up and we'd send that in to the Assistant Secretary for Legislation and so on. We'd go up the line, acting as counselors again, and we would advise on certain things where we thought the constituent units were not doing what they were supposed to do and that kind of thing.

When Wilbur came, he didn't find the need for [us to do] that so much. Wilbur knew all these constituent agencies, he knew what the score was. So that, although I think we still did the preparation of this [legislative program], our responsibility was diminished somewhat.

K: What about when Ralph Huitt came in as the Assistant Secretary?

S: I think with Ralph Huitt, again, we had more responsibility. He didn't know what the score was [as well as Wilbur did].

K: Did he come from the outside, or was he someone who was in HEW?

S: No, he came from the outside, it's my recollection. I have a picture with him, too, but I didn't put it up.

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The one thing I wanted to mention was on the Public Broadcasting Act, which you haven't asked about but that was during the Johnson [Administration]; it was while Gardner was there. The original draft of the TV part of it, the [Corporation for] Public Broadcasting part, was done by a private attorney with one of the big law firms, and they gave it to me to fix it up so that it was more in line with what the government usually does, and also to add the radio portion. I don't think I ever talked to the man that did it, but there were some parts of it, of course, that weren't appropriate for us to put in. So I revised them and I added the radio portion and I went up on the Hill and I worked with the people up there. I think I mentioned I was in the hospital for a double hernia operation while the House or the Senate, whichever operated on it secondly, was considering it. And when it went to conference, they sent me up documents and I wrote some material for them and sent it back. When I left the hospital after the second---I had two hernia operations---after the second one, I was supposed to stay home for I think three weeks or something like that. Toward the end of the period I got the call from my office telling me that I had been invited for the signing ceremony [at the White House].

K: You said Gardner took a real sort of personal interest in this? Why was that?

S: Yes, he was responsible for a study on that industry. In fact, I may have it here. He was very much interested for that reason, as a means of giving support to a private industry to provide educational and related materials on television and radio.

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K: Now it's almost hard to imagine life without it.

S: Yes, but he was very much interested in that and I was in his office with, I guess, Wilbur and others talking about it and then working up on the Hill with it and then going to the White House on it. With a doctor's permission I took a cab all the way down and went in for the signing. So that's one thing I remember about that. But the original draft of that part of it was done by a private attorney.

K: I bet that sort of thing didn't happen very often in government, from the outside--

S: No.

K: --that would come in at least in that form.

S: No, it did not. I remember Rod [Roswell] Perkins, who was the first Assistant Secretary for Legislation when it became a Department, left and went back to private practice. He was a very young attorney; I think he was twenty-eight when he was appointed Assistant Secretary. He went back, and we had worked together very closely. I think it was when I was working on Medicare, he wrote a letter to Wilbur or somebody saying that he missed my services, that he had this alternative draft and he wondered whether we'd look at it.

That was good, but otherwise we would get for comment sometimes drafts of legislation prepared by outside people. But other times we'd have these outside organizations like the American Hospital Association asking if we would help them draft stuff. I remember once I did that, with the permission of Creed Black, who was the Assistant Secretary for Legislation. What I told AHA to do was to go to the

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House Legislative Counsel's Office and ask them to do it, [or rather] ask a congressman to ask them to do it--go through a congressman--ask the House Legislative Counsel's Office to do it and tell them that I was familiar with it. They did that so then we wouldn't be responsible for the policy, but the House Legislative Counsel's Office would act as a buffer, and I did the drafting.

K: Yes. Do you remember what piece of legislation that might have been?

S: This was one of the amendments to the Hill-Burton Act.

K: You mentioned that the Office of Education was a pretty small outfit and there was not a whole lot to do until, well, I guess the National Defense Education Act certainly gave them more to do, but I guess the--

S: The initial ones were Public Laws 815 and 874. That was their initiation into this program of grants.

K: What kind of a reputation did the office have within the Department, or did it have one?

S: (Laughter) Well, you see, we're on the record now and I'm a little reluctant to speak freely.

K: Okay.

S: I would say that its reputation was not nearly as high as some of the other constituent units, such as Social Security [Administration] and Public Health [Service]. The feeling was that there were a lot of technicians there, people who got their doctorate degrees in education, which to this day are not held in high esteem. They were not administrators; they were sort of research, ivory-tower people. So

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there was a lot of suspicion of their ability to handle these problems. Now, they had some very able people there. Make no mistake, there were some very able people there.

