



EDWARD M. KENNEDY ORAL HISTORY PROJECT

INTERVIEW WITH EDWARD M. KENNEDY

Interview 16

January 6, 2007
Washington, D.C.

Interviewer

James Sterling Young

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TRANSCRIPT

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Kennedy: My daughter, Kara, gave me a lovely Christmas present, *200 Notable Days: Senate Story 1787 to 2002*. I was just flipping through it the other evening, and I read, “On June 19, 1787, the framers of the U.S. Constitution decided the term for Senator should run for seven years. They also tentatively agreed that House Members should serve three years, the Congress should elect the President, and the President should serve for an equal term to a Senator, and that the Senate should appoint Supreme Court Justices.”

James Madison’s wonderful “Notes on the Constitutional Convention” show that the last great decision on the appointing power of the Justices effectively divided the responsibility between the President and the Senate. That’s something that’s generally missed during the consideration of appointments to the federal bench, to the circuit bench, and to the Supreme Court. The party in power is often able to convince the American people that they have the sole authority and responsibility to appoint to the federal bench, and that unless one can find an egregious circumstance, the heavy requirement on the Senate is to approve the nominee. This is one of those areas where, incredibly, the public really doesn’t understand the full significance of the appointment power and the Senate’s responsibility.

This goes for all the judgeships. Having been on the Judiciary Committee since I arrived in the Senate, this is something I know is evident to Republicans and Democrats alike. This point is made when we’re considering Supreme Court nominees—because that’s when people are paying the most attention, and editorials pick up on it. But by and large, the American people think that if the person is nominated, and if he has a semblance of an understanding of the law, a decent character, and a fair judicial temperament, he ought to be presumed to have the chance to go on the Supreme Court.

I think our Founding Fathers understood that this is a lifetime appointment. It’s an entirely different appointment process than exists for Cabinet officials—or eventually, developed independent agencies—that are for the term of the existing President. This is a lifetime appointment, and they’re going to make judgments and decisions with regard to the interpretation of the Constitution. Therefore, the shared responsibility was very important to the Founding Fathers, and something that the public constantly misses.

Young: That's a decision you can't undo once you've made it, except by impeachment.

Kennedy: That's exactly right.

Young: You can't come back. I think I'm right about the early history: there was much more Senate advice and consent in the early days of the Republic on these appointments than there has come to be in the course of time.

Kennedy: There is much more communication with the committee. It's startling that until the mid part of the last century—or maybe it was just a few years before, the 1950s—judicial nominees didn't even appear before the Judiciary Committee. So there wasn't any opportunity for the exchange. I think that's rather startling in terms of what's happened since then. These were effectively worked out between Presidents and the Senate.

Young: Wasn't this a kind of abdication or failure to exercise Senate responsibility?

Kennedy: Oh, clearly it was. On the one hand, it was a much smaller and less complicated country, and the people who were being considered were much better known and understood by the members of the Judiciary Committee than you'd have today, as the country has gotten larger, more complicated, and more diverse. The fact is that, increasingly, the nominating process and the confirmation process are not revealing in terms of the knowledge and understanding and awareness of the true beliefs and philosophy of the nominees, and what they bring to the Court. They bring their life experience to judicial decision-making, and the process is to try to know whether individuals are going to have a respect for the core values of the Constitution. But we're getting ahead of ourselves.

Young: Not necessarily. You went on the floor when the [G. Harrold] Carswell nomination was up. I've seen the text of your remarks, and one of the things that struck me about them was the long attention you gave to the screening process for federal judges, district and appellate judges, in contrast to the kind of screening and vetting process that Supreme Court Justices took. What you were saying was there is much more opportunity to learn about the appointees and to vet them for appellate and lower court judges than there is for the Supreme Court. That was way back before the development of the effort to create a conservative judiciary.

Kennedy: Let's talk generally about the appointment power, and then get to more specifics. I think the test for the courts is one test, and the test for the Cabinet is a second test, and the test for other officials—for agencies that run for a longer period of time—a third test.

There's a different basic judgment to be exercised for each of these positions. Historically there has been a basic presumption that Presidents ought to be able to have their own advisors, and unless there's some really obvious impediment to that concept, we ought to move ahead and permit them to do so.

Over a period of time, I voted against some of those nominees, and I may very well wish I had voted for them. I probably voted for some that I very well should have voted against. We had a rather notorious one, the right-to-lifer, the doctor in the United States Navy. It was for HEW [Health, Education and Welfare]. I'll have to come back to that. I can't remember it now.

But in any event, you have one challenge there for the courts. The district court is the one dealing with the people on these issues. But if the district court makes a mistake, it's going to be appealed, and the appellate court will correct the mistakes. Ultimately, if it's an issue of constitutional importance, the Supreme Court is going to do it. You need criteria for a district court that are related to making judgments and decisions with regard to people's needs, and the challenges, individuals, and cases that will come before them.

At the appellate court, we get into some significant constitutional issues and rights, but at the Supreme Court, there isn't any appeal. Therefore, the highest standard has to be for the Supreme Court, a somewhat lower standard for the appellate judges, and somewhat lower, the district judges. Then lower down are going to be the appointments to the Cabinet. That's the basic way. It doesn't lend itself to very precise testing, but it's very important in terms of getting it right for the courts of the country. I've tried to apply that over time.

You get back to what your own individual judgment within that context is going to be. The individual judgment, when I first arrived at the Senate, was basically whether the nominees have a judicial background and experience in the law, and secondly, their temperament. Are they going to have a judicial temperament, be able to have the court be a fair arbiter of legitimate issues and questions? And then, third, are they going to have the fundamental integrity and judgment in terms of understanding and making significant decisions? If they met those requirements, then basically it was a go. Most people felt that way, and if you take a look over the history of the Senate, most people followed those criteria.

Now you get to the issue in question, particularly as you come to the time of [Clement] Haynsworth and Carswell, and then eventually [Harry] Blackmun, because he was the follow-on to those. What was going to happen on the outside? What is happening in terms of outside forces? How are they going to influence the members of the Senate? Because clearly they have a profound influence on the members.

Haynsworth was a very distinguished leader in the Fourth Circuit. He was a judge in the Moot Court when John Tunney and I were at the University of Virginia Law School with Lord Kilmuir, the Lord Chief Justice of the High Court in Great Britain, and two others. They ruled in favor of us. Haynsworth had cast a vote in favor of my friend John Tunney and me, so that we won the Moot Court. It was an irony, my being on the Judiciary Committee when his name came up to be on the Supreme Court. He had been highly regarded, highly respected, and had a very important array of supporters in the Bar, the business community, and throughout the legal profession. He had a firm, conservative philosophy, and it looked very much like he was going to be able to be successful and go on to the Supreme Court of the United States.

Over the process of the intense kinds of investigations that were done—more for the Supreme Court than certainly were done with the circuit court, because he had gotten on the circuit court—the failings of Haynsworth became more revealed, and he was eventually defeated, went back to the Fourth Circuit, but then had a very distinguished career.

Young: We can get into the context of that appointment. This was 1970, and then '71, when Haynsworth and Carswell came up. One gets the impression from the file that this was not a fight you were looking for. Unlike [Robert] Bork later on, where you really come out swinging, there

was a general presumption, as you say, that these people would pass muster unless something was discovered. But what's interesting is how the investigative process of searching out the facts about the nominee and his work came about.

What I'm seeing is that you had a staffer, Jim Flug, who was very much on that case, and he was doing the groundwork, taking the lead and mobilizing groups. What also happened—which I hadn't seen much before—was that Labor weighed in early. In fact, at the very beginning, the *New York Times* had an editorial about his business connections. So the press weighed in, Labor weighed in, and some of the civil rights groups' Leadership Conference began to weigh in, when they started looking at his record. It seems to me that you're taking a "wait and see" attitude. Is that correct?

Kennedy: I think that's fair enough. We had gone through the [Abraham] Fortas nomination just before, and that had been a very partisan nomination fight. He was obviously a brilliant nominee, but eventually it was discovered that he had gotten himself into an ethical issue about receiving a speaker's fee from a defendant in a case he might have to rule on, and based on that issue the Republicans filibustered his nomination.

