



EDWARD M. KENNEDY ORAL HISTORY PROJECT

INTERVIEW WITH CAREY PARKER

October 27, 2008
Washington, D.C.

Interviewer
James Sterling Young

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TRANSCRIPT

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Young: This is an interview with Carey Parker, on October 27th. We'll start with some loose threads from the last interview.

Parker: At the beginning of the 1970s, a number of controversies erupted between the Democratic Congress and President [Richard] Nixon. One of them involved a question of the separation of powers between Congress and the President under the Constitution. Senator Kennedy felt very strongly about the powers of Congress, and he was outraged by what happened during the Christmas break in 1970. It was an unusual situation. Congress had come back into session, after the election of 1970. It was a so-called lame-duck session, since some of the members had retired or been defeated in the election, and newly-elected members had not yet been sworn in. But Congress stayed in session through the ending of the year, taking a brief recess for the Christmas holiday.

One piece of legislation that Ted Kennedy had worked on as a member of the Health Subcommittee in 1970 was the Family Practice of Medicine Act. It offered grants to medical schools to encourage them to allocate more of their curriculum to teaching the family practice of medicine. It was a very popular issue in Congress, but it was strongly opposed by the Nixon administration. In the session after Thanksgiving, going into mid-December, the House of Representatives passed the bill overwhelmingly. So did the Senate, and it was sent to the President. Congress took a brief, five-day recess over Christmas, in December of 1970. They were coming back in session after Christmas to complete the pending business and adjourn.

Under the Constitution, the President has 10 days to sign a bill or else return it to Congress with his veto. Typically, if Congress is not in session for an extended period of time and a bill that goes to the President just before Congress adjourns is not returned to Congress, then the unsigned bill had been subjected to what is called a "pocket veto." In effect, the President simply "pockets" it, and doesn't return it to Congress, so Congress has no chance to override the veto. This situation, a pocket veto during a five-day recess, was unheard of. Senator Kennedy refused to swallow the idea that President Nixon could expand the use of the pocket-veto power and nullify legislation in that brief a period of time.

Before, even if the tenth day for Presidential action fell during a brief recess, the President would send a vetoed bill back to Congress, so that Congress could either vote to override the veto or vote to sustain the veto. In this situation, however, President Nixon knew that he could not make his veto stick. His advisors apparently decided, therefore, that the President should stretch to

unprecedented proportions the power of the pocket veto to include a recess when the Senate was out of session for only a few days—less than a week. There seemed to be no remedy.

But after consulting with a number of constitutional scholars, the Senator said, “The only choice we have to save this legislation is by bringing a lawsuit against the President in court.” The question was, who would have legal standing to bring the suit? It was not easy to imagine any of the outside groups or medical schools or someone else saying, “We should have this law in force so that we can apply for a grant and get the funds.” The constitutional scholars we talked to thought that a member of Congress would probably be the most likely person to have the legal standing to challenge a veto like that, since it basically meant that supporters of the legislation had their work nullified— unconstitutionally, they argued—by the President. It was a clear issue of separation of powers.

So Senator Kennedy decided to bring the lawsuit himself and became the plaintiff in the case he filed in the federal district court for the District of Columbia. The defendant was Arthur Sampson, the senior federal official with the responsibility of enrolling legislation enacted into law on the statute books. The technical aspect of the litigation was that we were asking the Court to order him to include the legislation as a public law, because the President’s attempt to pocket veto it was invalid. The administration strongly opposed the lawsuit, partly on the merits, but primarily on the standing of Senator Kennedy to file suit. It was a rather technical legal issue, but a lot was turning on it.

Young: That was where you got Sampson. Sampson was the official who published bills that became public laws.

Parker: Yes. That’s why he was the defendant in the case, but he was not personally involved in the litigation. Justice Department lawyers represented him. Actually, Sampson was the head of the General Services Administration, and there was also a second defendant, the Chief of White House Records. The pocket veto issue was very complicated, and standing was a rather esoteric judicial concept. Kennedy had decided to argue the case himself, so he organized several meetings with constitutional lawyers. We put together a brief, and he studied the legal issues thoroughly.

Young: Who were the lawyers?

Parker: I don’t recall. I think they were mostly lawyers from Harvard.

Young: Was Larry Tribe in that group? Or Paul Freund and people like that?

Parker: Paul Freund and Archibald Cox were two of the likely ones. They both strongly supported our position on the legal argument. It took quite a while for the case to work its way through the legal system. We argued the case, I think, in the spring of 1971. I know that the Court’s decision came in the summer of 1973—a lot of time elapsed while the district judge considered the arguments. Kennedy argued the case himself in the district court, which was relatively unheard of for a Senator. Lo and behold, in 1973 the district judge issued a ruling sustaining Kennedy’s position, and ordered the bill to be published as a law. But the administration didn’t stop there. They appealed the judge’s decision to the U.S. Court of Appeals for the District of Columbia Circuit, and Senator Kennedy argued the case the following year in

the appellate court. Two months later, the Court of Appeals affirmed the decision of the district court. The administration chose not to appeal the case to the Supreme Court. They probably felt it was an uphill battle, and didn't want to risk a Kennedy victory over Nixon in the nation's highest court. Still, Kennedy had a solid legislative victory courtesy of the judicial branch. His Family Practice of Medicine Act finally became a law.

The case didn't end there. It had ramifications for other legislators, both state and federal, who realized they had standing to bring legal action involving legislation they had worked on. In the 1990s a case finally worked its way to the Supreme Court. Several members of Congress filed a complaint against the Line Item Veto Act, which Congress had recently passed at that time. They were challenging its constitutionality. That case wound up in the Supreme Court, and the Supreme Court sustained the argument of the government that the members of Congress did not have standing to sue. That decision didn't change the outcome of Senator Kennedy's case, but it raised doubts about the standing in the future of members of Congress who want to bring litigation. The Court was becoming more conservative during that period, but there was a brief window of time when Kennedy made a bit of constitutional law himself. He was very pleased.

Young: It's the moot court all over again, but he won this time.

Parker: That's right.

Young: Though he won the other time too, in law school, yes. Very assiduous preparation and briefings.

Parker: Yes, extensive preparation. There was a lot of attention focused on the issue too. Nixon laid some of the groundwork that erupted in later Republican administrations in terms of challenging the traditional rules of the separation of powers. President Nixon may have launched that effort at the time, but in recent years, for example, President [George W.] Bush has begun to use what he calls "signing statements," in which he signs a bill and then explains why the administration doesn't intend to carry out certain provisions.

So Nixon laid the groundwork for what Bush effectively made into a line item pocket veto. On numerous occasions Bush has simply announced these signing statements that are hugely controversial, but there seems to be very little way for Congress to challenge him directly. Senator Kennedy felt, *If only that ruling in our pocket veto had stayed put, we could go after these signing statements.*

Young: You could indeed. Have the signing statements, by the way, been challenged?

Parker: Not that I know of.

Young: It would be hard to find a way to do it.

Parker: Members of Congress would rush to court to do it, I think, and give the President hell.

Young: But they might not have standing.

Parker: Right now they don't feel they do.

Young: It's another one of those situations where the only thing you can do is change the President.

Parker: That turned out to be easier than going to court.

Young: There have been other Senators since then who have tried. Didn't [Barry] Goldwater file a suit once? It was on something to do with Vietnam.

Parker: There may have been. I don't know the facts well enough.

Young: That was a standing issue, but it was not the pocket-veto issue.

