

**JOHN CLAGGETT DANFORTH, 1976-1995**  
**Preliminary Interview Topics**

*Joint Committee Service with EMK: Labor Committee (Jan-Feb. 1977)*

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*Miller Center of Public Affairs, University of Virginia, October 18, 2005*

***General Characteristics/Overall Impressions***

When did you first meet Edward Kennedy? What were your initial impressions of him?

Tell me about your relationship with Kennedy. Has it changed over time? How?

On what issues did you work most closely with him? On what issues were you opponents?

***Civil Rights Act of 1991 (see chronology)***

Where did your approach to remedying the problem created by the 1989 Supreme Court decisions differ from Kennedy's? How did the bills you introduced, S. 1208 and S. 1408, differ from the Kennedy/Hawkins approach in H.R. 4000 and S. 2104?

You brokered a compromise in 1990 in the bill that was vetoed by President Bush. You undertook a similar role for the bill in 1991 (H.R. 1/S. 1745) that ultimately was enacted after the Senate overrode the President's veto. What made the difference? How did the compromise differ in 1991 from that in 1990? Whose support had to be gained to override the veto?

How active was Senator Kennedy in the negotiations over the compromises? Was his role different in each year? In what arena was he most active? On the Senate floor? In the negotiations over a compromise? Persuading individual Senators?

If you remember when you were in Senator Dole's office negotiating with Boyden Gray and Nelson Lund over what the Bush Administration could accept in terms of language on business necessity and damage caps, where was Senator Kennedy at the time? How closely were you consulting with him? Were you running compromise language by him?

***Supreme Court Nominations: Robert Bork (1987) and Clarence Thomas (1991)***

As a student and admirer of Robert Bork, what did you think of his Supreme Court confirmation process?

Within an hour of Bork's nomination to the Court, Kennedy took to the Senate floor with a strong condemnation of it. "Robert Bork's America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens' doors in midnight raids, children could not be taught about evolution." Bork's confirmation was defeated by a vote of 58-42. What effect did Kennedy's speech have on the confirmation process? What did you think of Kennedy's role in that process?

As Clarence Thomas' sponsor, you were in a position to assess the role Kennedy played in the nomination process. What role did he play? How active was he behind the scenes?

How would you assess Biden's role in the confirmation process? Did you ever get the feeling that Biden and Kennedy were at different places before and after the Anita Hill allegations?

What effect do you think Thomas' use of the term "high tech lynching of an uppity black" had on Kennedy?

Why do you think Kennedy was less vocal in his opposition to Thomas than might have been expected, particularly on the allegations of sexual harassment made by Anita Hill?

### ***Health Care Reform***

You were part of a group of moderate Republicans (including Packwood, Chafee, Durenberger and Kassebaum) who worked for health care reform. Where did you take issue with Kennedy's approach? How would you assess the effect he has had on framing the debate over health care reform?

**Very abbreviated background on 1994 health care reform:** On June 9, 1994, Kennedy reported a strong version of the Clinton health plan from the Labor Committee. During the next two months, efforts were made to craft an alternative that culminated in the introduction by Dole and Packwood on June 29, 1994, of a bill that has no employer or individual mandates, no premium caps or price controls but garnered the support of major business lobbies fighting the Clinton plan. A stripped down version of the Clinton plan was introduced by Mitchell on August 3, 1994. Chafee introduced a "mainstream coalition" plan similar to the Finance Committee's bill that included a national board that would design two standard health-benefits packages, federal subsidies for people with incomes up to 200 percent of poverty level, and about \$120 billion in new taxes over 10 years. Kennedy called the plan "encouraging" though it had liabilities for both sides. It would have covered only 92 percent of Americans and would rely on new taxes for funding. By the end of August, it was all over with neither House nor Senate having even voted on any health reform plan.

Why did health care reform in 1994 fail? What could have been done differently? What role did you play in the Dole compromise?

Where was Kennedy in this process over the summer? He had been the lead sponsor of health care reform to provide universal coverage since the 1970s. In that two month period, other Senators appeared to have taken the lead: Mitchell, Dole, Moynihan, Packwood and Chafee. What was Kennedy's role in all these negotiations? How far was he willing to go to find a compromise?

Was there anything Kennedy could have done that would have given health reform a better chance of enactment? Leaving aside the problems Dingell and Stark had in getting

a bill the House could pass, was any compromise possible in the Senate that could have passed?

What effect did the “Harry and Louise” commercials have on the process?

What effect did the repeal of the Medicare catastrophic coverage provisions in 1989 have on the 1993-94 health care reform debate?

To what extent has Kennedy had an effect on other Senators’ stances on health care reform? What effect has he had on public perceptions of health care reform proposals? How did he succeed in such areas as patient rights, the Ryan White AIDS CARE Act of 1990, the Kennedy-Kassebaum Health Insurance Portability Act of 1996 and modest mental health parity legislation?

