EDWARD M. KENNEDY ORAL HISTORY PROJECT

INTERVIEW WITH PATRICK LEAHY

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Interviewer

Janet Heininger

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TRANSCRIPT

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Heininger: This is an interview with Senator Patrick Leahy on August 5, 2009. Normally I start by asking, "When did you first meet Kennedy and what were your first impressions of him?" but I'm going to start with a different question this time: How do you feel about the fact that Kennedy's not here for the first Democratic Supreme Court nomination since 1994, with Stephen Breyer?

Leahy: It's not just the Supreme Court, and he was here for every one of the current members of the Supreme Court, as well as ones who are no longer there. Some of them died; some of them retired. When he stepped down from the Judiciary Committee he was, as I understand, the longest serving member *ever* of the Senate Judiciary Committee. Of course he was the second most senior member of the U.S. Senate. While he had stepped down from the Judiciary Committee, I miss him anyway, as a friend.

Our offices are just one floor apart and we'd often go back and forth to votes together, or I'd walk out and chat with him when he was playing ball with his dogs. Our wives were part of a small group of four or five spouses who had a book club together, meeting sometimes at the Kennedy home, sometimes at ours, sometimes in our respective hideaways. In fact, on days when they were meeting, Teddy would come up to me on the floor and in that great voice of his say, "You know, we're in trouble. We're going to get home tonight and have a whole set of marching orders that we're going to follow," because I don't think they talked much about the books, but talked about current events and very specific things they wanted us to do.

Ted was an extraordinarily good legislator. He knew what would work and what wouldn't; he knew how to put people and things together. You could talk in shorthand with him. I could say, "Ted, do you think we're going to get such and such amendment?" and he'd say, "No, but I think we can get," etc., and I'd know where we were. We both believed in the legislative process, knew how to do it, knew when to make compromises and when not to.

I rarely disagreed with him, but there were times. I voted against the No Child Left Behind Act because I didn't think the [George W.] Bush administration would keep its word. I thought there would be a lot of lofty goals and then the money would not be there. I realized that he was trying to do it in the best way possible, by getting a bipartisan coalition to pass it. He was working with President Bush in good faith, and I would assume there was probably good faith on both sides, but I sensed the money would fall out or it would not be followed through. It would become too much of a one-size-fits-all program, which would not work in a rural state like Vermont, so I opposed it. It was one of the few times that I voted differently than he did. We voted differently on Chief Justice [John] Roberts, too, but most of the time, as all the scorecards would show, we were there together.

I do recall Ted saying years ago to Paul Laxalt from Nevada, who was then also the chairman of the Republican National Committee—He had staff running the Republican National Committee, but he was President [Ronald] Reagan's closest friend, so they also named him chair of it. Teddy was laughing, with his arm around him, saying, "I know about those letters you send out to blast people as being a Kennedy liberal." And Paul was saying, "Yes, but we don't want you to ever be defeated. We need *you* to raise money." Ted was okay with that; we used to tease him in the same way.

But after 9/11, while we were all together on things, he was concerned. We both knew John Ashcroft would become Attorney General, and we were both leery; we both voted against him. I conducted the hearings on Ashcroft during the short few weeks when I was chairman, and because it was a 50/50 Senate—Al Gore [Jr.] was Vice President—I conducted the hearings. Neither of us was in favor of the Patriot Act. I was our ranking member. After the inauguration, I did a lot of negotiating for it and we negotiated a position that made more sense.

The next morning, Ashcroft came to my office and reneged. He was sent out to do a press conference and said, "We need this, otherwise we're going to be attacked by terrorists tomorrow," and the negotiations broke down. I know Ted was disappointed in that. When we came back, we put in a sunset provision. When it came back again, neither one of us voted for it. I would sound things out with him, but we knew each other so well that whether we agreed or disagreed on a thing, we could do it in shorthand. Sometimes we'd be down at the gym or riding over on the trolley to go and vote or just be in the cloakroom, and could get a lot done.

Of course, we always knew when Ted was in the cloakroom, because every so often you'd hear these bellows of laughter. [*laughing*] I recall him being in there with Dale Bumpers and a couple of others, one-upping each other in stories, with it getting louder and louder. Finally the presiding officer said there would be order in the Chamber, and then slammed the gavel twice as hard and said, "And there will be order in the *cloakrooms*." Somebody had to come in and say, "I think that means you."

When I became chairman, although he was still there, his time was being spent in other committees, but he was always there when I needed him. He was always supportive; we worked together on a number of issues: immigration was one of the top, but high-tech areas, and a number of criminal areas. We worked very closely together.

One of the nice things about him being one of the old-style politicians was that if he agreed to something, it stayed agreed to. He came in during an era when neither Republicans nor Democrats could ever break their word, having made an agreement. Today we have members come in, in both parties, who will agree, but no one's sticking to their word.