Parker: No. There may have been cases where members, on one or more of their pet issues—certainly there are numerous cases in which Senators have gone to state courts in order to raise issues about the application of federal laws in their states. That was one of the precedents that Kennedy looked at and thought, *If they can do it in the state courts, then why can't we do it in the federal court here?*

Young: Sure. That is an interesting, unusual event, a little piece of history. Were you also going to talk about another loose thread?

Parker: There is another issue of interest in terms of Kennedy and his role in interpreting the Constitution. In the 1970s there was a fairly strong movement in the District of Columbia to gain full voting representation in Congress. At the time, they had a non-voting member in the House of Representatives, but no representation at all in the Senate. Congressman Walter Fauntroy was the non-voting member of the House, representing the District of Columbia.

As the movement became more crystallized in the district, it caught Senator Kennedy's attention because of his concern over the Voting Rights Act and equal rights to vote. The 23rd Amendment to the Constitution, giving D.C. citizens the right to vote for President had been approved by Congress in 1960 and ratified by the states in 1981. Kennedy felt it was wrong that the citizens of the District of Columbia—who were, for all practical purposes, a state—were not able to vote for their own members of Congress, even though Congress was meeting in the District and was legislating in ways that affected every person in the District.

It seemed grossly unfair to Senator Kennedy, and he called Congressman Fauntroy to say that he'd be interested in doing something about it. The two of them put together a constitutional amendment to grant D.C. full voting representation in Congress as though it were a state—meaning, it would have two Senators, and the number of Representatives, based on population, would have been two in those days. We found that we had some bipartisan support for it, and we managed to get it through both the Senate and the House in 1978 with relatively little controversy, which surprised us.

It soon became clear what the strategy was: Republicans were opposed to it on political terms because they knew that the District of Columbia would elect two Democratic Senators and two more Democratic Representatives. I think there was somewhat less concern about an additional two Democratic members of the House, but with the Senate trending toward close division,

Republican Senators held their noses and voted for it. They felt, “Let it go to the states—they’ll never ratify it.”

It turned out that their political prediction was correct about the states. Very few states—especially those with substantial Republican voting blocks—were interested in having the District of Columbia send two Democratic Senators to Congress. Nevertheless, the amendment was passed by Congress in 1978 and sent to the states for ratification. It turned out that only about thirteen states ratified the amendment. There was no hope of getting the three-quarters of the states needed for ratification.

Young: Was there an organized effort to get ratification for it in the states?

Parker: There didn’t seem to be one. Fauntroy and some of the groups that were lobbying Congress tried to make the case in other states, but they said that they basically ran into a brick wall and that it was almost impossible. They felt that no matter how much they pushed, they wouldn’t be able to get it ratified. It led, to some extent, to a shift in emphasis. If you care about D.C. voting representation in Congress, you probably have to make the District of Columbia a state.

D.C. statehood, once the amendment failed, became the driving force, the strategy that the supporters of D.C. voting rights used. But even there, opposition came out of the woodwork in the Senate. They weren’t willing to pass a statute. They had been willing to send something to the states that they knew would be defeated, but they refused to act by statute. In fact today there are still ramifications. The effort now is to at least give voting representation to the current non-voting members of the House. The House has, over the years, allowed the person who is called a “non-voting delegate” to vote in committees in the House, but not a vote in the full House.

The people of D.C. feel that they have second-class citizenship, and every Senator is used to walking around the city and seeing the D.C. license plates that say, “Taxation Without Representation,” on them. Kennedy wishes that he had been able to accomplish more, but we felt that we made a reasonable effort on it.

Young: The provision in the Constitution for the creation of a federal district was passed overwhelmingly. This was to be federal property. One of the interesting background notes is that the Congress had been itinerant for a number of years. It had moved to Philadelphia and to other places. They had a set-to at Philadelphia, as you may know, where the Philadelphia troops and the city employees of the state militia would not give any protection to a demonstration against the government. Revolutionary War soldiers were protesting for their pay. They hadn’t been paid. So the Congress left because they were in somebody else’s jurisdiction—a jurisdiction that was not giving them any protection.

Parker: I’ve heard that there were something like nine capitals of the United States.

Young: There were quite a few. They were all over, yes, before they decided on D.C.

Parker: When the first Congress met in the District of Columbia, the District had quite a large number of residents, who, for all practical purposes, were—

Young: Unanimous on this provision. [*laughs*] Never again.

Parker: One of Kennedy's favorite visual aids during the debate in 1978 was a chart he held up, showing that the District's population was greater than the populations of seven states. He wanted to give people a sense of the number of people who were unrepresented, but it didn't make a dent out in the country. It was quite effective in producing the two-thirds majority of the Senate and House needed to pass it and send it to the states for ratification. When they didn't have the final say, they were recommending to the states that they pass it, but it never got anywhere in the states. It's still an unfinished battle.

Young: "Shut the door. They don't belong."

Parker: That's right.

Young: Maybe there will be such an overwhelming Democratic majority that they—

Parker: That still won't make a difference in the states, unfortunately.

Young: No, it won't. We've been talking about voting and voting rights in the case of the District of Columbia. There was an important voting-rights extension during the [Ronald] Reagan years.

Parker: In '82.

Young: It was extended for 20-odd years.

Parker: I think it was 20 years, yes.

Young: It included a provision—I think this was the one—the "results, not the intention" test.

Parker: The effects test, not the intention test.

Young: Yes. That was a big breakthrough. That, in effect, overruled something. The Department of Justice, as I understand it, would not enforce—am I right about this?

Parker: Yes. That was a big issue at the time. For years they had interpreted the Voting Rights Act as requiring states to get the approval of the Department of Justice before redistricting whenever there were claims that minorities were being discriminated against. It developed into a situation in which states were able to make the argument, for example, that they weren't intentionally discriminating, but unfortunately, the effects, when they claimed they drew the boundary lines of Congressional districts for other reasons, put minorities at a significant disadvantage.

It seemed to be a somewhat hypocritical argument, but there was often a legitimate issue of whether the intent could be proved, even when there was no doubt whatsoever that the effects were highly discriminatory in many states. Consequently there were initial attempts, as I recall, to work it through the lower courts and the federal court, and to have the Supreme Court declare that the act applied not only to intentional discrimination in drawing legislative districts, but also

to the drawing of districts that had the effect of discrimination as well. The debate became known as the “intent-versus-the-effects test.” A similar controversy arose whenever other state actions had the effect limiting or denying the right to vote.

The Supreme Court never concluded that an effects test was valid. For one reason or another the legislation and the states’ efforts, particularly the efforts of minorities, to challenge it in court, were unsuccessful. A Voting Rights Act had been passed in ’65, ’70, and ’75, and then they passed it for seven years, from ’75 to ’82. By 1982 the Voting Rights Extension had become a serious issue. There was still a great deal of voting discrimination. Many Democrats felt—and many African Americans felt especially strongly—that they were being denied equal voting rights in their states.

Basically, Republicans would find ways to draw election districts so that most minority voters would be in one or two districts, and would have negligible influences in other districts in a state. It was racial gerrymandering, contrary to the principle that people generally gave lip service to—that districts should be compact and contiguous, which meant making a state’s districts all look like square boxes.

That has never happened, but it got to the point in some states, in the late ’70s and early ’80s, where some districts were drawn in such a way that they looked like the tentacles of an octopus. It was outrageous, and there was a huge battle in Congress over it. We were able, with the support of a number of moderate Republicans, to pass a prohibition against it, and avoid a filibuster.

Young: Senator [Robert] Dole’s name was prominent on the Republican side as being in favor or as agreeing. I think there was a compromise that he agreed to.