K: Was there a man who was Mr. James Kelly [inaudible]?

S: Yes, Jim Kelly was the head of the budget for the Department, and he went then to Georgetown University as their comptroller and then he went to the State University of New York. It was a very high position. That's Jim Kelly. There was a Fred Kelly [?], I think, in the Office of Education--

K: Yes, Fred Kelly I think was around for years and years.

S: And Fred Diaves and some of the others who were around for a long time. Ralph Flynt was one of the people who worked with me, or I worked with him, on the National Defense Education Act. Did you say you've seen him?

K: I attempted to get an interview with him. He's not well enough to give one, but he is still in the area.

S: He's still in the area?

K: Yes. He lives in Northern Virginia.

S: His intention when he retired was to go to England and live there, in London. He had friends there, but I don't know that he ever did it.

Then after him, Mel Sneed, who was in the legislation division, and Charles Radcliffe [?]. He was a Republican. It was primarily a Republican Administration.

K: Can you make any generalizations about the kind of men who were employed as the Commissioners of Education over the years that you

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were there? I mean, you saw Commissioners of Education who were heads of a very small, research-oriented--

G: Like John Studebaker and so on. My recollection that people like--

K: Samuel Brownell and Lawrence Derthick and--

G: Brownell was a pretty able guy, and Derthick I thought was an able fellow. Keppel was, I didn't think, as able an administrator as some of the others, but a very sharp guy.

K: "Doc" [Harold] Howe [II].

G: "Doc" Howe is quite a guy. He was a good public-relations man. He was very articulate and quite a guy. I don't know how he was as an administrator, I really don't.

K: Do you feel that--?

S: And Frank Keppel, I felt, if they had that story about him, was getting a bum rap. I think he was a very capable guy, too, but again maybe not a good administrator. But I don't know; I really am not in a position to judge that. I had very little to do with administration. After the legislation was passed, it was somebody else's concern.

K: One of the things that the White House directed be done after the passage of the 1965 Elementary and Secondary Education Act was to reorganize the Office of Education.

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K: I guess a lot of new divisions were made and new people brought in. Was it your impression that this had a generally good effect on the

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work products that came out of the Office of Education or that it created more problems?

S: Again, I'm not in the position to know. We worked with their legislation people primarily, and the legislation people were a small division and--

K: Do you remember who--?

S: Well, I remember Ralph Flynt and Mel Sneed particularly.

K: Where was Sam Halperin? Was he--?

S: Sam Halperin was a Deputy Assistant Secretary.

K: Okay, okay.

S: And Sam would know a lot about the education stuff. He worked under Wilbur [and Ralph Huitt]. You know, he's in town here, Sam Halperin. He's got a position with APAC, American-Israel Public Affairs Committee, I guess it is.

K: He does have an oral history on file at the Library. It's been a couple of years since I looked at it so I wouldn't recall exactly what he covers. I do recall that he was pretty critical of the White House task force operation. But you didn't feel the direct effect of the task force operation?

S: No, I didn't feel the heat on that. They more likely felt the heat on it. I did not.

Then there was a Charlie Saunders. Charlie I think at one point was over in the--was it the National Institute of Education that was created in the Republican Administration? And he was also an assistant

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to the secretary and he was active in the education field. And then there was the late Homer Babbidge--

K: Yes, he was there for a long time.

S: --for whom I had a great deal of respect. He was a very able guy in that field.

(Interruption)

K: I have one sort of last question and that is what was the philosophy, as you would describe it, of the Nixon Administration inheriting the Great Society and all the health, education and welfare programs? The Nixon Administration came in talking a lot about, in the field of education, producing excellence, encouraging more innovation in education and that sort of thing--I don't know what they were promoting on the side of health and welfare--but converting categorical aid programs to block grants and that type of thing. What was the Nixon Administration hoping to accomplish?

S: Well, one of the things, they wanted to diminish the amount of federal interference. And I remember [Nelson] Rockefeller initiated this idea way back in the Eisenhower Administration, of eliminating the categorical grants and putting in the block grants. That meant that states and institutions would have more flexibility and there would be less federal interference. I think that Rockefeller also had an idea that there should be a five-year limit on the duration of programs. I think the Nixon Administration wanted to do that, too. But I remember Elliot Richardson wanting to eliminate some of these programs and going toward the noncategorical, block grant approach, not with the

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idea of reducing funds, necessarily, but of providing more flexibility, and being singularly unsuccessful.

K: Why was that? Was it just that the interests were just too well entrenched at that point?