And then we have Haynsworth. It certainly appeared that he was going to be cautious and conservative. It looked like he was going to sail through. By every indication, he was above reproach in every possible way. A part of what happened, I think, in the Haynsworth case, is that you had people who had been involved. For example, Bob Griffin, from Michigan, who had been very active in defeating Fortas for his indiscretion in taking a speaker's fee from a person in a case that might have come up before the Supreme Court. When it began to dribble out that Haynsworth had business interests in a vending machine company that was coming before his court, he misrepresented and said he had gotten out of the case before he ruled on it. And then his explanation was that in a second circumstance he had already made up his mind about stock prior to the time of the issuing of the report.

Initially, Haynsworth's responses had wisps of legitimacy. When these charges came out, he had answers for most of these things, and it wasn't until well into the process that we understood the whole series of questionable activities: his business activities, his investment activities, his representations to the Court when he had been on the circuit court, and the details of his decisions in terms of civil rights.

Carswell had been a rather notorious anti-civil rights figure who tried to explain that he was only 29 years old at the time and it didn't reflect his subsequent positions, but you could look to his cases very quickly and find out that's not so. He maintained that position, and it stood out like a red flag. That wasn't as true with Haynsworth. I came to the position almost cumulatively. If you look through the record, it was the business conflicts that he had initially, decisions that he made on the vending machine issues and his failure to be completely frank to the committee. Then, it came out that he had a series of decisions on labor, which was somewhat related, because some of the companies that were getting charged with anti-labor practices were also buying some of the vending machines. So that almost came out as a result of following the thread with regard to the machines.

Then it came out, almost at the same time—I can't remember the sequence and the timing—about his decisions with regard to slowing down the whole process of desegregation. But that came out in a much more subtle way.

The case against Haynsworth was not as obvious. If you read through the record again, at least in recent times, a lot of Senators stayed with him until we had this cumulative record that had been built up, and the bottom really fell out for him fast. I think it's fair to say that I wasn't after Haynsworth at the very start. I can't remember what the mindset was at that time, but it clearly was entirely different from Bork.

Young: On this and Carswell, had you really thought very much about these issues until they were presented?

Kennedy: Not really.

Young: My guess is that if it hadn't been for this very vigorous effort to research these two people—or at least Haynsworth, the first of the two—you probably would have voted no and that was the end of it. But what's interesting here is that it went far beyond just voting no. It went to organizing and mobilizing to defeat a Presidential nominee. That was a new thing in the memory of the time.

Kennedy: Yes.

Young: I think that turned a new page. Was that what got you to thinking about the criteria for qualifications and how the Senate goes about this business?

Kennedy: When I joined the Judiciary Committee, I don't think I anticipated that the Supreme Court confirmation fights were going to be a major preoccupation in terms of my service. I thought it was much more issues on civil rights, constitutional rights, these refugee issues I was interested in, some in terms of the crime aspects and juvenile justice issues. But I didn't really expect this whole issue of the makeup of the Supreme Court to be front and center.

I think that's basically because we had seen, in that period of time—although this should have awakened our interest in it—the whole Fifth Circuit make all of these judgments and decisions that advanced the cause of liberty and equal rights. We were building all of this process. In the early '60s, we saw what they called the March for Progress that we had in knocking down the walls of discrimination.

We had the '64 Act and the '65 Act, and the Housing in '68. We had the Immigration Bill in '65. And we were beginning to look at the disabled, how we were going to battle. It just seemed like this course had been set, and it certainly didn't seem to me and to many others that there was going to be a very involved, active, determined effort to reverse all of that, which there has been and which there is, and which is ongoing now.

Young: Exactly. And you also have the war on Court rulings, which are moving with the same grain of history.

Kennedy: That's right, the Miranda issue, and these other kinds of questions. So I don't think it really wakened in us that we were going to have big fights in order to maintain that. It seemed that the country had made the judgment and decided on the course of it, and that we were going to have Justices who may be somewhat more conservative, but we weren't going to sound the retreat on this. What we have seen, over the last 20 years, is the courts—which had been really the principal instrument for advancing human rights and equal rights and civil rights and liberties—have moved to the rear, and have been diminished in a very dramatic and significant way.

That's been out of design. Carswell was a different kettle of fish, because he was so obviously outside the mainstream. He shouldn't have gotten on the Court. But I think this was probably the beginning, the awakening that this is—

Young: I had wondered whether it was [William] Rehnquist who really—

Kennedy: Rehnquist was really the target.

Young: Carswell and Haynsworth were, after all, southerners brought up in that tradition, and it was part of [Richard] Nixon's southern strategy, I gather. But it seems to me that Rehnquist might be the beginning of the wake-up call. You have a conservative strategy that is not a southern strategy, by somebody who is not a southerner.

Kennedy: Yes, I think that's right.

Young: I'm trying to put the Haynsworth and Carswell affairs in that context and see what's coming down the pike.

Kennedy: Rehnquist was an entirely different kettle of fish, and we can talk about that or get back to Carswell.

Young: On Carswell and Haynsworth, Haynsworth was the tougher case to make for opposition, wasn't it?

Kennedy: Yes, although eventually a clear majority voted against him, including Republicans in their leadership.

Young: Carswell was more obvious, but it was harder to get the votes against Carswell than against Haynsworth. Why would that have been?

Kennedy: There's always the climate and atmosphere of the Senate and the institution. First of all, it took a lot of energy, a lot of effort, and a lot of hard work to defeat Haynsworth, and when it came to Carswell, the question was whether we were going to be able to gear all of this back up again. It was a changed climate and atmosphere at that time. I don't know whether the elections had—no, it was still '70.

Young: We had Haynsworth in August of '69, and we had Carswell in October, 1970?

Kennedy: Yes. In Haynsworth, Labor was very strong, because of the workers. Civil rights groups were very strong, because of the slowing down of the desegregation issues. And a number of the professors and intellectuals were involved because of the ethical lapses. So you had three very powerful groups involved in it.

On Carswell, it was primarily the issue of race. It always amazed me that the former Florida Governor, LeRoy Collins, who was a terrific Democrat, testified for Carswell. There was some fatigue after it, some sense that we were just going after southerners. It took a good deal more energy.

Young: A liberal group of Senators were really vocal on this, people like [Joseph] Tydings.

Kennedy: [Birch] Bayh.

Young: And you were a part of that group. When it came to mobilizing a coherent reason for being against Carswell, there was some disarray in the group. Some felt it was civil rights, some felt it was ethics. The notes say that you had to do a lot of work to get a statement that everybody could agree to. So I don't know whether it was the fatigue factor or a growing consciousness of the actual substantive reasons that the Senate might vote against somebody. I think this is a transitional time for the Senate.

Kennedy: Yes. I think it was, and it saved it. Although, in terms of his statements and decisions on race, 11 of the 19 active and retired Fifth Circuit Court of Appeals Justices endorsed Carswell. But that didn't include [John Minor] Wisdom. Initially, [Elbert P.] Tuttle had said that he would endorse Carswell, but then he backed off. It wasn't nearly as clear and as broad and as deep, although I think everyone would understand that Haynsworth was obviously the better mind, and Carswell, as later was clearly demonstrated, was not qualified.

What we're finding here is the judgment: the failure to follow either the precedent or fundamental commitments to the rule of law made it pretty easy to make a judgment that this person wasn't qualified, at least for me. I think later, the golf club activity, keeping blacks out—that and a number of other instances eventually won this. My memory is somewhat dim, but my sense about it is, you've had a big fight on one, and it's very difficult to get the Senate cranked up again to have a big fight on another. We had enough out there, certainly, to meet that case and make the fight, and to have it be successful, but it takes more to get it going the second time.

Young: And that makes the accomplishment all the more notable, because you're opposing the President twice in a row. And he has the psychological advantage, as you mentioned earlier—you give a President the benefit of the doubt on these things. I didn't notice much in the way of a counter-organizational effort on behalf of these two candidates. Maybe that's a distortion of what I'm reading in the papers and in the record, but it seems to me that on the one hand, you have a very serious, well thought-out, and effective mobilization of forces to vote against these candidates.

What was the administration doing in support of the candidates? I didn't see very much other than Nixon getting on the phone to try to pressure people. The only constituency mobilized for them seems to have been some of the Justices of the appellate courts, and that wasn't a very strong endorsement. Do you have any memory of—

Kennedy: Of what the administration was doing on it? They thought there weren't going to be any *Times* reports [reading from a text]: "There's no immediate indication on Capitol Hill the Carswell nomination will evoke the same angry widespread furor that culminated in the defeat of Haynsworth." They were able to get leading members of the New York Bar, I guess. I don't remember, really, what the administration was doing.