Parker: Dole was a moderate on civil rights issues. I’m not sure what the mechanics were of the compromise, but it basically legislated an effects test that was to be a legitimate basis for a complaint to be taken to court in order to challenge redistricting. It had been a long battle, and it was one of the milestones of civil rights. Senator Kennedy felt that way. He had been active on all the voting rights bills. They were intensely partisan from 1965 on. As Democratic majorities began to be reduced in Congress after ’68, it became harder in the Senate to pass civil rights legislation. The preeminent piece of civil rights legislation during those years was probably each renewal of the Voting Rights Act.

Young: The latest passage of the voting rights extension was unanimous. It might even have been extended for a longer period. I think that happened in the [William J.] Clinton years.

Parker: We extended it during the Bush years too, again without a major battle. The big controversy was over the effects-versus-intent test. I think the country had gotten used to the fact that people have a right to vote, and politicians can’t manipulate it beyond a certain point.

Young: Though it’s a different issue, there are other means to discriminate, which we’re hearing a lot about right now. That has a history also. It came up in the [William] Rehnquist hearings, didn’t it? He had been at the polls in Arizona. Discouragement through all sorts of means is continuing, isn’t it?

Parker: It has gotten out of hand. With the close election in 2000, the issue received much more intense interest in Congress. The question has been how to regulate elections in order to make sure that devious techniques aren't used by certain groups to suppress votes. Every close election now may be heatedly disputed because of actions taken to discourage certain groups from voting.

Young: Has Kennedy involved himself much in these issues in terms of legislation?

Parker: The search has been for ways to prevent such voter suppression, and no one has come up with a very good idea, at least at the federal level. It seems primarily to be a question of implementing voting laws. There are fair-voting laws on the statute books, but they're manipulated by state and local officials, almost precinct by precinct. The local official knows, for example, who the minority voters are likely to be and what precincts they tend to vote most heavily in. The word goes out to do what you can to discourage them from voting.

There are so many ways to suppress the vote. Make the ballot complicated to read. Make it painful to vote by having people stand in long lines. Once you get to the voting booth, they might have to show their voter identification to the poll registrar, who will then say, "Wait a minute. I need to check this. Do you have some other identification with you?" Something like that. There are dozens of ways to systematically suppress the vote.

Young: "I have to see a driver's license."

Parker: That's right.

Young: In fact Georgia was requiring ID, I think.

Parker: Right, and that has been an issue too, because some people who don't have a driver's license still ought to be able to vote. Obviously, we can't eliminate that sort of corruption entirely, so the question is, what's the best way to minimize it? Just bringing it to light and pointing out what happened in the last election—"We don't want to see this again at these polling places"—seems to be the tactic of choice right now.

It will be interesting to see in this election coming up, with the strong grassroots organization that the [Barack] Obama campaign has, how successful the effort to reduce minority voting will be in many of the states. It's widely felt that systematic-suppression tactics made the difference in the 2000 election. Whenever an election is within one or two percentage points, those tactics can make a huge difference in a swing state.

Young: It is remarkable how the arc of the civil rights movement, or the civil rights revelation of the '60s, moves through time. Some of that has been gutted, in effect. School desegregation is virtually no longer a policy in most cases, is it?

Parker: De facto in schools.

Young: It's de facto, thanks to the Supreme Court, which seems to have killed even voluntary segregation.

Parker: That's right. There's no solution yet.

Young: Voting rights has become an issue again, as it was then, but it's a different kind of issue. It's exercised at the polling place.

Parker: One of the techniques that people have used is to identify officials, if they can, who are implementing a strategy of voter suppression, so that their job is not secure anymore if they're caught doing it.

Young: Would you like to give your perspective on the Martin Luther King holiday? Were you deeply involved in that?

Parker: Mostly our Judiciary staff was involved in that. Initially there was strong resistance in the Senate. People said, "Wait a minute. We have too many days named for too many people already. Let's allow Congress to designate a day honoring Martin Luther King without making it a national holiday." Democrats gagged over that. Members of Congress now name days of the year for almost every cause under the sun, particular causes they care about, and they sail right through Congress. I've never seen a list of them posted, but there are even days that honor local sports teams.

Young: They'll run out of dates.

Parker: No, they can keep doing it. One day could be Mothers' Day and Fathers' Day put together. Or instead of mothers and fathers, it might be Second Cousins Once Removed Day or something like that. They have Runners' Day and Snowball Day or something like that.

By ridiculing that suggestion, Senator Kennedy jumped into the battle. It had been led by one of the Democratic minority members of the House of Representatives. They got it through the House, and it came over to the Senate. There was an initial attempt to derail it, and that was when Senator Kennedy, I believe, jumped in. He went over to the Senate floor and gave a very strong speech, talking about the importance of honoring the people who had made truly great contributions to our country. He basically gave a speech for Dr. King, and he was critical of those who were attempting to minimize his impact on the country. He criticized their lack of respect for equal opportunity and basic rights that were protected by the Constitution. I think he made a difference when he came to the floor outraged that there was an attempt to bottle this up.

Young: Jesse Helms was calling Kennedy a Communist.

Parker: He had a knockdown, drag-out debate with him, yes.

Young: It was a pitched exchange.

Parker: Yes, a pitched battle. The holiday had a head of steam, since it was sent over by the House, which was fortunate. It also was easily characterized as a clear vote for or against civil rights. There was no question that civil rights was *the* issue of that generation in Congress. Kennedy had personal ties with the King family. His son, Martin Luther King, III, had been a staff member of ours for a time. Kennedy wasn't going to sit still while some in the Senate attempted to derail it.

Young: South Africa. You mentioned that last time.

Parker: Yes.

Young: Do you want to say more about that remarkable passage over Reagan's veto?

Parker: Again, it was the intensity of the civil rights issue and the intensity of Senator Kennedy pushing that issue so hard.

Young: It took time too. He had tried that earlier.

Parker: He had made a visit to South Africa in 1984. That was very important in a separate political way, since it led to the Senator acting in 1985 to take himself out of the Presidential race in 1988. Seeing what was happening in South Africa convinced him to take up the issue. He had enormous respect for Nelson Mandela. His political party became a powerful force in Congress as well. Kennedy basically picked up that cause and made it one of his principal issues for the course of that legislation, which took about six years to get through.

There was talk about what sanctions should apply to South Africa. There were major efforts by opponents to water down the legislation. In the end, Kennedy wanted to send a strong signal that the United States was foursquare against the apartheid regime in South Africa and that the majority of the black community in South Africa deserved to be respected and to have its rights in a full democracy.

The Reagan administration would have none of it. They basically said, "It's not an issue for Congress to decide. It's an issue of the foreign policy of our country." They raised concerns that turmoil might erupt in South Africa. We were able to deal very effectively with that argument. There certainly seemed to be no sign of potential turmoil. Mandela, despite his past record as a revolutionary, was clearly on a new path to be a moderate leader of his people. Mandela, in Washington, in Congress, acquired something of the image of Martin Luther King because of his leadership in a peaceful way of his community in South Africa.

The issue was whether members of the Senate would recognize that the issue was fundamentally about human rights, civil rights. Gradually members of Congress reacted the same way that Kennedy did. It caught on as a civil rights issue in this country. The issue was driven partly by the concerns of Democrats around the country who had been for civil rights since the '60s. In the 1980s we had a President who apparently was against civil rights when it came to other countries, and he obviously was not very supportive of the Voting Rights Act.

Young: There was a question about his commitment.

Parker: Certainly. We had a majority of members of the Senate, and of the House as well, who were for strong sanctions against South Africa.

Young: It was a super majority.