S: Oh, sure, because each Senator or each Congressman had a particular interest. In the health field, for example, there's one who's particularly interested in cancer--[or] a number of them. Some [are] interested in eye diseases. And we would get institutes created for these things even though we didn't need statutory authorization to create them. They [Congressmen] wanted these institutes. Similarly on the education grants, you had people interested in particular aspects of it. Not as much as in health, but you still had the same thing. And finally Elliot [Richardson] got to the point when he said, "Well, maybe we'll just go ahead with these. We'll plaster the wall with all these categorical programs and they'll finally see how ridiculous it is." But he never could get them to see how ridiculous it was.

K: Was there suspicion that there was sort of a hidden agenda in the Nixon Administration, that the real purpose was not to eliminate the administrative monster that had been created as a result of all these categorical programs, but the real goal was to eventually diminish support for them or eliminate support or--?

S: I don't know. But just as you had particular Congressmen and Senators who had an interest in a specialized area, you had people in the Executive Branch who had a special interest. They were administering

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[a particular] kind of program and, of course, a block grant approach would eliminate some of their jobs. So you had that kind of resistance from them, too. But I did not get the impression that the Nixon Administration was trying to cut out all these programs or reduce the amount of federal funding. In fact, as I've said on the record in connection with welfare reform, I was perfectly amazed that the Nixon Administration came out with something like that. If you're primarily concerned with the Johnson Administration, you may not be interested in some of the--

K: Yes, we will be interested in something like that.

S: Well, at that point when Medicare was enacted, I decided I'd had enough social security. Social security and welfare were administered by the Social Security Administration for a long time. And we got a fellow from Baltimore, a friend of mine, who had worked with me on Medicare and some of the other social security stuff, to come over and work in our division. He was with the Social Security Division of the General Counsel's Office, and he'd come over and work in our division on welfare and social security so I wouldn't have to deal with it anymore. I think I was then deputy chief and I wanted health and education and [other] stuff.

Well, I guess it was in 1967--I'm not sure when it happened; I forgot when the welfare amendments were considered--I got a call from the Under Secretary, who was Jack Veneman. He said the Secretary, who was [Robert] Finch at that point, had asked that I go to work at the White House on the welfare reform, with Bob Patricelli, who was

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Deputy Assistant Secretary from this Department. That was the first I'd heard about this. But there was a small White House task force of Dick [Richard] Nathan from OMB and Jerry [Jerome] Rostow from Labor and Anderson, who was in this Administration for a while; he's now out on the West Coast in that think tank, Martin Anderson--

K: Oh, at the Hoover Institution now.

S: And Bob Patricelli, with Morgan from the White House.

K: Gerald Morgan? No.

S: No, no. This was the one that was indicted for backdating Nixon's--I think his name is [Edward] Morgan. It may be something [else]; I may be mixing him up. Anyhow, he was sort of chairing it. The others were representing their principals. And they wanted a couple of lawyers over there to do the drafting. They called a young lawyer from Justice who was on vacation in the wilds of New Jersey without a phone. They sent a telegram and someone had to go get her to come back. And they got me over. And I resisted. When they called me--I think it was on an early Friday morning, or maybe it was Thursday afternoon--into the Under Secretary's office, they want[ed] me to go to work on this Monday. I said, "I can't." They said, "Why not?" I said, "Well, I've arranged with my aunt and uncle to come up to our country home on Deep Creek Lake for this long weekend. We won't be back until Monday night." So Jack [Veneman] said, "Well, you take this stuff with you and you work on it over the weekend and Tuesday morning you report there."

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Mary Lawton was the name of the young [lawyer]; she was with the Office of Legal Counsel at the Department of Justice. And she at that point was responsible for the Omnibus Crime Prevention [and] Control Act, too. So we worked over there at the White House and everything was kept under wraps. The Secretaries had agreed on general principles; [George] Shultz I think was then Secretary of Labor and Finch [was Secretary of HEW]. These representatives were trying to decide how you work it out, and Mary and I were drafting. Very shortly Mary had to go back because she had to work on the Omnibus Crime [Act], so I was stuck with the drafting. And I couldn't talk to anybody. Charlie Hawkins, thank God, was called over from Social Security [Administration]. He knew all the ramifications of social security and welfare; he was the welfare man. And we would meet and then I would begin the job of drafting. We prepared draft after draft, and they would put it in the safe overnight, wouldn't give it to me. Finally I said to them, "Look, as soon as you guys [or your typists] get finished with the draft, I want to look at it and start revising it so that when you come back with more stuff, I'm ready. I can't work this way." So they finally decided I could have a copy.