Young: I think there was no solid block in the Bar, among the professors, or anywhere else, in favor of these candidates. [Adam] Clymer says in his book that you later had regrets about Haynsworth. He doesn't detail that. Is that anything you want to talk about? Was it wrong?

Kennedy: I don't have any clear recollection of this. I'm basically by nature and disposition not interested in the destruction of people. I'm interested in advancing the cause of humankind rather than being judgmental. I don't relish it. I love fighting on minimum wage or health or civil rights issues, but not in terms of the destruction of people. So in any of these battles, I never got a lot of personal satisfaction from the defeat. I suppose more so with Bork at the time, for obvious reasons, the real threat that he posed. I never thought Haynsworth posed the kind of threat that Bork did, or that [Clarence] Thomas was going to pose.

By the end of it, I thought Carswell was kind of a buffoon. I didn't have any respect for him at all, but you couldn't help having some respect for Haynsworth. He had been an important jurist. He certainly went back and had a good career. I never really relished the thought of defeating these people.

Young: I wouldn't have thought that, or that that's what Clymer meant. It is the case though, isn't it, that one of the things in the mix, when you're deciding on a Supreme Court nomination, is that there's an individual here. It's not like an immigration bill or something like that.

Kennedy: That's right.

Young: There is a focus on the individual, and you have to have that.

Kennedy: Yes.

Young: You can't, as you say, separate the person from the beliefs.

Kennedy: That's right. And this is played on, too. People bring their wives and their little children up there. His mother breaks down crying when we're going after him. They're using them, which I personally resent. I can understand why people would be there at the signing in or swearing in, when they're successful. But they have little children four or five years old waiting until 5:00 in the afternoon until someone can come up and be questioned. Having to sit there borders on child abuse, as far as I'm concerned. I can't remember whether Haynsworth did that, but it happens fairly regularly now.

Young: It happens now, but it wasn't the kind of public show then.

Kennedy: With regard to Haynsworth and Carswell, I don't have any specific recollection.

Young: At some point after he lost on Haynsworth and Carswell, Nixon floated the names of [Robert] Byrd and several other people. What did you think of that move?

Kennedy: I think it was just a flash in the pan. It's something that's used somewhat—

[BREAK]

Kennedy: We need to do Rehnquist. I think it's moving towards the transition in judgment. There's an interesting editorial here. The *Washington Post* ran an editorial on civil rights—or was it Haynsworth? It was a letter to the editor. [*searching through papers*]

Young: Joe Rauh wrote the letter. That's Tab A in your book, that letter.

Kennedy: This is it, yes. Just referencing this *Washington Post*, Sunday, October 5, 1969, the case against Haynsworth. I wish I had the *Washington Post* editorial. I don't have it, but we should have it. "The standard you propose"—this is what they're saying—is that the Senate should confirm, unless, and then they quote, "the nominee has shortcomings so serious that he would handicap or disgrace the Court." And then it continues, "We think an exercise of judgment more independent of the President's, in the case of Cabinet appointments... higher standard than lower-court judges." This comes back to what the standard was. Here you have the *Washington Post* saying that the nominee should be confirmed unless the shortcomings are so serious that they would handicap or disgrace the Court.

Basically, the *Washington Post*, a leading newspaper, fails to understand the role of the United States Senate as the Founding Fathers conceived it, and what the test ought to be. That's the key issue in question, and it's a continuing one. You find in the history of the country that you never had members of the Judiciary Committee work this out with the President—and we still had some extraordinary Justices who were worked out in those particular ways. You know that great story, when the Senators went down and they said, "You have the right list, but in the wrong order."

Young: No, I don't know that story.

Kennedy: That's a famous one. The President sent down a list of the five nominees, and the chairman of the Judiciary Committee—I think it might have been [William] Borah—went up to the President at that time and said, "Mr. President, you have the right list but in the wrong order." At the bottom of the list was [Benjamin] Cardozo, and Cardozo was nominated.

That part was worked out. But now we're in entirely different times. As we said, in the '50s they start to come up, and now it's gotten to be a very sophisticated confirmation process. My own belief is the confirmation process has broken down, because the nominees are so coached in their answers. The nominees look at videotapes showing where the mistakes were made for other nominees in answering questions about the *Roe v. Wade* case. They go through that time and time and time again and see how the successful nominees got through answering it, and how the

other nominees got themselves in trouble answering it. This is like the preparation for a Bar exam or the SATs [Scholastic Aptitude Tests]. These people are all bright, and they go on through. There are only a few of these kinds of questions that are troublesome.

Young: So that's where we're ending up—look at how we get from where it was to where it is.

Kennedy: Yes. Different Senators have different viewpoints. My own sense was that when Reagan nominated Bork, it was primarily for political purposes. Haynsworth may have been part of a southern strategy, but he wasn't selected because he had been involved in the Saturday Night Massacre in the Justice Department, and had been writing up at Yale for 10 or 15 years, just banging away at every kind of progressive civil right and civil liberty. This one was carefully, carefully, carefully selected, and everyone knew exactly why and what the purposes were. I don't think that was as true about Carswell and Haynsworth.

It was more true with regard to Rehnquist. Rehnquist was selected because he had been Nixon's hatchet man in a lot of respects. The real case against him was so powerful in terms of his intimidation of voters, in voting rights.

Young: This was in Arizona.

Kennedy: In Arizona. And now we find out that our request to get the FBI [Federal Bureau of Investigation] to look into this was held up. And who held it up but Josh Bolten.

Young: I just saw that.

Kennedy: Josh Bolten held this up. This has only come to light recently, but it was so clear. There was a very good, distinguished attorney named Henry in Arizona, who appeared before our committee on a number of things. He was a very thoughtful lawyer who specialized in confirmation hearings, and he had all the facts, he knew the people. He was a friend of mine, a political supporter.

We had all of that information, and basically, they lied through their teeth. They had witnesses who denied it all, and we were unable to make an air-tight case. And then we had the second battle, which was clear. If you look through Rehnquist's record, by the time he came up for Chief Justice, he had been against virtually everything on rights and liberties. I don't have the list of things here, but I think they're in these notes. I would think, in at least half of those cases, he was the only person. Once in a while he had a second person, but it was clearly where he was going. And then—through Joe Rauh, actually—the memo came to light that was done at the time of the *Brown v. Board of Education* debate and discussion.

Young: When he was clerking?

Kennedy: He was clerking for Justice [Robert H.] Jackson. One memo had support for “separate but equal.” The question became whether he wrote it and those expressed his views. Initially, he denied writing it. Jackson had been, at that time, living with his secretary, Elsie Douglas. She was still alive, and she remembered that Jackson said that this had been done by Rehnquist, and that he was surprised that he had done it.

Young: Upholding the *Plessy* case.

Kennedy: Upholding the *Plessy v. Ferguson* case. He denied that he wrote it, but she was still alive. Jackson eventually married her, the secretary, and they lived well.

She was still alive at 92, but incredibly frail. Rauh had been out to see her, and she told him. The question then became whether we should try to subpoena her to come down. She said it would kill her, that she was frail and couldn't come. She remembered it, but she had a lot of other things she couldn't remember, and you get cross-examined on those things. It was very apparent. The memorandum was out there. No one else knew who had written it, but she remembered who had written it. And then you go around in circles: Well, even if he did write it, was he trying to— ? This was an intellectual exercise to raise the other side of the issue. So even if he had written it, which was the right interpretation? For the most part, when you read through the cases he had voted on, it was clearly his view, but we could never get closer to it than that.

Young: You can almost see [Samuel] Alito and [John] Roberts coming, can't you, in terms of the administration's strategy?

Kennedy: I don't think so. I couldn't see that. They had the list. There are always four or five people still out there. Who are the most trouble? They've had people who are real problems. But I don't remember Bork. You know who's always on the list? The fellow from Virginia Law School, [J. Harvie III] Wilkinson.