Parker: Yes. We thought we had close to enough votes to override a veto, and I think they were reasonably sure of it in the House. There was no doubt that we were insisting on passing this legislation. We wouldn't let it simply be bottled up. In the end it went to the White House, and Reagan's veto was almost pro forma. It seemed that by the time he cast his veto his heart wasn't

in it. He didn't think he was doing the right thing, but he felt he had to veto it. Certainly that was one of Kennedy's most important causes in the 1980s.

Young: Was this a polarizing issue?

Parker: No, not in the way that civil rights issues in this country were polarizing. In some ways, that was a plus for persuading Senators to go against the administration. It wasn't something that people in states around the country cared about.

Young: We had passed that point.

Parker: It seemed to be an anomaly. The country was ready for it, and I think that convinced more than enough Republicans to vote to override the veto. We thought that Reagan was going through the motions with a veto, that his heart didn't seem to be in it, and it certainly wasn't a polarizing issue in this country. It seemed surprising that the Commander in Chief would not be a supporter of the same rights in South Africa that he claimed to support in this country.

Young: That's right, all the while talking about human rights in the Soviet Union.

Parker: Yes. The administration tried to treat it as a foreign policy issue, but it became a domestic issue in Congress, and that was the end of the veto. Republicans tried to generate support in the states of Republican Senators, but that didn't seem to have any effect. It wasn't an issue that people felt strongly about. To Senators the issue was basically, "Are you going to support President Reagan because he needs your vote, or will you be concerned if you vote on this issue with the President that you'll alienate the minority community in your state?" Not that it had a major effect, but people were worried enough about it that they asked, "How much do I owe this vote to President Reagan?" They didn't owe him that much. It was the end of his term. The veto override finally came in 1988.

Young: It meant a great deal to people inside the regime in South Africa.

Parker: Of course. It was amazing. It earned a lot of respect for Nelson Mandela that he was able to take his cause to the United States and have us recognize his people. I think it contributed a lot to the progress that has been made in South Africa.

Young: Father [Desmond] Tutu talked about how important Kennedy's voice was—Tutu and the others who were involved in the movement against apartheid and for independence. He said, "This was a time when we were very alone in the world. The American administration was not for this. Europe was not for it. This was the true voice of America."

Parker: RFK [Robert Francis Kennedy], in 1966, at Cape Town, laid that groundwork.

Young: Right, with the pebble in the pond.

Parker: Yes, his "ripples of hope" speech. That was a cause that Senator Kennedy picked up as well, probably from his brother. The speech he gave at the University of Cape Town was one of RFK's all-time great speeches. I think Senator Kennedy visited that university when he was there, and he was very touched by his reception.

Young: But it was the same voice, the Senator's voice, with the repressions in Chile. That's what he stands for in the eyes of so many.

Parker: He is a voice for human rights around the world.

Young: Yes.

Parker: I wasn't as heavily involved in Chile, but in some ways it started with the assassination of [Orlando] Letelier, here in D.C. That drove home what was going on around the world. I think Chile had been, in some ways—the Latin American heritage of JFK [John Fitzgerald Kennedy]—an ideal democracy in Latin America. Then all of a sudden this took over.

Young: It turned back.

Parker: It regressed. This was of deep concern to Senator Kennedy. You probably talked to some of our foreign policy people. Is Mark Schneider on your list?

Young: We haven't talked to him yet.

Parker: He'll tell you a lot about it. That was a major cause for the Senate over a number of years, and it has had echoes since then, as he saw with the current President of Chile.

Young: Yes, I saw that. The Senator was going to go to Chile to receive the award.

Parker: The Bernardo O'Higgins Award. Senator Kennedy and his wife Joan [Kennedy] had visited Chile in 1959. They were amazed to find an Irish role in Chile—Bernardo O'Higgins was one of the founders of the democracy in Chile in the 19th century. The Irish diaspora was alive and well, and all of that appealed to Senator Kennedy as well. I think that had something to do with him being so involved in Chile.

Young: Absolutely. I'm trying to pick out some of the things the Senator was involved in that were highlights of the Reagan years. Fair housing, was that a big deal?

Parker: I think it was a big deal. It's not in the same category as the Voting Rights Act, but it's always a major civil-rights issue.

Young: Amendments to not discriminate against the disabled in housing. Disabilities were put into it for consideration.

Parker: The Senator, of course, has a long history of support for people with disabilities.

Young: Talk about that.

Parker: I think it goes back to his sister Rosemary [Kennedy] and to the Shriver family. Eunice Shriver was, I think, constantly urging Senator Kennedy to be involved, and he wanted to do what he could for Rosemary. I think the big breakthrough was the Americans with Disabilities Act in the 1980s [enacted in 1990]. He has worked on mental disabilities as well as physical disabilities.

Young: Yes, very early.

Parker: The legislation he has been pushing in recent years finally made it into law a month ago. It was included in the legislation for the economic-bailout package.

Young: I did not know about it.

Parker: It's called the Mental Health Parity Act. Basically, part of his concern on mental health care was that most insurance policies gave secondary status to people with mental illnesses. He felt that insurance policies discriminated against people with mental illnesses. The war on cancer had helped create a strong push for research into all areas of medicine—both physical illnesses and mental illnesses. As it became clear that most mental illnesses had a physical cause, it became less justifiable for insurance companies to treat them separately.

About a half dozen years ago, Kennedy, along with Gordon Smith and other Senators—particularly those who had family members with mental problems—got together and proposed the Mental Health Parity Act, to require insurance companies, if they provided insurance for physical disabilities or physical illnesses, to apply it with equal terms to mental illnesses and disabilities—equal cost sharing, equal premiums, equality in all aspects of the insurance.

It was heavy going, because the insurance companies were very much against it, and their lobbying was very intense. But during this past decade, as it has become clearer that people receive treatment for mental illnesses to either fully recover or resume relatively normal lives, the issue has gained steam. It was championed by more and more members of the Senate who had family members who had trouble paying their mental-health bills because their insurance coverage was inadequate on such conditions. Finally we got to the point where it looked as though, after a lot of negotiation—Connie Garner could go into the details of this.

Young: You suggested interviewing her, and I don't think we have contacted her. I've made a note to.

Parker: She would be very important. She, more than anyone, has helped guide those bills through Congress, working with the Senator. They spent the better part of the last two years seeking to bring Republicans and Democrats together in both the Senate and the House. It was a coordinated, bipartisan effort below the radar to bring people of different philosophies and parties together to see if they can agree that it's important for people with a mental illness have the same benefits from insurance as people with a physical illness.

They worked it out to the point where they had completed an agreement on almost everything except the funding. Because of the cost, there was some reluctance among members of the House to accept it in a compromise package. They didn't know how it would be paid for. We depended rather heavily on the votes of what are called the "blue dogs," the conservative Democrats who felt that any new spending program should be fully paid for. Without their votes we might not have been able to pass it. As a consequence the legislation was waiting for an opportune moment to act. Unfortunately, Kennedy's illness in May removed the central player from most of the action. But he still kept in touch, and Connie redoubled her efforts. They got the bill to the point where it was ready either to be passed by itself or to be made part of some other legislation.

Senator Kennedy was very effective. He was working with Pete Domenici, the Senator from New Mexico, who has a family member who is affected. Domenici was retiring. Democrats wanted to pass the bill for Kennedy because that was his number-one issue for the rest of this session, and Republicans wanted to do it for Domenici. Kennedy and Domenici were able to persuade both the Senate and House leadership to find a way to get the bill passed before Congress adjourned. It turned out that the vehicle they chose was the \$700 billion bailout for the insurance companies, which was a veto-proof bill from the White House.