Then at one stage I decided it just wasn't necessary for me to be there all the time, and preparing all these drafts. We had draft after draft. I said, "Have a few meetings and then we'll prepare a draft." They wouldn't agree to that, so finally I said, "Well, I've got stuff back at the office I have to do." I had other responsibilities. So Patricelli called up Bob Mardian, who was the General

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Counsel, and complained. So Bob Mardian called me and I told him what the situation was. He said, "I agree with you, but Bob Patricelli's coming over here." So I said, "I'm not trying to avoid doing the work, but can't we cut down on the number of drafts?" So there was a compromise reached.

But, anyway, I was amazed that the Nixon Administration would be as perceptive as it was in this field and not try to cut it [welfare] back and that kind of thing.

K: What was the essence of the changes or the change that--?

S: Well, actually, it never got through that way. What came out of it was the Supplementary Security Income program, and I worked on that. When we drafted the bill [and sent it to Congress], then I went up to the House Ways and Means Committee and worked in executive session with them. And that [bill] didn't get through, but the next session I started withdrawing and I had a woman who is now the Assistant General Counsel, or Associate General Counsel, for Legislation. I was training her and had her go up there and work with them the next year on it. But they were going to provide--first, they were going to try to base it on lack of income rather than determining every individual need. So it was enacted, but only for the aged and the disabled.

K: This wasn't the Family Assistance Plan?

S: Yes. FAP, it was FAP.

K: Oh, okay, okay.

S: It was FAP, and there's a book written on it called Nixon's Good Deed.

K: Oh, no, I'm not familiar with that.

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S: I mentioned that to you, I think, and it was finished by the author's widow [Vee Burke]. He [Vincent Burke] died before he quite completed it. He called me a few times and there are some references to them [the calls] in the book. And one of the quotes is that I was perfectly amazed that the Nixon Administration would propose something like this. Because I was.

K: What stopped it from going through all the way?

S: Well, it was, I think, too radical a proposal to go all the way. Also they did not want to help the people who were in the age group where they should be able to work, so it was confined, with some modifications, to the aged and the disabled. But otherwise it kept many of the aspects of the original FAP program. But that was an experience, working over there with the White House staff people. And everything was kept quite confidential until they were ready to release it; there were no leaks.

K: Unlike the Johnson White House, plagued by leaks.

S: Yes, oh, yes. I don't think they were plagued by leaks as much as they encouraged some of them.

But this was kept under wraps until they were ready. They announced it about a couple of weeks before we actually came out with the final draft, and then we had to make some modifications. We had some very able people working on it then--toward the end, I mean. They called in Bob Ball, and Alair Townsend worked with Bob Patricelli; she then went back up to Columbia, I think, a very sharp gal.

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Bob Patricelli, incidentally, was a very able guy. He had come from--I think it was--Javits' staff; he'd been on his staff and he came down. Then he was appointed head of the Mass Transportation Agency in Commerce, and then when the Democrats came back, why, he went up to Hartford to work with Pete Libassi, I think, who--the Hartford Plan, you know, the insurance agency. They were trying to coordinate all the various welfare and educational functions; he went up there.

K: Yes. Since you're winding up with a reminiscence from the Nixon Administration, would you care to comment on Robert Finch as a Secretary of HEW and maybe compare or contrast to your work with Elliot Richardson? I guess--yes, Richardson followed Finch. Finch wasn't there but a year?

S: Yes, but he couldn't handle it. That's when they had the [welfare mothers] sit-ins; he was held prisoner in his office by these welfare people, and so on, and he was sort of sent upstairs to the White House. He became a counselor. I thought he got a bum rap. But he was no Elliot Richardson. I have the greatest admiration for Elliot Richardson as a lawyer and an individual; he's just a wonderful person. And he matured tremendously from the time he was Assistant Secretary for Legislation till he became Secretary.

K: What do you mean by that?

S: Well, when he became Assistant Secretary--one of the reasons we've had such a good relationship, I sort of helped orient him and educate him when he came in. He had been on the Hill working for [Leverett]

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Saltonstall and coming downtown, so to speak, was a change and he wasn't quite accustomed to that. And I helped him--

K: About how old was he when he came?