They say he's the conservative [Stephen] Breyer, that he's very bright. You don't get on at a very early age unless you're smart. Everybody knows he is enormously conservative and smart as a whip. He's on my little board, the Madison Board—we have a scholarship program for teaching Constitution Law. He's on it, and he comes to every meeting, and we talk all the time. He's smart as a whip. He's always engaging. He does just what you ask about describing the various constitutional processes. I have actually enjoyed seeing him and meeting him, but I fear to death that he'll come at us, because he'll be tough to stop.

There are those kinds of people out there, but Bork was beyond that. He was the political operative: brilliant, articulate, opinionated, a scholar, writer, lecturer. He was always in the wings, and then he landed that nomination. I think Rehnquist was clearly Nixon's pal, and everybody knew he was conservative. But he was one or two in his class at Stanford Law School, and everybody knew he was bright and smart.

Young: He was no Carswell or Haynsworth, in terms of this.

Kennedy: No. He was in terms of his work at the polling booths. I thought that was as flagrant and blatant an activity as anything that either Carswell or Haynsworth had been involved in. We had a time getting that done. [REDACTED]

So there are these intangibles, besides the test that we're talking about now. These are the intangibles: how close to an election, whether you're able to marshal the various groups that are out there. Civil rights groups are key, but you need other groups as well. Are you able to get their

enthusiastic support, to get them to be involved? What is the strength of the President? Have you been battling on nominees before? Are people tired from doing this kind of thing?

So in terms of the outcome, there are a lot of different variables. Timing. All of those are out there, intangibles in terms of the success of some of these people getting through or not getting through.

And then the second issue, which is the more basic and fundamental, is what test are individuals going to use in deciding how they're going to cast their vote? What are going to be the criteria? That varies. You have Democrats going through those votes, like Bill Proxmire, saying that the President ought to have a lot of discretion about this—and he's a rather progressive and enlightened figure. I'd say that they haven't read those early debates in terms of the Constitutional Convention. Or they haven't followed the whole march of progress and where the courts have been in terms of the movement of our country and our society to be a fair and a more just place. They've been instrumental in doing it. When the Congress didn't do it in the '50s, we had the '57 Civil Rights Act.

Young: You had one Civil Rights Act.

Kennedy: Yes, we had one and put in a Title Three of that. We didn't really have it there; we weren't dealing with the social problems. But the courts were involved in it, and that created a big opportunity to make significant progress. The interesting political fact is that even the radicals—I mean the right—are reluctant to try to repeal any of this. They'll try to undermine and circumvent it, but they will not further restrict it.

In terms of the civil rights issues, the strict scrutiny tests they use, they give the greatest deference to preserving the rights and liberties of individuals, and the expanded view of the 14th Amendment. That's where we've been going, and the courts have done that at a very important time. In my view, if people who come to the Senate and are going to vote miss that or don't understand it, they don't understand where the country has been and where it is and where it's going. They don't always have to agree about the specifics of particular cases that I have a view on, but they have to have some appreciation or understanding about that.

If you look back, I asked these nominees whether they understand where we've come from, where we're going, where this country is, where we have to go. Is this a continuing march? Maybe you don't agree with the Miranda decision, warnings to people, but I do think we have to try to have a criminal justice system that's fair and more just. The sentencing has to be more fair or just. You don't agree with Miranda—okay. Where are we in terms of the whole range of different items that we consider to be in the judicial system, and how do they respond to these kinds of questions? What you're seeing now, with Roberts and Alito, is a serious challenge to those.

Young: Is that occurring in the lower court nominations too?

Kennedy: Well, at the present time they have fewer cases before them than they've had in I don't know how many years, because they've had such control of the judiciary, the district courts and the circuit courts, that they never get into the Supreme Court. These matters are all getting decided down at the lower court, so they don't really have a lot to do.

Young: Let me quote [Thomas] Jefferson on the judiciary. When the Federalists were defeated by the Republicans in the election, he said, “They have now retired into the federal bench, whence they will proceed to destroy all the works of Republicanism.” Under that analogy, it seems that there is beginning to occur a strategy to try to create a conservative judiciary from top to bottom. Maybe Rehnquist was the beginning of it when he was under [Ronald] Reagan, and [Edwin] Meese was there.

Kennedy: I think that’s very true.

Young: They’re using the judiciary as the key to try to limit what they consider the excesses of progress.

Kennedy: I think that’s true.

Young: And if that’s what’s happening, it poses a real problem for the Senate, doesn’t it?

Kennedy: Yes. It came at us, I think initially, with court stripping.

Young: What’s that?

Kennedy: That means taking major policy issues or questions out of the courts and saying the courts can’t rule on them. It’s a way to limit whatever was going to be able to come before the courts. There was an effort on that 15 or 20 years ago. [Lowell] Weicker was a leading opponent. They couldn’t get it through the Senate, so they abandoned it. But they were going to take important areas, primarily civil rights—and they also did it on abortion and other areas and say the courts can’t deal with these. This is a serious undertaking, and it’s continuing.

It gets away from what we were talking about before, the tests of the nominees. It does seem to me that—particularly at the time, and certainly from the Bork period on, maybe from Rehnquist—that we were just going to take somebody who was very bright. Rehnquist fit into that; he was somebody you could defend as having a judicial temperament. You could say, “He fits into that.” And somebody who had knowledge of the law, he could fit into that. And if you were to be supportive of that and not look at—I think the judicial temperament, the fact that he was fiddling around in terms of local political races and intimidating people from voting, was enough to disqualify him.

But the point about it was they were being very carefully selected for their judicial philosophy. This is what had taken place, and the idea that we were not to be able to consider that seemed to be nonsensical. They weren’t selecting just people who were knowledgeable and very competent, very well prepared. They were seeking out judicial activists, and at the same time telling us we couldn’t use that as a test, because the test ought to be, if you can’t find a problem with them, those people ought to go on the courts. That’s what they interpreted as the original intent of our Founding Fathers. And if you have a different viewpoint, you’re an obstructionist, and you’re obstructing our right to get to the courts and permit the courts to function and work and bring justice to the people in the country. Politicizing all of this got in the way, and that’s certainly a key part of their whole movement.

Young: The original intent movement.

Kennedy: Yes. Original intent is somewhat different, because that is the original intent of the Constitution. They allegedly wanted original intentors, but original intentors have a lot of difficulty. They get off base fairly quickly if they go down that line. How are they going to explain their actions? The point I'm making is that we had the politicization of the judicial process, and it required an alteration in terms of what the tests were going to be. They were going to select a philosophy that they were using as a criterion, and that isn't something the American people, as a rule, were beginning to understand.

I think they understand it somewhat more after the [George W.] Bush v. [Albert Jr.] Gore election decision, where all Republicans voted one way and the Democrats voted the other. These people were on the court, had been selected and appointed, because they had a viewpoint. That, I think, was the awakening, and hopefully the country hasn't forgotten that lesson. That was the clearest example of what we are faced with. These people weren't selected to look at that and come to an independent judgment. They were all locked up. They were all in lockstep, and they're in lockstep in terms of political power. They're pretty much in lockstep in terms of rolling back rights and liberties.

Young: There are two prongs to this, it seems to me. One is the reading of the Constitution and the objective of getting a conservative Court. It seems to me there are two things going on here. One is a conservative philosophy that pertains particularly, but not exclusively, to the interpretation of rights and the 14th Amendment, those cases where you see retrenchment as a pattern. The other has to do with executive power. So part of this is pro-Presidential. It's for Presidential prerogative. Is that a right reading of it? They go together.

Kennedy: I think they go together, in the thinking of these modern-day Federalists. But it is so blatantly and flagrantly false.

[BREAK]

Kennedy: The flagrant and blatant fallacy of the position is demonstrated by recent history. When President [William J.] Clinton was in, the last thing this crowd wanted, the neo-Federalists, was a strong President, and they attacked him in every possible way: with Travelgate, problems down in Arkansas, in every possible way. He got himself in trouble and made it easy, but nonetheless, it was a fierce assault and attack on the Presidency, and the power of the Presidency, and the ability of the President to do anything.