Young: So this is one of those pieces of pork that got in there. *[laughter]* I'm joking, of course.

Parker: As it turned out, the Mental Health Parity legislation became the vehicle to which was added all of the financial securities and bailout legislation. The Mental Health Parity provisions were only a few pages in a several-hundred-page bill. Nevertheless it went to the President, he signed it, and it's now law.

Young: So there was a piece of luck involved here. The bad luck was good luck for the bill. This looks to be a case where something major was accomplished legislatively that was more or less below the radar screen. It was not a big public play with hearings and all of that.

Parker: A number of hearings had been held.

Young: But in the past.

Parker: Right. They all felt that the mental health provisions had been aired exhaustively. We now needed to deal with Senators member to member on the issue. It was relatively unusual in terms of an issue because not much national press attention was given to it, but there was intense opposition to it from the insurance industry, which was very concerned. A decision was made to make them part of a package that we would put together, so that at least some of their hostility would be diffused. They made some contributions to the bill. I think Connie will tell you that they probably were helpful in the end.

It came to the Senate floor in a way that made no one think that the legislation was a problem. It could have caused trouble. With almost everything blocked by anyone who wanted to delay something, it might not have survived this late in the session. They got it ready to go in May, before the Senator had his first seizure. Then it slowed down because he wasn't able to be here. It picked up speed in the last two months of the session, to the point where we were reasonably confident that they would find a way to get it to the White House. We assumed that the President would sign it, but we were counting on Republican support for it in both the Senate and House.

The decision was made not to make it a separate bill, but to use it as a vehicle for other must-pass legislation. Then, the financial crisis suddenly erupted and Congress had to act. It was an interesting legislative strategy and overall approach to the issue. It was very unusual the way it finally happened, but I think there was concern all the way along that there wasn't enough impetus behind it to get it to the finish line on its own.

Over a period of five or six years, Senator Kennedy, working with Senators Domenici and Gordon Smith and a few other Republican Senators, got it to the point where we could go to House members who shared our commitment, and emphasize to them, "We can make this

happen. We need your help.” It was, in some ways, a textbook case of how you get legislation passed that people feel needs to be passed and should be passed, but it was being blocked by one very well-funded special interest group that simply didn’t want to see it enacted.

Young: What about the disabilities legislation that passed in 1990?

Parker: Dole was the principal player. Tom Harkin was very much involved in that too.

Young: Hadn’t Kennedy tried something earlier?

Parker: Yes. There had been moves before.

Young: Wasn’t [Lowell] Weicker a part of it?

Parker: Weicker was part of it. Harkin was a major player all the way along too. They formed a reasonably good team, but I think what made the difference—though I’d go more by Connie’s assessment—was that Dole was a strong supporter of it. That made it enough of an issue that Republicans were willing to consider it. It was difficult to get it enough attention to make it a major item on the leadership’s agenda. It took a long, hard campaign by the disability community. Connie Garner was amazing. Sometimes Senator Kennedy would call her and say, “We have a difficult markup coming. We need your strong interest and support on this,” so she’d contact the disability community and they’d send 100 people in wheelchairs to the Capitol to support us.

Young: But the disability community as a political force wasn’t powerfully organized.

Parker: No, it became much more so.

Young: It became so as this became an issue.

Parker: Yes.

Young: It wasn’t out there lobbying for this.

Parker: Not intensely. There were strong groups, both in the academic sector and to some extent in the public-interest sector as well who understood that improvements could be made for relatively little cost and that they would give disabled people a much greater opportunity to live more effective lives—to hold jobs, for example. I think everybody is now used to coming to the curb on a street corner and seeing a place where wheelchairs can get through.

Young: Or they see the bus collapse.

Parker: It was a battle even to get things like that going. But the gradual incremental progress we made finally reached a critical mass.

Young: The [George H.W.] Bush administration, except for [Richard] Thornburgh, was not for this, were they?

Parker: They weren’t.

Young: [John] Sununu.

Parker: Our feeling was that we needed to get more members of Congress involved. We felt that we wouldn't get strong support from the administration. It wasn't a priority of theirs. In order to make it a priority of the leadership in Congress, it would need to be a Congress-initiated effort that the administration would then come on board with. The administration wouldn't start it. We felt that we had to educate the administration and make sure that the people in the agencies who were dealing with the legislation we passed would understand and support us and be on board and at least give us advice, frankly and realistically, as to how could we make public facilities more accessible to people with disabilities? That was the principal issue.

Young: At an affordable cost. It seems that that was one of the big arguments that Sununu and others were making: it would cost too much for their constituents in the business community. "It would bankrupt us," that sort of thing. With them, I guess Dole was particularly—

Parker: Especially, yes.

Young: And also with the veterans. Weren't the veterans organized?

Parker: They were organized very effectively too. The danger, to some extent, was that Congress might help the veterans but not help everybody else. There had been a separate issue, ever since the Vietnam War, of trying to do more for veterans who come back with both mental and physical disabilities. It certainly lent some support and gave a new infusion of energy to the disability community as a whole. We often hear the argument, "We're not saying, 'Don't do it for the veterans,' but you should recognize, Senator, that there are many people in civilian life who haven't served in the Armed Forces, who have similar disabilities, who need and deserve this sort of help. By helping them, you'll also help veterans more effectively."

There was a coalition of groups. The veterans also recognized that a nationwide Americans with Disabilities Act, as we started to call it, would effectively aid veterans as well. They could get special assistance at veterans' hospitals for mental problems and for posttraumatic stress disorder. Those issues could also be taken care of through the VA [Veterans Affairs] Administration. But in order for veterans to resume a full civilian life, you have to help other civilians as well. I think it's accurate to say that by endorsing the proposals we were making, veterans in the Senate added substantially to the effort—Dole, with his disability. Certainly Dan Inouye was another exhibit A in the Senate. When you know people with disabilities, it makes a difference.

Young: The Senator has said that many people in the Senate and House have family members with not just mental disabilities but with all types of disabilities. Thornburgh did. Weicker did.

Parker: There were quite a few. People came out of the woodwork.

Young: That was my impression. That created a coalition for it.

Parker: The groups, rather shrewdly, identified members of Congress. There was a lot of research done, so that Harkin, Kennedy, Dole, and others could approach members and say, "I know you have a brother-in-law who is disabled."

His memory of his sister Rosemary was always strong in the Senator's mind. Her disability, I think, began to be noticed at about the age of 10 or 11. For the rest of her life, every time they went out to Wisconsin to visit her, he'd come back saying, "We have to do this." It was very moving, but it was also part of the tenacity he had. He cared about the issue, and he cared enough to want to get it through Congress. Others tended to not want to bring it into the daylight. But Senator Kennedy would often talk about his sister and about how things could have been done for her. "I wish that she had many of these resources available."

The Special Olympics, for example, which Mrs. Shriver created in '68, has been an extraordinary success. It has gone from a backyard athletic camp for disabled youngsters in Bethesda to an international sports spectacle that is rather incredible. The Paralympics took off from that drive as well. People began to see, as Senator Kennedy liked to say—which he first started saying about his son Teddy [Kennedy Jr.] when Teddy lost his leg to cancer—"Disabled people are not unable." There, again, it was not just Rosemary's mental disability, but also Teddy's physical disability that brought a lot of the Senator's passion to the cause.

Young: There was also a fairness, civil rights, and human rights component.

Parker: It was a civil rights issue, yes. It was part of his overall civil rights agenda.

In terms of the 18-year-old vote, there was one aspect that we didn't talk much about. One of Senator Kennedy's most interesting achievements was his talking with Charles Ferris, who was Senate Majority Leader Mike Mansfield's top aide.