S: He, I think, is five years younger than I am, so he's about sixty-five. And when he became Assistant Secretary, he was relatively young and he at that point on occasion would fly off the handle. You couldn't do that in that job; I mean, Wilbur Cohen, for example, was able to contain himself, except once. This was when he had a run-in with Elizabeth Springer, who was then--I think I may have mentioned that to you earlier. And I said to him, "Wilbur, it's all right for me to be on the outs with her, but you can't." And he called her back, and he said to me, "She's looking for things underneath every table, she's so suspicious of everybody." So he called her back and everything was smoothed out. But Elliot of course had to learn that, which he learned very well.

When he became [Secretary]--he was Under Secretary of State before he became Secretary of HEW. And I had called him once, as a matter of fact, to get him to call the White House. I was having trouble getting my successor as my deputy. Don Hirsch had been appointed in the Republican Administration [to our staff], had been found by Elliot Richardson. But they didn't want to give him to me because they were upset because Bob Mardian, because of his political clout, was able to get me and another fellow [lawyer] from the Roosevelt Administration appointed as Assistant General Counsel, promoted to that job. So when this position came through, they objected, even though it was not

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really a political position. I called Elliot and he called the White House, and they cleared it. He persuaded them, you know, that this fellow was not suspect or anything.

So just before he [Richardson] was officially appointed--I guess the Senate approved, advised and consented--he came over to our place. This was about 5:00 p.m., our quitting time was five-thirty. Well, I had a six o'clock meeting with the Secretary's office. I also the next morning had a physical exam for which I was not supposed to eat after six o'clock. So I at five o'clock went out and one of the Deputy Assistant Secretaries who lived nearby had his wife fix me something to eat. Elliot Richardson came looking for me while I was out, and of course my secretary was flabbergasted. She had no idea I knew him so well. He asked where I was, and she said, "Well, he's gone out to grab a bite to eat, because he has this meeting." So he said to her, and of course she was taken aback, "That sounds just like Saperstein. He's not here when I want him." But he was joking and she took him seriously. But that's one reason we had that relationship. I was always able to get my views to him as the result. The man he appointed as General Counsel, who is also a very young but very able guy who had been his executive assistant over at State--

K: Who is that?

S: Will Hastings. Wilnot I think is his full name, but Will Hastings.

And when I disagreed with Bob Ball or someone else on certain things, I could write him a note and he would read it; I mean he would pay attention. I did that on this Supplementary Security Income, as a

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matter of fact, when my assistant came back and told me what Bob Ball had asked the committee to do and that Larry Filson was in sympathy, [from] the Legislative Counsel's Office. I called Larry and asked him. He said, no, he didn't express any views on it. I wrote a note and said I didn't think this was the way to go and explained why, and so they didn't go that way.

I must say that the reason was that Bob Ball and [the] Social Security [Administration] generally always wanted everything spelled out in the statute to the last detail. The result is that social security, OASDI and Medicare and so on, are so complicated that [almost] no laymen and very few lawyers can understand it. And I was anxious to avoid that happening in Supplementary Security Income, as FAP and then Supplementary Security Income. I felt that lawyers at least should be able to read the statute and see what it was, and then if they [Social Security Administration] wanted [more detail] to have regulations on it--but Social Security felt if they had it spelled out in a statute, then they didn't have to worry about regulations and people fighting with them and that kind of thing. So I disagreed with them on that and I won out and they did not put all those details in, at least at that point. I don't know what they've done since. Medicare has become much more complicated since I was first involved in it in 1965, much more complicated.

K: Well, is this technique, to get it in the statutory language, a way of sort of pre-empting dissent at the regulatory--?

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S: Well, not dissent, but it avoids controversy. They don't have to exercise initiative. For example, when I was telling about the welfare reform in 1962, when I pointed out some of the problems that were likely to result, and either you should spell it out in a statute or otherwise, I was able to get them to give the authority to the Secretary to limit it. But the Secretary didn't want to get involved in that controversy, particularly with high-powered states like California and New York. So that's one of the problems. And with a program as big as social security, I can sort of sympathize with him [Bob Ball] for wanting to avoid that. But on the other hand, as a lawyer it bothers me because you're then dependent on what the bureaucrats tell you. There have been several cases in which the judges said they couldn't figure out what's supposed to be [the meaning]. And I just don't think that's the way it should be.