Now once this is flipped and the Republicans win, they want all power to the Presidency. They have this in a number of different areas. The most obvious is violating the torture statutes and agreements, and the agreements of the Geneva Convention, even though those statutes were put into effect during Ronald Reagan's time and pushed forward by Jesse Helms, without any kind of opposition. It was done in the wiretap, when President [Gerald] Ford had worked through, both with me and the Judiciary Committee, the FISA [Foreign Intelligence Surveillance Act], with Attorney General [Edward H.] Levi, with only one vote in opposition. Now President Bush just says, "I'm going to do whatever I want, and if you don't want it—too bad." He defies us.

The military tribunals give this President the power to define whoever he wants as an enemy combatant, and that person, under rules and regulations decided by this President and the Secretary of Defense, can be denied *habeas corpus* and kept in prison for as long as he wants. This is this imperial Presidency, plus the war, and the lack of authorization and the refusal to deal with Congress on these issues. This is the imperial Presidency—the signing statements, where he has interpreted his way legislative provisions that were left somewhat ambiguous, and then taken action based on his own interpretations.

So you have this extraordinary growth of power, but it isn't a consistent philosophical position, because it has nothing to do with the willingness to grant the same power to a President of another political party. It's a very practical philosophy to enhance power for power's sake, and exploitation, and the accumulation of resources and money to the wealthiest special interests.

Young: And the judicial strategy becomes part of that, to the extent this gets frozen into legal precedent, this reaching, this imperial Presidency. It's hard to undo.

Kennedy: It's hard to undo, but I hope it's going to be gradually undone. This has been a real disaster in terms of the country, and the second disaster has been the failure of the American people to do anything about it, to demonstrate very much interest in it. They've been virtually silent. Even when we had [Alberto] Gonzales, who has been a co-conspirator in all of the torture, and the torture amendment, the [Jay] Bybee Memorandum, saying that interrogators are free to torture, and the executive power will pardon them. The only way they will ever be prosecuted is for a prosecutor to be able to demonstrate that they had a specific intent to hurt the person rather than to get the information. I mean, hello?

This is such a gross misinterpretation, and then Gonzales goes up and says, "Okay, I'm not going to do this any more. We're going into a new phase on that." And then the United States Senate passes it. I was the leader of the fight against that. We got 42 votes, but we weren't able to stop him. Everybody said, "Well, that's fine, that's okay; we're going to yield those."

And then when we had the military tribunals that gave effective amnesty to every one of these torturers, it went back to the time of 9/11, saying we can't prosecute any of them. No one will ever be able to prosecute any of these people; we got only 25 votes on this. The Congress didn't stand up; there was no outrage over this, no central concern about the loss of rights and liberties.

We had the opening of the mail three days ago. Where is the outrage in this? I went to a Democratic caucus yesterday, and no one even mentioned that. This is opening your mail. "Oh, we've always been able to open your mail." Well that's certainly news to an awful lot of Americans. If there isn't evidence that you're involved in activity that's threatening the nation, I don't know where they get this right.

Young: Well, if it weren't for 9/11, and if it weren't for the conversion of that terrible event into a continuing war, and a wartime—

Kennedy: I agree with you. We can certainly say that we've had the politics of fear and smear, and I think part of the last [2006] election was the beginning of the rejection of that, the awakening of the American people. It's the fallacy of that philosophy that's so much out there. I

don't think the American people bought into it, but it's going to take some doing to get us through this.

The interesting thing is, if they try these people, the really bad actors, under the military tribunals, they'll just keep other people wherever they are in their prisons around the world. If we try these people and we don't observe appropriate rights, then the trial will be thrown out. And then what happens to these individuals? We'll say that under the other ruling, we're going to keep them anyway. But they will then be effectively liberated or free, under most statutes. They will have been tried for crimes and found to be not guilty. Are we going to keep them in prison anyway? That's not going to make our judicial system really look good around the world.

The important thing is to get it right, so that we can take the people who are the bad actors and prosecute them and hold them to a tough kind of accountability. But they're trying to do it the easy way—and risking the whole effort to try to prosecute and hold these people accountable. This isn't left/right; this is the height of stupidity. We're interested in getting the bad people, in holding them accountable. But if they've been solely as sheep-herders in Afghanistan—as a lot of them were, you know—shipped into Guantanamo, they ought to be out of there.

Young: How much of this do you think is just incompetence?

Kennedy: I think they knew what they were doing. Part of it was the fear at the time. When [Donald] Rumsfeld gave approval to rough up these people in Guantanamo, he knew exactly what he was doing. And there's no question that when General [Geoffrey] Miller was moved from Guantanamo to Iraq, all of these practices started up in Iraq. You can follow the trail, follow the money. Miller is now retired and won't appear before Congress. He will not appear.

Young: Because he won't be—

Kennedy: He got himself out of the military, and whether we can chase him around and subpoena him—Maybe we can now. We couldn't under Republicans. I imagine they'll probably get him back. [Carl] Levin or someone will probably get him back. The Republicans wouldn't bring him back.

Young: It sounds to me like you're saying the Congress is having to do the job the Court should be doing, to some extent.

Kennedy: A little bit in a couple of these cases: the [Salim Ahmed] Hamdan decision and a couple of the others throughout those military commissions, which were so bad. We don't know what the end will be, when we have Alito now permitting the search of people's houses without probable cause. You just don't know quite where it's going to end. It's a great threat. A good chairman of Judiciary Committee ought to take that on and spend a good deal of time trying to do that. I think [Patrick] Leahy will try to do it. We'll be helpful, but it takes a lot of determination.

So, do you want to do [Frank] Morrissey for a little bit?

Young: Okay, let's do Morrissey. And you want to talk about those commissions, which is also part of the story of the lower courts. I don't know what you want to say about Morrissey. This is not as historically important as the other areas, but this was something you got into.

Kennedy: We had a vacancy on the district court bench in Massachusetts, and we had an opportunity. Basically, for district and circuit courts, the President makes the judgment. The home-state Senators can refuse to "blue slip" someone—that means they personally object—and the Senate, as an institution, has respected that over the years.

When I was chairman of the Judiciary Committee, it was used in a number of cases against minorities. I said I wasn't going to accept it. If the people were going to refuse to blue-slip a nominee, they had to come to the Judiciary Committee and explain it, and their explanation would have whatever weight they could place on it. But we weren't going to just take it automatically. Then Senators didn't refuse to blue-slip minorities because they didn't want to have to come to the committee to explain it. We're pretty much further down the road on it, but the blue slip is still out there, and whether people respect it varies in degree.

Young: And they don't have to come before the committee any more.

Kennedy: They don't have to come before it. An awful lot depends on who's in charge. If the Democrats are in charge of the Congress and two Democrats fail to blue-slip somebody, more often than not, the leadership won't call the name up. It's a looser kind of arrangement at the present time than it used to be.

When Clinton became President, we had a number of openings on our district courts and in the circuit court. He indicated that he'd take recommendations from the Senators from the affected states, and for a circuit court, he'd take recommendations from the circuit court members, supposedly to represent the region. But this way, a lot of them represent the states. So they're from the state. We have one on the Circuit Court that includes Massachusetts, [Sandra] Lynch, and she's superb.

So we have two different issues. One is Morrissey, and one is the commissions. I established the commissions for the vacancies we were going to have. We had a big expansion in the number of judgeships in 1977.

Young: You used commissions then?

Kennedy: We used commissions then. President [Jimmy] Carter liked the commissions. I established a commission that was chaired by Dick Donahue.

Young: How did you pick Dick?

Kennedy: Dick had been President of the Massachusetts Bar Association. I knew Dick was a first-rate lawyer. I knew him well. He had been, I believe, president of the Massachusetts Bar Association, and he served in President [John F.] Kennedy's White House. He knew what I was looking for in terms of quality. I had about a 10-member panel that included lawyers and non-lawyers and representatives of minority groups. Steve Breyer was a member when he was up at Harvard Law School. Others were Wayne Budd, a Republican, who had been a U.S. attorney;

Bob Coles, who was a prominent psychiatrist; Father [J. Donald] Monan, president of Boston College. I had a judge named Jacob Spiegel from western Massachusetts; a fellow named Sebastian Ruggeri; and Mary Boland, Congressman [Edward] Boland's wife. They developed a series of recommendations.

After '92, I established a similar committee chaired by Jack Curtin, the past president of the ABA [American Bar Association]. Included on that committee were Jack Driscoll, who had been the president of the Boston Bar Association; Wayne Budd; and Sandra Lynch, who is now on the Court of Appeals; Margie Marshall, now the Chief Justice on the state Supreme Judicial Court; and Deborah Ramirez, a leading spokesman for the Hispanic community. We had a number of vacancies. They made recommendations, and they also did it for the U.S. attorney.