Young: Yes.

Parker: It probably would not have become law if Ferris hadn't joined Senator Warren Magnuson in persuading Mansfield to act. Ferris also had a lot to do with the warm reception of Senator Kennedy when he returned to the Senate after his accident in 1969. During that period, we worked closely with Ferris, and the Senator worked closely with Mansfield. Ferris would have a useful perspective on the Senator's career up to '69 and after that, and Mansfield's role in it. Mansfield, I think, had two indispensable roles with Senator Kennedy. One was welcoming him back to the Senate, and the second was recognizing that the 18-year-old vote could be enacted, but that Kennedy needed strong support to do it.

Young: There were others who had been for this too.

Parker: Yes, but they all thought it had to be done by a constitutional amendment. Kennedy's approach was to do it by statute because of an opinion by the Supreme Court in a voting-rights case.

Young: You were the one who discovered that, weren't you?

Parker: Archibald Cox had suggested it in a Harvard Law Review article in November 1966. It's amazing that nobody else picked it up before 1969. Any liberal would have seen that and said, "Wow, here we go." Senator Kennedy got it off the ground, and gave it a head of steam—that is, until Democratic members of the House began going to Speaker [Thomas P.] O'Neill and saying, "Mr. Speaker, I don't think I'm ready for 18-year-olds to start voting in my district. You

might lose me in my next election. I have my district right where I want it now.” That attitude came up fast.

Once Mansfield became involved, the amendment passed the Senate and sailed through the House as part of the Voting Rights Act of 1970. Ferris had called me one day and said, “We think Senator Kennedy has a good idea. Senator Mansfield would like to offer the 18-year-old amendment with Senator [Warren] Magnuson. Would you be willing to join us on that?”

Young: The Senator didn’t like that.

Parker: It upset him a bit that his amendment was being taken over by Mansfield and Magnuson—but at the same time, he recognized that he didn’t have the clout by himself to bring it to the floor and pass it. He was amazed that Mansfield was interested in doing that.

Senator Magnuson of Washington State had gone to Mansfield about the issue. Magnuson had for some time been the sponsor of an amendment to the Constitution to lower the voting age, as had Senator Jennings Randolph of West Virginia. Lowering the voting age had become an increasingly popular issue nationwide as the Vietnam War escalated. People began to say, “Our members of Congress are voting to send you to war, and you can’t even vote.” So “Old enough to fight, old enough to vote” became the slogan that caught on widely for supporters of the proposal.

People began offering constitutional amendments. Jennings Randolph of West Virginia also offered one. They were the two. Magnuson was a good friend of Mansfield. They had served together for a long time. He said, “We don’t need a constitutional amendment, Mike. Let’s use Kennedy’s statute. How are we going to do this?” I think Mansfield said, “I’ll talk to Ted about it. I think he’ll need some help getting it through here because of the objections we’re hearing from the House, but I think you have a good idea.” If Mike Mansfield hadn’t been willing to do that, it probably wouldn’t have passed. It might have continued to gather steam, but the way it suddenly sailed through Congress and became law was extraordinary.

Young: Ferris said that he wanted Barry Goldwater in on it too. He called Goldwater up at Burning Tree and said that they were doing this, and he asked if Goldwater would sign on. Goldwater said yes.

Parker: Yes, Mansfield had that ability. Ferris did too. I don’t minimize Charlie at all.

Young: I don’t think Mansfield’s strategy pleased the Senator very much.

Parker: No, but the Senator was realistic about Mansfield’s decision to get involved. Kennedy knew the amendment was in trouble, and he felt Mansfield was probably the only person who could rescue it. Still, what Mansfield did was a surprise. As Dave Burke jokingly said to me, “It’s as though Ferris came to you and said, ‘Stick ’em up, kid. Gimme your amendment.’”

Kennedy and Goldwater worked together too. They wrote a letter to the editor of the Washington Post that was published a few days after the amendment passed the Senate, responding to the objections to it. That was a clear demonstration of Republican support for the amendment, just as it was about to be taken up by House-Senate conferees.

Young: Kennedy was visiting Ireland as the time Mansfield and Magnuson introduced the 18-year-old vote amendment.

Parker: Yes, he had gone on a trip to Ireland. He had been invited to give a lecture on Edmund Burke at Trinity College, Dublin.

Young: When this help was offered by Mansfield, I think you were the one who got the information and then had to call him to tell him.

Parker: Charlie may have other things too. He's one of the few Senate staff members outside the Senator's own staff who had numerous dealings with Senator Kennedy. It would be well worth talking to him some more.

Young: It's funny. He said, "I don't have anything to say. I don't know anything about it," when we were pestering him for an interview. Then when he was in the interview, he was very good.

Parker: That's good.

Young: What about Kennedy and the first Bush? Do you want to go on to the transition into Bush, or are there more things in the Reagan years?

Parker: There are lots of little things, but I don't know that they're significant.

Young: Little things may have a large significance. Looking back over the Reagan years, it is interesting what Kennedy was able to accomplish beyond defending legislation and funding for Democratic programs—civil rights and medical programs—against a new wave of conservative sentiment that was accompanied with an ideology of "Government's the problem, not the solution."

I've gone through some of the things he helped accomplish, not only on the defensive side but on the forward side. COBRA [Consolidated Omnibus Budget Reconciliation Act], for example, was a forward movement, I think. It wasn't just defense. The Civil Rights Restoration Act was forward movement. Even though some of those were accomplished at the end, after the Democrats won the Senate, not all of them were accomplished then. What's his secret? Why didn't the guy get discouraged?

Parker: That's not his personality.

Young: All right, but look at it from the outside. He often takes an incremental approach to things. Is that enough for him? I'm talking about health care and other things.

Parker: He doesn't like the word "incremental" as much as he does the phrase, "The best can be the enemy of the good." He looked at it that way, that this was a significant step forward. People call it "incremental," but I think—

Young: That's not my term, but it's what people say.

Parker: A lot of people use the term, but I think he resists being labeled an advocate of incremental change, partly because of his commitment to national health insurance, which is by no stretch of the imagination incremental change. He takes as large a step as he can, and he doesn't necessarily have to get all the way to his overall goal. In terms of health care, he certainly felt that funding health programs, whether working with Nixon, for example, on the war on cancer or working with the Reagan administration—the biggest issue was the funding of these social programs, but I think he felt that he could work with Republicans.

Almost since I arrived here, there has been a sense that, although his ideology and philosophy are very different from Republican Senators, by and large there isn't a single Republican Senator who wouldn't like to work with Senator Kennedy on an issue he feels comfortable with. Part of the challenge that Senator Kennedy has had over the years is his feeling that *If I can identify the right path and the right person, we can make what I would call a significant step—not necessarily an incremental step, but a step toward the goal I'm trying to reach.* He specialized in working with Republican Senators, in being bipartisan even when it was becoming increasingly difficult during those years.

Young: It certainly was becoming more difficult in the '80s.

Parker: Yes. To some extent the tide began to recede after the election of '68. That was the peak of liberal power and influence. It's interesting now to hear people talk as though we'll be back up at that same high level again two weeks from tomorrow. We'll see whether that's true. It's pie in the sky perhaps. Nevertheless it was extraordinary. If I recall, when I arrived, the Senate ratio was 68-32. There were 68 Democrats in the Senate. The South hadn't turned Republican at that point.