On the one side, you have the bleeding hearts, as I call them, from Social Security and welfare who want to make sure that every last individual is taken care of, no matter how, and with precise justice. On the other hand, you have the congressmen who have constituents who don't quite meet the qualifying conditions. And why didn't they? You'll be amazed at the kind of drafts we had to write, which sounded like general provisions, [but] which were intended to take care of one or two cases. And that complicated the statute no end, and people used to come to me and say, "Boy, are you a lousy draftsman. That law is impossible to understand." And I'd have to explain, you know, "the provision you're talking about, we had to put in for this particular

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case or that particular case." And this is it. The political system is such that you have the Congressmen worried about that and you have these bleeding hearts worried about something else, so between the two of them, too much. So that's one of the things.

K: Well, I think I have gone through my entire list of questions and issues.

(Interruption)

K: We forgot to talk about the Mental Retardation Facilities and Community Mental Health Centers Act of 1963, which I guess concerned a subject that was of special interest to the Kennedys, and you had some role in that, as well.

S: Yes, the Kennedys were quite interested because of the sister who was mentally retarded. There was always this tug of war going on between the mental health and the mental retardation people as to which would be dominant. Mental retardation people were very concerned about being swallowed up by the mental health people and so we originally drafted it as two separate bills and sent it up that way. When it got up to the Hill, Jack Forsythe called me up and said, "We can't have this. We want a single bill." So I said, "Jack, you understand the reason we split it up into two bills was because of this issue." So I redrafted it, with Wilbur Cohen's approval of course, as a single bill. But it was done for the Senate committee rather than for the Administration. And that's how that came about.

I remember the mental health part of that is the one that really expanded the notion, if it didn't initiate it, of treating the mentally

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ill in the community rather than through institutionalization in the big state institutions. Because of the development of the medications that could control a lot of the mentally ill, this idea burgeoned, really blossomed, and we drafted this legislation to authorize this program of assistance to these local community mental health centers. They were supposed to take all the people out of the big institutions, [since] many people felt we were just warehousing [them], and treat them and return them to society more readily than they could otherwise. That idea has lasted, endured, and has been expanded. The only problem is that when a lot of these people are being released from the institutions, there are no facilities, or inadequate facilities, to take care of them in the community. The support has dried up from federally [funded sources] and other places, and so a lot of them are these homeless people that we see on the streets. But it was a good idea.

Then the mentally retarded were always apprehensive about being swallowed up or overshadowed by the mental health people. I remember we had some mental retardation amendments a couple of years later that I drafted in order to strengthen their program. But that's one feature that I remember about this.

K: When we look at the date on this Act, and this was 1963, it just seems so strange to me that we could have been as forward-looking at that point in time about the need to provide treatment and places to be treated for people who are mentally retarded or with mental illness, and yet we couldn't agree on Medicare by 1963. It would seem,

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logically speaking, that Medicare would antedate concern for the special illnesses or special conditions that people were affected with.

S: Those did not involve the spectre of socialized medicine. That term of opprobrium was always attached to Medicare. Of course, that's why--well, that's one of the reasons why as the program was proposed in the sixties, it was confined to the elderly. When we first drafted it back in the late forties--it was drafted even before I got involved in 1939--but certainly when I was involved in the Truman Administration, it was universal, covered the whole population. But between that time and the sixties, of course, socialized medicine remained a spectre. But in addition to that, a lot of private health insurance was developed, admittedly inadequate and not covering a lot of people. But they also then were opposed to complete [coverage] so we developed it as a program for the elderly.

Interestingly enough, during the Nixon Administration we had some kind of a proposal that I helped draft--I guess Elliot Richardson was then Secretary--to cover the population by using a lot of these employer plans, imposing requirements on the plans and making them mandatory; if they didn't do it, we would have to do something. I drafted a proposal like that for the Nixon Administration, which again was a forward-looking thing, something that surprised me about the Nixon Administration. But it wasn't brought to fruition.

But, anyhow, that's why. And, of course, another thing was Wilbur Mills. Now, those two things [Mental Retardation and Mental

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Health proposals] did not go through Ways and Means. They went through Labor and Public Welfare in the Senate, and Education and Labor--no, I guess it was health. There was a health committee, I forget what it was [called]. Interstate and Foreign Commerce then handled the health [legislation]. It didn't go through Wilbur Mills. But Wilbur Mills was getting to the point--I mean, in 1964 when that social security bill failed because we couldn't get agreement on Medicare even though it had a benefit increase in it, Wilbur Mills was pretty close to it. I mean he was getting a little discouraged, disenchanted with the AMA, and then we were able to do something with that.

End of Tape 2 of 2 and Interview I

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