Young: They were out to identify candidates?

Kennedy: They recommended several candidates, and I took one of them, [Donald] Stern, for U.S. attorney. Deval Patrick was one of the ones they recommended, but I didn't take him. That's interesting. Of the ten they recommended, I appointed six to the court: [Robert] Keaton, who was on the faculty at Harvard Law School; Judge [John] McNaught, who had been on the Superior Court of Massachusetts; Dave Nelson, an African-American who had been on the Superior Court of Massachusetts; Rya Zobel, a very successful and notable attorney. Reginald Lindsay, who also happened to be black, very successful also. He is disabled and in a wheelchair, but he's been absolutely superior. I appointed Patti Saris, who had been chief of the civil division, U.S. attorney's office, and Rick Stearns, who was a Rhodes Scholar and assistant U.S. attorney. Nancy Gertner, a Boston University Law School professor and a visiting professor at Harvard Law School; a fellow named Michael Posner, who was adjunct professor at Yale Law School; and George O'Toole, who had been on the Superior Court of Massachusetts and on the Municipal Court were all people we appointed.

In some instances, we had very tough battles. In the appointment of Posner, who was out in western Massachusetts, Tip [Thomas] O'Neill and Eddie Boland lobbied hard for the appointment of Boland's brother-in-law. I went along with the candidate who had been recommended by the panel. Boland had nominated me for the United States Senate at the 1962 State Democratic Convention, the only member of Congress to support me in '62, and who had traveled to Ireland with President Kennedy. He was one of President Kennedy's best friends and one of my best friends. I had to say no, and he didn't speak to me for the last five years of his life. And now only Mary Boland comes to the Library. She talks to me and her children do, but he wouldn't speak to me. Tip didn't speak to me for a period of time. It was very hard. I saw the person I didn't appoint at the Kennedy Library about four weeks ago, a fellow named [Daniel M.] Keyes, Judge Keyes, who was a delightful person and a smart guy. The other person was just notably above him. It was a quality thing, but it was a very hard decision.

Young: Why did you not choose Tip's candidate?

Kennedy: We had to start out at the beginning and say we're going to have this commission, and they're going to be subject to all these kinds of pressures. Around here, we have a vacancy. We're on the Judiciary Committee, we're questioning these people for the Supreme Court, and we're demanding excellence down there. The people in Massachusetts ought to get the best in

terms of these Court appointments. I thought this was a very important part of my service in the United States Senate, that they get the very best. The district court of Massachusetts is recognized in the courts around the country as having the best people now. We have the best people on that court. Having said all that, we had some rough times.

Young: Were there candidates included in the pool and then rejected?

Kennedy: There were three others I didn't appoint. I ran into this wonderful lady, Nonnie Burns, who I would have appointed if I'd had a vacancy. She was a Republican. She's been a great friend and sport, and she's probably getting close to the maximum age now. But there were two others who were just crackerjacks. I can't remember quite who they were, but there were another two. I looked at the pool, and then I interviewed the likely ones.

Young: Did you interview them all?

Kennedy: Yes. I talked to all of them personally. I'd take the top two or three. We wanted to have it reflective of the state. Nelson was just an outstanding fellow. We had the first black in the history of Massachusetts district courts, and he was just a terrific guy, well qualified. He had been on the Superior Court. Reggie Lindsay. And then to make sure that we had people who were first rate, I chose Patti Saris, who knows everything about intellectual property. She's so smart. Another one was Keaton, from Harvard, who taught bankruptcy and three or four other things. He just retired, as a matter of fact.

Young: So you were really hard on this.

Kennedy: We really did it right, set it up right, and got the best people. I'm very proud. No one ever knows it, no one ever asks you about it in a campaign. I've run for the Senate umpteen times, and no one has ever—either in a comment or statement that I can remember—stood up to say anything about the judges. I know people know we have good people up there, and they expect it. So you're not supposed to get—you're not doing this thing—

Young: But they don't identify them as your people.

Kennedy: They don't identify them as my people.

Young: Well, that's what you wanted, isn't it?

Kennedy: That's right. That's not the purpose of it.

Young: I'm surprised to hear that Boland and Tip O'Neill took it so hard.

Kennedy: It was just bitter, bitter, bitter.

Young: In politics, you win some, you lose some, but you don't hold personal grudges.

Kennedy: You know, Boland and O'Neill lived together in Washington. They were very close. It's the only thing Eddie Boland ever asked me. He had been with me at the very beginning. This guy was competent, could have handled the job. It was very close, very tough. But this other

fellow writes articles all the time; he's brilliant. Everybody's very happy with him. He's a bit aloof and a bit cool for me, but he's been absolutely superb. The newspapers out there supported Boland's brother-in-law. It was a big do in Springfield.

One other thing was interesting. Three of these had gone through the committee and were waiting on the floor. Then there was a vacancy in Worcester during the Republican time. Slade Gorton, a Republican from the state of Washington, wouldn't let any of my judges go through unless his brother went through. His brother wanted to be the judge in Worcester.

Young: Gorton's brother was in Worcester, and he wanted that seat?

Kennedy: He wanted that seat, and he wasn't going to let any of my judges go through until he got it. The Republican leadership went right along, held all of mine up, until I finally had to appoint his brother.

Young: Is he incompetent?

Kennedy: He's adequately competent—[REDACTED]. That ought to bring us to an introduction to Frank Morrissey. When you have a member of the Senate going to the Republican leadership and saying, "We're not going to let these qualified people go on the bench until my brother is taken care of," and then what happened to me, when I made the recommendation of a person who had been clearly identified with the politics of our family, and legitimately so. He ran my brother Jack's office when he was in Congress, was a very close personal friend of my father, and was a close personal friend of the Cardinal [Richard Cushing]. He was the person who got me started at the beginning of my political career.

When I was in the district attorney's office, every noontime I spoke at a lunch. I'd speak at the East Boston Chamber. I'd speak at the East Boston Lions Club. I'd speak at the North End seniors group. I'd speak at the Charlestown Civic Association, all local things at noontime, and every evening I'd be at a bean supper. He went with me.

Court ended at 4 o'clock. I'd go home and see my children for an hour and a half and then get dressed and go to these events. Frank Morrissey was the one who got me started meeting with the legislators in Massachusetts. Gerry Doherty is a friend. I had a group of about 10 or 12 of them with the organization, and they were very good. They had to take a lot of heat, because it was a red-hot primary with the Speaker's nephew running, and Frank was really the person.

He got along well with my district attorney, Garrett Byrne. They used to go out to this Jewish club in Brookline and swim. They were the only two Irishmen admitted to this Jewish club, and they'd pick up all the chatter. Everybody liked Garrett Byrne because he broke the Brink's robbery. He prosecuted the Brink's case, so he was a big deal in Boston, and the fact that I was working for him brought all these things together with Morrissey.

Young: With Morrissey in Byrne's office?

Kennedy: No. He was a Boston municipal judge at this time. So I knew he was very close. Whenever I was home, the phone would ring, and my father would talk to Morrissey, and he'd

always have some gossip, some information. My father liked him, and he liked my father. My father was sick in '61, and I got elected in '62, and there was a vacancy some time after that.

Young: It was '65, I think.

Kennedy: Morrissey said, "Your brother told me I was going to get it"—or led me to believe that to be the case. I don't want to defame Frank's name, but he certainly led me to believe that he had a commitment. My father was still alive at that time, and I knew he wanted it for Frank, and I know he had spoken to my brother about it. I don't know what my brother really told him.

Young: Your brother John?

Kennedy: Jack, President Kennedy.

Young: I've heard he backed off.

Kennedy: He may very well have. It wasn't entirely clear, although I was under the impression that there had been enough commitments made around that I had to go through with it. So we went through the nominating process. [Leverett] Saltonstall gave his approval. There was a lead story in the *Globe* that indicated they were going to oppose Morrissey. I went down and spoke to President [Lyndon] Johnson, and he indicated to me, in a personal conversation, that he would go ahead with Morrissey if I wanted to. I told him I did, and he did follow up and signed the papers a couple of days later.