There were a lot of conservative, southern Democrats with whom Kennedy worked very well. They didn't mind supporting Senator Kennedy on social causes, as long as it wasn't civil rights. They were at odds on those issues, but I think he found it easy to work with southern Democrats. He had a lot of good friends, some of them quite liberal—Fritz [Ernest] Hollings, for example. He loved to imitate Fritz Hollings. You'd pick up the phone and you weren't sure if it was Senator Hollings or Senator Kennedy. *[laughter]*

But during that time, he wanted new ideas to deal with continuing problems. That's what the staff was supposed to do: to scout, to go around and talk to the experts, find the experts he should talk to, and then pare it down, and put together a realistic strategy. Then Kennedy would take it to a Republican Senator he thought would be receptive and say, "Here's an issue that I think we can work on together." Often, they would say yes—he wouldn't embark on a hopeless mission. And on an occasional issue, sometimes it would happen by chance.

His church arson legislation in 1996 is an example. An epidemic of arsons had erupted against black churches in the South, so he put together a bipartisan coalition with the two very conservative Republican Senators from North Carolina, and their proposal passed overwhelmingly. With an under-the-radar issue, Senators in both parties usually knew of the problem. The question was, How do you solve it? What do you do? Often Senators were waiting for an idea to land in their lap. I think that's part of the challenge that Senator Kennedy sees.

“Why isn’t there some way to deal with this problem? I talked to my colleague from North Carolina and he said, ‘I’m appalled at these church arsons.’”

Young: Was that [Lauch] Faircloth?

Parker: It was Faircloth and Helms both, but Faircloth was the one with whom he initially introduced the legislation. People said, “Helms, Faircloth, and Kennedy? How could we be against something like that?” So it sailed through Congress and made federal assistance available to help local police departments investigate these shocking crimes and bring the criminals to justice. It was law-enforcement assistance that was urgently needed, and it worked.

Even Senators who disagree with Senator Kennedy on many issues still like him, and they like to work with him when they can. They enjoy it. Senator Hatch, in particular, loves Senator Kennedy. He certainly seems to. He has written songs about Senator Kennedy. It’s extraordinary.

Which reminds me, I think I mentioned the story about Steve Breyer, when he was our chief counsel on the Judiciary Committee in ’78. He became, for all practical purposes, Senator Kennedy at Judiciary Committee meetings in the last half of ’79 and on through the summer of 1980, when Kennedy was frequently away from the Senate during his campaign for President. When Kennedy came back to the Senate, at the next Judiciary Committee meeting, Senator Hatch said, “Ted, we’re so sorry to see you here. We love Steve so much.”

At the end of the ’80 campaign, there was a lame-duck session of Congress after Reagan was elected, and there were a lot of Democratic nominations for federal judgeships—not for the Supreme Court but for district courts and courts of appeals—that had been dormant, that hadn’t been acted on by the time of the November election that year.

Republicans thought there was a good chance that President [Jimmy] Carter wouldn’t be reelected, and they wanted Reagan to be able to appoint all these judges, so they refused to confirm Carter’s nominees before the election, and were even more adamant against them after the election. The one exception turned out to be Steve Breyer, and that was partly because the Republicans on the Judiciary Committee liked and respected him. The difficulty was persuading Carter to nominate him after the election, but they worked it out.

Young: I think there was an understanding.

Parker: Yes, Kennedy and Carter had been trying to reconcile their differences since the end of their battle for the Presidential nomination. Kennedy, back in the Senate, had decided to become the ranking Democrat on the Labor Committee, and to give up his ranking status on the Judiciary Committee. It made no sense for Breyer to remain on the staff, and he told Kennedy that his preference was to become a judge. So Kennedy urged President Carter to nominate Breyer to be a judge on the First Circuit Court of Appeals, which included Massachusetts. Fortunately, Carter agreed to make the nomination, probably thinking that it wasn’t going anywhere anyway in the Senate. But lo and behold, the Judiciary Committee agreed to approve the nomination and sent it to the full Senate. When it reached the Senate floor, however, there was a filibuster against it, and the filibuster was waged, not by a Republican, but by a Democratic Senator from North Carolina, Robert Morgan. Morgan was one of the Senators whose judge had not been approved yet, whose nomination was pending for a court in North Carolina. His feeling was, *If my Judge*

isn't getting through, then Ted Kennedy's judge shouldn't get through either. We tried our best to persuade Senator Morgan to let it go.

Young: Was Morgan on the Judiciary Committee?

Parker: No.

Young: No, but he was going to put a hold on the nomination.

Parker: He had a hold on Breyer's nomination. As the days began to dwindle in the session before the final adjournment of Congress for the year, the question was, would Breyer get through? He was the only one who looked like he even had a chance. Orrin Hatch stepped in and basically made it clear that Breyer had his support, and so did Republican Senator Strom Thurmond. Senator Robert Byrd had taken over as Senate Minority Leader after Mansfield retired in '76, and Byrd thought it would probably pass the Senate and have the votes to break the filibuster. So he filed cloture against Morgan's filibuster. More than enough Republicans voted with the Democrats to break the filibuster, and Breyer was confirmed to be a judge on the court of appeals.

Young: And Hatch?

Parker: Hatch led the fight for Breyer on the Republican side.

Young: Thurmond was on the—

Parker: He was on the Judiciary Committee then too.

Young: And he went along with this.

Parker: Yes. The Judiciary Committee had voted 17 to nothing to approve the nomination. The committee Republicans had come to know Breyer well, and they respected him.

Young: I have a recollection that somebody mentioned that Orrin Hatch spoke to Thurmond about Breyer in advance of this coming up.

Parker: He might well have. I don't know.

Young: It may have been Hatch himself who said it.

Parker: It was well greased to get out of the committee, and that Republican support held firm on the Senate floor. Breyer had also won quite a few friends in the Senate through his work on airline deregulation as a member of Kennedy's staff in the 1970s.

Young: Oh, yes.

Parker: Which was not exactly a pet Democratic issue at the time, but I think Kennedy felt that it was important, so he got involved in the issue. That's how Steve first came to the staff. He'd been on the faculty at Harvard Law School and had worked on economic regulation issues. He was also involved in the trucking deregulation issue, which Howard Cannon pushed through the

Commerce Committee in 1980, before the election. So Steve was pretty well known by conservatives, who appreciated his positions on deregulation. He wasn't necessarily the 110 percent liberal who they were afraid Kennedy might put on the Court.

Young: Kennedy is the poster boy for so many of the big-spending, extreme-liberal stereotypes, it seems, but we haven't encountered anybody in the Senate who has said that that is what he really is. It's an interesting image for the public.

Parker: The Republicans use it, yes.

Young: As you say, everybody would like to work with him on issues in the Senate. It's much more workman-like and much more collegial.

Parker: They don't see Kennedy as an ideologue. They see him as a practical Senator.

Young: Even though he's liberal.

Parker: Yes, even though. They know what his liberal philosophy is and where he would like to go, but at the same time, where he'd like to go happens also to be where a lot of their constituents want to go. They can use some of the support that Kennedy generates for an issue to then say, "I'm not totally against health insurance either."

Young: As part of the Breyer story, I've heard that Hatch talked to Paul Laxalt in order to make sure that this was okay with Reagan—or with the Reagan folks—so that Laxalt could give Orrin the assurance that it was okay with them and that they were not going to raise a big issue.

Parker: Ken Feinberg, on our staff, was very active in promoting the nomination as well. He was our Judiciary staff member with Steve at the time, and they developed a good strategy on the nomination. They found they were tapping into a lot of affection for Steve. It was rather extraordinary.

Young: I don't think it was a case of their having to persuade anybody against their initial inclination. Everybody said it was fine.