Heininger: When Ashcroft was nominated, which you both opposed, what were your concerns about what might happen to the Justice Department under him?

Leahy: I was concerned it would become politicized.

I often tell the story of being a young law student at Georgetown, and the then Attorney General inviting several of us down. I think because of our grades or whatever, they were looking at possibly recruiting us to become members of the Justice Department. I remember asking the then Attorney General how much influence the White House would have over, say, criminal prosecutions or civil rights prosecutions, things like that. I was thinking primarily in the area of prosecutions. He said, "I told the President that neither he nor anybody from the White House could interfere with anything."

Subsequently, a person who was very instrumental in the President's being elected committed a crime and the Attorney General prosecuted him. That Attorney General was Ted Kennedy's brother Robert Kennedy, and the President was his brother John Kennedy! And you know what a closely knit family they were. I was always impressed with that, and I talked to Ted about that story about his brother, whom I met a few times, but obviously I didn't begin to know him as well I know Ted.

Both Ted and I felt that Ashcroft would play politics with the Department of Justice. We both feel the Department of Justice is important. Most of the people there—You have no idea if they're Republicans or Democrats—are just hardworking men and women. We both felt that Ashcroft would politicize it, but we didn't realize how much *worse* it could be politicized until Alberto Gonzales came. Kennedy was very helpful to me as I helped push Gonzales out. He knew instinctively how government should work and knew when it didn't.

Heininger: When you got to the Patriot Act, did you have concerns at that point? Both you and Kennedy were involved in its enactment; you both supported it and felt that it was necessary at the time. Did you expect the Bush administration to use it to push the limits as far as it did?

Leahy: Nobody expected it to be pushed to the limits that far because nobody—They pushed it into areas of illegality, and you assume the White House is going to follow the law. But I had urged, and Ted had supported me, it having sunset provisions, just in case they didn't follow the law. It turned out that that was a wise thing to do, because they did not follow the law. In fact, it wasn't until some time later that we found out how flagrantly they were breaking the law, and how willingly they were breaking the law. We first found out about that in the Congress, when the *New York Times* had exposed it. It turned out that a number of people in the Congress, Republicans or Democrats, who were supposed to be apprised of what they were doing had never been apprised.

Heininger: You've both been very concerned about civil liberties. What were some of the ways that you and Kennedy saw the Bush administration infringing on civil liberties, and what did you try to do about it?

Leahy: We saw it in the selective enforcement of the laws; with the civil rights laws it was selective *non*enforcement. The interfering with voting rights was a concern to both of us, and Ted would express it. Keep in mind that at this point he was concentrating predominantly on the HELP [Health, Education, Labor, & Pensions] Committee, but when we had a major matter in Judiciary, I invited all the Democratic members to come in and talk about it. His opinion was the one we all wanted to hear above anybody else.

Heininger: When it got to the Patriot Act, as you saw what the Bush administration was doing, what were the areas that—Both you and Kennedy opposed it when it got to the reauthorization in 2006. Did you have similar concerns about it, or were there particular areas about which he was particularly concerned and others about which you were particularly concerned?

Leahy: I think they were the areas of reporting, transparency, checks and balances, the requirement to go to the courts—

Heininger: The warrantless wiretapping?

Leahy: Yes. Everything that we suspected could possibly go wrong—Things that could be a temptation to the Executive—In almost every single area, they were unable to resist the temptation.

Heininger: When you go back to 9/11 and you look at it from the perspective of 2009, do you regret its enactment, or do you think it was necessary?

Leahy: There were some parts of it that were very good. Parts of it simply codified existing law. Those are the parts that usually are not talked about: what could be obtained through search warrants or by letter from the FBI [Federal Bureau of Investigation]. A number of these things were brought up to date. For example, much of the wiretap laws in the United States were made back in the old analog days. We tried to bring it up into the digital age. It makes sense that when somebody gets a court-ordered wiretap, instead of on just one specific number, being able to wiretap them in their house, their car phone, their cell phone, and so forth. Those parts were all good; I don't think anybody had any problem with those parts and bringing things up to date.

We all opposed the most extreme parts of the changes the White House wanted. We were able to stop most of them, but then when it required reporting and checks and balances, the reporting wasn't followed and the checks and balances weren't followed.

Heininger: How soon were the two of you aware of how the Bush administration was using the Patriot Act?

Leahy: We suspected some of it, but we didn't find out until the press accounts, really. I would—I don't know about Ted—talk to the intelligence community and know that they weren't getting any of this information.

Heininger: Thank goodness for the press.

Leahy: It's not unlike what happened back in the days of—

Heininger: Iran Contra for instance.