***EMK modus operandi and leadership in the Senate***

What have you observed about Kennedy’s standing among his colleagues? How has that changed over the years?

What do you think of Kennedy? What are his strong points? What have been his legislative priorities? How have they changed over the years? How does he get his legislative agenda enacted?

When the Democrats have been in the minority, what role has he played in opposition? How effective has he been at that? How has he exercised leadership in the Senate?

How did his 1980 run at the presidential nomination affect his subsequent years as Senator? What changes did you see in him during his Senate tenure?

***Kennedy’s use of staff***

How would you characterize his use of staff? How did your staff’s relationships with those of Kennedy differ from your personal relationship with him?

## **CHRONOLOGY**

### **ENACTMENT OF CIVIL RIGHTS ACT of 1991**

**Background:** The Supreme Court's decision in *Wards Cove* reallocated the proof burden making it more onerous for the plaintiff to prove discrimination. Under the 1971 *Griggs* decision, to establish a case of unintentional discrimination, the plaintiff had to present evidence of a disparate impact resulting from an employment practice. Then the burden of proof shifted to the employer who could rebut the claim with a business necessity defense that the employment requirement had a manifest relationship to the employment in question. The 1989 *Wards Cove* decision required the plaintiff to show disparate impact through evidence of a statistical imbalance in the composition of the employer's workforce compared to the qualified labor pool. The employee also had to isolate and identify which specific employment practices were responsible for the statistical disparities. Under *Wards Cove* the employer could rebut discrimination claims by offering a business justification for the use of the challenged employment practice. The employer did not have to prove his defense; it was accept unless the plaintiff could disprove its legitimacy. Moreover, the justification did not have to have a "manifest relationship" to the job as per *Griggs*. Under *Wards Cove*, a wider range qualified as business necessity justifications.

Legislative proposals to address this triggered debate over whether an employer could set up a qualification (i.e. business necessity justification) for employment that had nothing to do with the ability to do the job. Opponents insisted that the legislative proposals would cause employers to "hire by the numbers."

1989	5 Supreme Court decisions altered prior interpretations of federal employment law affecting burdens of proof requirements involving "disparate impact" discrimination and "mixed motive" discrimination under Title VII of the Civil Rights Act of 1964. The effect was to negatively affect the ability of victims of discrimination to obtain remedies for intentional and disparate impact discrimination.
February 1990	H.R. 4000 introduced by Hawkins with 122 original cosponsors (eventual 183); S. 2104 by Kennedy with 37 original cosponsors (eventual 49). Danforth became a cosponsor on 5/17/90.
July 18, 1990	S. 2140 adopted with amendment by Senate vote of 65-34
August 3, 1990	H.R. 4000 adopted by House vote of 272-154
October 22, 1990	S. 2104 (after conference) vetoed by President Bush.
October 24, 1990	Senate failed to override veto by 66-34.
January 1, 1991	H.R. 1 introduced by Brooks with 175 cosponsors. Provided for burdens of proof when allegation of unlawful employment practice

is based on disparate impact. Declared when employment practice is alleged to have mixed motives, unlawful employment practice is established when discriminatory basis was a motivating factor, even though other factors also contributed. Allowed certain types of compensatory damages and punitive damages (with caps) for intentional discrimination.

- June 4, 1991 S. 1207, S. 1208, S. 1209 introduced by Danforth with 8 cosponsors—referred to Labor Committee. S. 1207 dealt with “mixed motives” and provided limited types of relief (not damages). S. 1208 dealt with disparate impact and declared mere existence of statistical imbalance is not alone sufficient to establish a *prima facie* case of employment discrimination. Defined “required by business necessity” to mean that challenged practice must 1) in cases of *selection*, bear manifest relationship to requirements for effective job performance and 2) in case of other practices, bear manifest relationship to a legitimate objective of employer. S. 1209 dealt with compensatory and punitive damages (with caps) for intentional discrimination.
- September 24, 1991 Compromise bill S. 1745 introduced by Danforth with 6 cosponsors (Chafee, Durenberger, Jeffords, Cohen, Hatfield, and Specter). Became P.L. 102-166.
- S. 1745 defined “required by business necessity” as must: 1) in case of practices used as job qualifications or to measure the ability to perform the job, bear a manifest relationship to the employment; and 2) in the case of other practices, bear a manifest relationship to a legitimate business objective of employer. This language was broader than in S. 1208 because it affected more than just selection process (promotions etc.).
- Provided burdens of proof when allegation of unlawful employment practice is based on assertion of disparate impact.
- Used similar language to H.R. 1 on discriminatory intent and mixed motives.
- October 22, 1991 Cloture invoked 93-4 on S. 1745.
- October 30, 1991 S. 1745 passed Senate, as amended, by 93-5.
- November 7, 1991 S. 1745 passed House by 381-38.
- November 21, 1991 S. 1745 became Public Law No: 102-166.