Parker: And it certainly wasn't that big a deal for Republicans in any event. All the other Carter judicial nominees were clearly going to be blocked in the lame-duck session. It wasn't a problem for them to let one nominee go through. But Senator Morgan took offense. He said, "Unless I get my judge, nobody's going to get theirs either." That didn't wash with other Senators.

Young: Let's talk about Robert Byrd and Ted Kennedy over the years. We have interviewed Byrd, whose affections are overflowing for Kennedy now, but this is a very interesting relationship—where it started and where it has come to. They have not agreed on everything, but it's a very close relationship, it seems, and an indestructible one. What explains that? Comment on how it has changed over the years.

Parker: Obviously it reached its nadir in 1970, when Byrd took the whip's job from Senator Kennedy. Byrd, I'm sure, had reached the nadir in '68, when Kennedy campaigned for and won the whip's job.

Young: It might have been even before that. *[laughs]*

Parker: Yes. The feeling that Kennedy had for Byrd, I suspect, had a lot to do with West Virginia. West Virginia has a special place in the Kennedy family heart. Kennedy has always loved campaigning in West Virginia. From the time JFK won the primary there, I think it has had a special place in his family's heart and in the family's history. He certainly respected Senator Byrd for his knowledge of Senate procedure. He learned a lot about how the Senate operates from Byrd during the years when Russell Long was whip and Byrd was the Secretary of the Senate.

I think he gained significant respect for Byrd, not only as a practical Senator in terms of how the Senate works, but also for his intellectual ability and his sense of history, which is another aspect of Senator Kennedy's personality that we haven't talked about. He loves American history, and he has spent a lot of time on historical issues. For example, in the past decade or so, with his huge family of great nephews and great nieces, sometimes 40 or 50, they'd take family history trips to places like Gettysburg, or to Independence Hall in Philadelphia, or to sites in Massachusetts. That, I think, primed him to develop a special empathy with Senator Byrd.

After Kennedy lost the whip's battle to Byrd, and he didn't sulk. Amazingly, he was laughing about it, telling people, "That's probably the best thing Bob Byrd has ever done for me, freeing me from the whip job so that I can spend my time on health care, education, the Vietnam War, and many other issues." It appealed to Byrd that Kennedy could take a defeat and get back up and want to be a Senator even more. Byrd knows a lot about how Senators are in terms of past and present Senators, and he loves to talk about that, and he has written his three- or four-volume history of the Senate that Kennedy has gone through. Kennedy has respect and even affection for Senator Byrd as a teacher, and I think Byrd reciprocates that.

Initially, Byrd probably felt, *I've made an enemy. Kennedy's a national figure, and I've just defeated him. What'll happen to me?* It wasn't a setback for Kennedy that made any difference to Kennedy politically. For Byrd, it was a victory without any side effects in terms of relationships in the Senate. I don't think Kennedy changed in any way, except by becoming more positive toward Byrd after that. It wasn't as though he avoided him or shunned him as some Senators sometimes do when they have trouble with their colleagues.

Young: Kennedy congratulated him.

Parker: Yes, but it was a pro forma congratulations. *[laughs]*

Young: But still, it was an important gesture.

Parker: Frankly, by the time of that race, Kennedy wasn't sure if he still wanted to be whip anyway, because the responsibilities weren't the sort that he felt would allow him to be the Senator he wanted to be. I think that was part of Byrd's case against Senator Kennedy. He argued, "I'm the de facto whip now. I was your secretary. I wanted to be whip, but you chose someone else. But because that someone else has so many other interests, I'm already doing a lot of the whip's work anyway." When he lost to Byrd in 1970, Kennedy, in a sense, felt freed to spend his time being a different kind of Senator.

Young: And Byrd liked the whip job.

Parker: Byrd loved that job, and he moved up to become Majority Leader in 1977, after Mike Mansfield retired from that position. There was a question in 1986, when Democrats won back their majority in the Senate, whether Byrd would stay as the Democratic leader or whether he would take the chairmanship of the Appropriations Committee, which was then open. The West Virginia call came first, so he took chairmanship [at the beginning of the session in 1989, not 1987]. Once he became chairman of the Appropriations Committee, then of course everybody went to Byrd for support for funds for their state. Massachusetts was never left behind. The joke about Senator Byrd was that he would have moved all of Washington to West Virginia, but he couldn't get the Washington Monument through some of the tunnels. *[laughter]*

Young: They were very much together on Iraq.

Parker: Yes. Kennedy rarely challenges Byrd on something that Byrd feels strongly about, and he finds that Byrd, by and large, is very sympathetic to all of the causes that he feels strongly about. So I think they're very simpatico in terms of their political philosophy and in terms of what's realistic in the Senate. Kennedy admires Byrd for his skills. It's amazing that even as elderly as Byrd is now, he can still give an eloquent speech on the Senate floor. He hasn't lost his ability to be an eloquent Senator. Senators look at Byrd and say, "I hope when I'm 90 that I'll be going like that as well."

Young: The Byrd rule was not helpful for health care, under Clinton. Byrd wouldn't yield on that.

Parker: That's a separate issue. I can understand why he wouldn't do that. He felt strongly in principle that that was a very special provision that was important to have as part of the Senate rules, and he wasn't willing to make exceptions for anyone.

Young: And I imagine that Kennedy respects that he stands on his principles.

Parker: Kennedy certainly respected that. Basically he needed to find another way to accomplish his goal.

Byrd's friendship with the Senator has certainly been extraordinary in terms of his generosity. For a time Senator Kennedy used to send Bob Byrd's wife roses for her birthday. When she turned 70, he sent 70 roses out to West Virginia. Byrd loved that. I think he was touched by the generosity of the Senator toward him. The Senator always went out of his way to accommodate Byrd, and he certainly loved to make campaign trips to West Virginia. For every campaign until this one, I think, he has campaigned in West Virginia for the Democratic candidate in Presidential election years. He wishes he could be there this year to support Obama and compare him to JFK in West Virginia in 1960.

Young: I'm sure he does. They both have a love and respect for the Senate as an institution.

Parker: Oh, yes, of course.

Young: That has always been there. I wish I could give you more observations, but I can't quote Senator Byrd. It's an interesting contribution to the oral history.

Parker: Byrd found out that Senator Kennedy was a painter. I don't know whether you covered that in any of your interviews.

Young: No, I didn't.

Parker: Years ago, in the '50s, when JFK was having problems with his back and had an operation, he asked his brother Ted, who was then at Harvard, to come down to the family home in Palm Beach, where he was recovering, and to help him do some things, to entertain him. One thing they decided to do was to start painting, and they competed at it. They'd each paint subjects at the same time and see who could do it better. The Senator liked it as a hobby, and he picked it up from there. He did a series with JFK, and then he began to do paintings on his own.

Bob Byrd discovered, in the '80s I think, that Senator Kennedy was doing paintings, and he did a painting for Senator Kennedy himself. The Senator had that hanging in his office for years. That was a rather touching gesture from Bob Byrd. Little things like that show the extra care that they have for each other.

Young: Did I see pictures by Kennedy in Byrd's office?

Parker: He has given him maybe two or three paintings. I'm sure he has given him at least a couple. He began to think, *Maybe I'd better give him something else*. That's why we started with the roses.

Over the years, though, Senator Kennedy has done a fairly large number of paintings, and a few years ago, we tried to arrange an exhibition of his paintings at a museum in Boston. The museum liked the idea, and agreed to work with us to assemble the paintings for it. But the paintings by then had become far flung, and in the end it didn't work out. But I hope that one day, it will. Winston Churchill was a painter too, and the Senator loved that comparison.

Young: It's 3:00 and time to stop.