The *Boston Globe* caught news of it and started to do a job on Morrissey, about where he had gone to law school (he had gone to night school in Georgia), and whether it was an authentic school, and whether he really lived down there or didn't go down there. They did a real drumbeat on Frank, and so he became controversial. [Albert E. Jr.] Jenner from Illinois, who was the head of the American Bar Association, and a close friend of [Everett] Dirksen, the Republican leader, made it a *cause célèbre*—the president of the Bar Association against Morrissey. Morrissey came and testified before the Judiciary Committee. Actually, the conscience of the Senate always was Phil Hart, and he was a good friend of mine. We all know about the Hart Building; he was just a giant of a person. Historically, he was one of the really important public servants: very good record in World War II, courageous in Michigan, and very committed on civil rights. He took on all the haters out there. He was just a giant of a person, and a very gifted, talented, smart guy, too.

I remember concluding the hearing and sitting next to Phil. I said, "Phil, do you think this guy is competent? Can you vote for him?" He said, "In all good conscience, I'll vote for him. I think he can handle the job." If Phil had thought *this guy just can't make it*, he would have told me that too.

It was very mean-spirited. We had Joe Tydings, who my brother had appointed a U.S. attorney over the opposition of all the Congressional delegation from Maryland who thought he was incompetent, without any experience or knowledge. He worked with my brother Bobby [Robert F. Kennedy] in the 1960 campaign, and my brother stuck his neck out and appointed him. And here Joe was, leading the fight against it, because everybody knew Tydings was close to me. He

was leading the fight, arguing that Morrissey was not competent and not qualified. That was enough to get your goat, to put it mildly.

It was just a battle royal, but by the end, we got it out of the committee and onto the floor. We had the majority of the votes for confirmation, but not enough to get cloture. The question was whether we had the votes to get cloture, and I could just see this thing was getting too close on cloture to draw it to a head. It had gotten to the point where it was all out of proportion. It was turning into a national issue. It was going to be difficult. A lot of good people and a lot of good friends were supporting it.

Young: Did LBJ [Lyndon B. Johnson] and Dirksen lead you down the garden path on this?

Kennedy: I don't think so, no.

Young: That's what Clymer says.

Kennedy: They all said, "Lyndon likes to do this; he'll do it for you and he'll get it." I didn't catch that. He and Bobby were at it, but I didn't have that sense. Dirksen got into it, got warmed up to it, and then saw the political advantage of it. I think he was probably opposed to it in the beginning, but he had a lot else on his plate, and he wasn't enormously—

Young: You don't think anybody was out to get you on this?

Kennedy: I don't. I think once they saw that I was in the frying pan, they relished it. They relished, "This is a pretty good, we can bang the Kennedys legitimately—we have the Bar Association." I know that the schemers and others think Lyndon went along because it would slow Teddy down. I never really bought that. I know others who did, but I didn't.

The irony was, after I pulled his name back, I went to Dulles airport and got on the plane to Vietnam, and the person seated next to me was Joe Tydings—all the way to L.A., all the way to Vietnam.

Young: He was going to Vietnam?

Kennedy: He was going to Vietnam. Finally, when we got to Vietnam, I said, "I'm not sleeping in the room with that guy." So we traveled around Vietnam, three days, four days, and then he went up to Laos, and I went down to Singapore, and then we came back.

Young: On different planes?

Kennedy: Oh, yes. Shortly after that, he got licked. He always said it was the gun control issue, but it wasn't. Joe just didn't connect the way he should. He was around the floor of the Senate a couple of days ago. I saw him walking around.

Young: His father was a Senator?

Kennedy: A Senator, yes. Millard Tydings.

Young: You mentioned Tip and Eddie Boland. Did you have any other experiences like that in the Senate, over an issue you disagreed on, where your colleagues wouldn't speak to you?

Kennedy: I think probably the meanest one was with [John] Dingell, when I went down and debated him on gun control at the National Rifle Association. We did that in the '60s in the NRA building down there. There were probably 250 people there.

Young: In D.C.?

Kennedy: In D.C. I think they have a building down here. That was really mean and nasty. I didn't run into him a lot, but I remember him not talking to me for a period of ten years.

Young: Were you both in that meeting?

Kennedy: We debated each other on guns.

Young: Before the NRA?

Kennedy: Before the NRA. He was a big deal in the House even then. Then, about ten years after that, we got over it. He didn't make much of an effort, and I didn't make much of an effort. I found out that his committee had enough influence on health issues that I had to try to get through. He didn't hold the health programs up because of that. [Henry] Waxman, I think, helped a bit, and so we got beyond it. Now, of course, he invites me out to his district to campaign for him when he's being threatened.

Young: What's your price?

Kennedy: Well, that's the thing. I worked with him on the Patients Bill of Rights, and I worked with him on health. He's a big deal if you're going to do business in this place.

Young: He was interviewed very early for this project, and he wouldn't acknowledge any differences at all with you.

Kennedy: In the Senate, there were some raw feelings in leadership fights, going back to when [Hubert] Humphrey opposed [Ernest] Hollings, and I forget who else. It may have been Byrd on the leadership. Hollings was really upset with me that I supported Humphrey. I think I told Hollings that I'd be with him unless Humphrey got in, and then Humphrey got in. You know, when you switch, it's never a good situation. He didn't talk to me, and he had an office and a seat right next to me, and he had been a big supporter of my brother Jack. But we've ended up really good friends. I've taken his grandson to work in my office. I consider him a good friend now, but we went through a bad period.

Young: What about over your 1971 Whip fight? Was that bitter?

Kennedy: Not really. It's always interesting. We can go back and get the list of who had been with me before in the 1969 Whip contest. The people I lost on this were Scoop [Henry] Jackson and [Warren] Magnuson. I lost them because I was against the SST [supersonic transport], and Byrd was for it, and he worked them. He worked those two, and I lost them.

A third was [William] Fulbright. The Viet Cong contacted me, saying that they would let me have the list of American prisoners. I got a hold of a person who worked in my brother Bobby's office, John Nolan; he's still an attorney here. He had done the negotiations for the release of prisoners in Cuba in 1963. We swapped pharmaceuticals for prisoners down there. He was a very good person, and I asked him to go over there and get the list. He got the list and went to the embassy right away, so that they could check the list and notify the parents about who was alive. Then he brought it back here. I didn't announce anything about it, because the State Department said they wanted to do it. So we lost what would have been the big political gain. We got the list, and if we'd announced it, it would have been a big, big deal.

I sat next to Fulbright and said, "Bill, we notified your office. I got an invitation for this guy." This was on a Thursday. I got the notice on a Thursday morning or a Thursday afternoon, sitting in the Senate, and I had John Nolan on the plane Thursday night, to go over and get it. I said, "I've notified your committee." And he said, "I'm sending someone over next week to pick that up." I said, "Well, I've sent someone over tonight, and I'll share the list with you." He said, "You have no business doing that. That's a matter for the Foreign Relations Committee. You have no business at all doing it."

He voted against me, and that was the issue, which was interesting. So those were three votes I lost. Everybody said it was Chappaquiddick and other things. Byrd understood these three I lost. There were probably four new people who came in that year, and I thought I had half of them—or three out of the four, or five came in, and I thought I had three out of the five. But there were two ballots that were counted that spelled Byrd B-I-R-D instead of B-Y-R-D, so that meant that they were new Senators, and there were only four or five. They told me they would vote for me, and they told Byrd they would vote for him, so I could tell. I don't have the list here, but I could tell exactly who the people were who told me and the ones—

[Richard] Russell was still alive out at Walter Reed, and Byrd called out there, "Is he still alive?" He's still alive; okay, I'm going to run. Otherwise, he wouldn't have run. He thought it was going to be one votes, two votes he had. But as I said, it's the best thing that's happened. As Majority Whip, you're compelled to spend so much time on peripheral issues, and it takes away dramatically from the time you have for substantive issues. The amount of time you have to hold people's hands, you have to work and be around. This is much more liberating—I'm freer about what I can do. If you're in a leadership position, you can't start running off on your own, for example, to give that talk next Tuesday. I care about these issues, and that's why I'm in it. And we can do well enough. All these other people get attention. We can do as well as anybody else can on any of this.

Young: Why did you want to be Whip?

Kennedy: Well, the opportunity was there.