Leahy: Yes. I remember once, in an Intelligence Committee meeting, when Bill Casey, who was up for about the third time in a fewer number of weeks, said something like, "I know by law I'm supposed to tell you about such and such, and I forgot, but now that it's been in the paper—" Each time we heard about it first in the newspaper, nobody in Congress had been told, so about the third time they did it, I said, "You know, you can save a great deal of money. I get the CIA [Central Intelligence Agency] briefing almost every day. They had to go through a lot to put it together. Why don't you just take the *New York Times* and mark it 'Top Secret'? This has three advantages: first, I'll get the information a lot quicker than I get it from you; secondly, I'll get it probably in greater detail than I get it from you; and thirdly, you know there is that wonderful crossword puzzle." The agency, for some reason, did not find that funny. I thought it was one of my better lines.

Heininger: [*laughing*] It was. Did he mumble in response?

Leahy: He muttered. One of the agents in the room with him started to laugh, but a look from Casey that would have shattered concrete—The poor guy has been on assignment ever since; nobody knows where he is. [*laughing*]

Heininger: In Timbuktu perhaps.

Leahy: Yes.

Heininger: Why do you think you were targeted for the anthrax attacks?

Leahy: I have often wondered that; it's a huge question in my mind. It was a tragic thing; five people died during that anthrax thing. Out of the five that died, I think only one of them was targeted—well, maybe two: a woman on a subway in New York; an elderly woman, through a letter that she had connected with the others; postal workers just doing their jobs. The letter addressed to me that I was supposed to open killed at least one person, maybe two.

I don't feel any danger from whoever did it, but I just want to know why. Why me? Why [Thomas] Daschle? Why the reporter at the *National Enquirer*? Why Tom Brokaw? I do not, for even a nanosecond, think the man that committed suicide, *if* he was involved, was the only person. I'm not convinced he wasn't involved, but I'm not convinced he was the only person. I'd like to know who did it and why. Why me?

Heininger: Did it give you any sense of the kind of death threats that Kennedy has had to live under?

Leahy: To some extent, but he received so many more. I was used to some death threats when I was a prosecutor. In one case, I went out and personally arrested the man. Before that sounds too crazy, I did have a SWAT [special weapons and tactics] team with me.

Heininger: [*laughing*] I should hope so.

Leahy: But Teddy, who could easily ask for it and would get, if he wanted, Capitol Police security, declines it. He gets death threats all the time. I'm not sure I could bear up under that, especially in his case, with two brothers having been assassinated. I was happy to get rid of the security I had a couple of years after the anthrax thing. I said, "Look, whoever it is, is not coming back. I don't need them." Maybe that's why he doesn't want it, because you do lose some of your freedom and spontaneity, but the Senate would provide security for him were he to ask for it, at least I assume they would, because he's gotten so many threats. But I've walked back and forth to the Capitol with him, and hoards of people come up, and he smiles and shakes hands and keeps on going.

Heininger: I suppose you can't live in fear.

Leahy: He does just the opposite; he lives without precaution.

Heininger: Yes.

Tell me about his opposition to the war in Iraq, and the concerns that ultimately carried over to the concerns about military tribunals and the treatment of detainees, which both of you have worked on.

Leahy: He was right in his opposition to the war in Iraq, and I don't think that was the majority view in Massachusetts; it was not the majority view in Vermont. We both opposed it. We both could be very clear for going into Afghanistan to get Osama bin Laden. Had they stuck with just that, they would have gotten Osama bin Laden. That's part of the tragedy: going into a war in Iraq, where there were no weapons of mass destruction, where it posed *no* threat to us. There were no Al Qaeda there. Now they have a lot of Al Qaeda and there *is* a threat.

He was shaped somewhat by his own experience with Vietnam, both of us with Vietnam. He wasn't about to give a blank check to anybody. That mistake was made with the Tonkin Gulf Resolution. You'd have to ask him what went through his mind, but both of us were very comfortable with our votes.

Bob Graham, a conservative Democrat who was the ranking member of the Senate Intelligence Committee, voted against the war and urged other Senators to go and see—He'd tell us which reports to look at. We'd have to read a classified version, and some people would come to the same conclusion I did. I talked to many people in the agency, and others, and came to the conclusion that there was nothing there, which was what the agency concluded. But it was a show of muscle, and the White House was actively implying that Saddam Hussein was connected to 9/11, even though he wasn't. So much of the poll-taking around that time showed that well over half of the people in America thought we had to go into Iraq because of what Saddam Hussein did to us, even though he did nothing.

Heininger: Yes.

Leahy: As a result, the guy who *did* mastermind 9/11 got away.

Heininger: Is still there. Yes, I know. Well, you have been generous with your time. Thank you.