Young: You had to beat [Russell] Long.

Kennedy: I had to beat Long. Whatever year, '67, '68.

Young: Sixty-eight.

Kennedy: He was having a reasonably bad spell.

Young: You won in '69.

Kennedy: Yes, January of '69. He was having a bad spell of it and wasn't really interested in it, and I don't know who talked to me. I had just arrived there. You call people to find out whether you have it, but at some point, *you* have to think. They're not going to be able to say if you're in or not in. At that time, you're making the commitment to go, when you're not sure you have the rest of the votes.

We did it over that Christmas and had the votes by New Year's. They got hold of him and called him, but we had it done by then. He was never bitter about it. You go on a Democratic retreat, go through and get your food at the buffet, and look over at the table where you're sitting. Go over and sit down with Russell Long. He's the most interesting one in that caucus. He has terrific stories about the South, and he's genuine, a character, a political character. His wife is always nice.

He never was embittered about it. He still had a lot of cards. He was chairman of the Finance Committee. That's not a bad fallback position. That's a big deal. I haven't personalized—there was a little bit of fallout from the Humphrey thing with Hollings. But then after five or six years, Fritz and I were good friends. He had been a good friend of my brother. We even got along well with some of the southerners.

Young: Did you get along well with [James] Eastland?

Kennedy: Yes. I got along well with Eastland.

Young: How come?

Kennedy: I was kind of an amusement to Eastland. I arrived at 30 years old. There's a wonderful story. I don't know if I've ever told you this. My brother said, "Don't ask for committees, because if you don't get on, they'll say you've lost influence and prestige. But I'll take a sounding and see where you are; I'll check that out." And then he called back and said, "I know what they're eyeing for you. It's going to be fine." So I was on the Labor Committee and the Judiciary Committee. Labor, obviously, because of New England, and Judiciary was good.

Eastland said, "I want you to come over, boy. We'll talk about your subcommittees." I said, "That's fine. When do you want me to come?" "You come by tomorrow morning at ten, and we'll talk about your subcommittees." I said, "Okay, I'll come over." We had been working all day and night, what committees I want and what committees I don't want and why. I had all my staff around, and I finally had my little list.

"You sit down here, boy." It's 10:00. "What do you drink, bourbon or scotch?" I said, "Well, I—" "Bourbon or scotch!?" "Scotch," I said finally. And his guy went over and brought in that metal tray. You know, you used to have the metal trays for ice cubes. Everything is plastic today. He put that on his desk, and he pulled out the slide, and he put a white napkin down, and put the ice down and two glasses, and put the scotch down. He said, "Do you need ice?" I said yes. He

said, "Help yourself; put ice in there." And then he went gurgle, gurgle, gurgle, gurgle. "Are you drinking it?" I said, "No, I don't—a little soda, I guess." "Oh, you want soda?"

So he came over and put another towel down, puts some soda down. "Well," he said, "I think you have a lot of Italians up there in Massachusetts, don't you?" I said yes. He said, "You have a lot of those groups come over there, a lot of immigrants come over there." And I said, "That's right."

He said, "You drink that down, and you're on the Immigration Committee." I said, "Thank you very much, Mr. Chairman." So I drank that down, gurgle, gurgle, gurgle, gurgle. It's now about 10:15. He said, "Kennedys always care about the Constitution. Your brother Jack's always talking about the Constitution. Do you want to get on the Constitution subcommittee?"

I thought, *How the hell did he know I wanted to get...?* He said, "Drink that drink, and you're on that Constitution Committee." Gurgle, gurgle, gurgle, gurgle. He said, "You know, we have another subcommittee on civil rights. Kennedys are always worrying about civil rights, is that right?" I said yes. How the hell did he know those are the three subcommittees I want?

"You drink that thing—" Gurgle, gurgle, gurgle. And that was the end. It's quarter to eleven, and I'm barely able to get up. So of course I go back to my office, and the sitting room is filled with people—the 9:00 meeting, the 9:30 meeting, the 10 o'clock meeting—and I walk in there smelling like a brewery. Here's our little Senator, 30 years old; he's been down here two weeks, and he's stiff as a billy goat at ten in the morning.

Can you believe it? Every afternoon Eastland and Hugh Scott always met for a drink, and they always decided what nominees and what bills would go. They always did it over a drink in the late afternoon in one office or the other.

I never went into Jim Eastland's office when he didn't have—and I used to go in for one thing or the other. He had the maps of Mississippi and Alabama there and two or three oil development people, all looking at oil wells. He no more cared what was happening in the United States Senate—it was all about the oil. He had an oil company jet plane bring him up in the morning, fly him back on Thursday. It was all oil and gas leasing. He was no more attached in terms of what happened in the United States Senate than the man in the moon.

One occasion was interesting, but I can't remember what the issue was. I should, because I remember the occasion. I was trying to get something out of the committee, and he was going to vote against it. Then he saw someone flip on me further down, and so he flipped. He said, "You have the votes to get this out; go ahead and offer it. I know you have the votes." Someone flipped against me, and so he voted for it. I said "Thank you." He said, "I told you you were going to get the thing out. I didn't think it was going to be this way, but if I give my word on it, you're going to get it out."

He was a rogue and a rascal. I was 30 years old, and he was such a character. I campaigned, and he said, "Teddy, Leander Perez, did you hear about Leander?" I said, "Oh, God, did I hear about Leander." In the '62 campaign, we had the Freedom Riders come up, and I went out and met them in Boston. They sent them out. These are blacks they send out to Massachusetts for freedom. They sent them up, and I met them, and Leander Perez said, "That's fine." So they kept

sending bus after bus after bus up there, and it became a real issue in Boston. My brother would say, “What’s happening over there?” I said, “You can’t believe what’s happening; they’re sending all the people up.”

Young: These people were coming from?

Kennedy: From Mississippi on Greyhound buses, with all their goods. Poor blacks.

Young: Just getting in.

Kennedy: Getting out of poor rural areas, and all financed by Leander Perez. And so my brother said, “I can take care of that.” They called Eastland, and he said, “Leander? Yuk, yuk, yuk, yuk. We’ll stop that, okay.” On the one hand, it was so cynical and so bad and so evil, but it exposed me to what this place used to be like. They could turn the faucet on and turn it off on anything. Eastland asked me to go down and speak at Ole Miss.

Young: At what point?

Kennedy: At the end, when he retired. He retired and asked me to go down there, and I said, “Well, you know what—” They were going to have a reception, and everything was integrated. The hall was integrated, the reception was integrated. He said, “I know what I have to do.” It was a big deal. I was down there and he introduced me. Here you have this guy who is the arch segregationist of the time. I went down, and he let me talk.

Bobby had the best story down there: he got down to the University of Mississippi in 1966, and he told this story about Mississippi Governor [Ross] Barnett. When they went in in 1962 to desegregate the university, Barnett said, “Look, what will happen is I’ll say you can’t come in. You have the U.S. marshals pull their guns halfway out—not all the way out, halfway out.” Bobby said, “I’m not going to do that kind of stuff.” But the kids—the thing is all a fraud, and here are these white supremacists.

It was a whole sequence of these people governing down there, trying to bargain with the Justice Department so they would look good, to give the impression that they were being overwhelmed by superior force, but they were really standing up for their rights. The whole time, they had already effectively surrendered, but they were trying to save their political tails.

I always remember Bobby coming back from that 1960 speech and saying the U. Miss. kids just laughed and laughed and laughed and laughed, because it was so ridiculous, these supposed actions—how the Governors and the sheriffs and everybody was going to be overwhelmed by federal force. They wanted to make a deal to make them look good, and were selling out on the issue. They weren’t standing up on a principle, saying, “You’re not going to get that.” It was, “How do I save my own ass politically?”

Somewhere in Bobby’s memoirs, someone ought to get that cross-referenced. I don’t know whether he tells the story—or maybe someone else who was with him told it—but it was such a powerful moment. He was the epitome; he represented everything the white supremacists were against. These students were not sympathetic when they first introduced him. But Bobby turned it around. He said that by halfway through this thing—he had a regular speech, but they wanted

to talk about the incidents and how it left them, and where everybody was. He said that when he got finished talking, these kids were just putty. They know if this stuff isn't on the level: "These guys are just trying to jam us."

Young: Okay? Good. We're finished up.