EDWARD M. KENNEDY ORAL HISTORY PROJECT

FINAL EDITED TRANSCRIPT

INTERVIEW WITH CLAYTON SPENCER

March 25, 2008
Cambridge, Massachusetts

Interviewer

University of Virginia

Janet Heininger

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Heininger: This is an interview with Clayton Spencer on March 25, 2008. Why don't we start at the beginning? Tell me about when you first met Senator Kennedy.

Spencer: I first met Senator Kennedy at some point in the spring of 1993. I was working up here in Boston as an Assistant U.S. Attorney. My then husband, Ash [Ashton] Carter, was going down to Washington to be an Assistant Secretary of Defense. We had two little kids, ages two and four. Ash had left as of January. I was up here prosecuting cases. I was working on a big grand jury indictment, and I realized that I still didn't have a job in Washington. I started saying, "I had better get a job in Washington, or else I'm going to be up here trying to run my crazy life by myself."

Several people I ran into that spring said, "Senator Kennedy is looking for an education person." Meanwhile I was a lawyer. I had been at Ropes & Gray. I was a federal prosecutor at the time, but my deep, profound interest was education. I had already said, when Ash had decided to go down to Washington, that I wanted to find a job in education. So people kept saying, "Senator Kennedy has a job in education," and I kept thinking, *There's no way I can work on Capitol Hill, because I'm way too substantive, and I can't do all that craziness of Capitol Hill.* So I didn't take it seriously.

But one day I returned from the grand jury room after finishing an indictment I was working on, and it was by now, I think, well into March. Ash had been gone since January. My life was totally crazy with the kids. I picked up the phone and dialed information and got Senator Kennedy's Boston office. This was before the Internet, so you couldn't look up phone numbers on the Internet. I asked them whom I should call in Washington about the education job I had heard of. This is how completely unwired-in I was.

I got Nick Littlefield's name. I dialed Nick Littlefield, and for some bizarre reason, God put the phone call through, because Nick has never taken a phone call from me since, even when I worked for him. The phone call was put through and I said, "Hi, my name is Clayton Spencer. I'm an Assistant U.S. Attorney in Boston, and my husband lives in Washington, and I need to find a job. I'm passionate about education, and I hear that you have an education job open." Nick said, "Fax me a résumé," and he clicked down the phone. So I faxed Nick a résumé, this guy I haven't met, and Nick, I think, saw something of himself, he being a former Assistant United States Attorney. I later learned from Nick that he thought, *Oh, great. I'll get this tough*

prosecutor, and she'll come down and do education. Little did he know that I was complete bleeding heart and I hated being a prosecutor.

Anyway, Nick came up and interviewed me. I spent hours before the interview trying to figure out what the hell was going on in education in Washington. I had no clue, because I had been a full-time lawyer and then a prosecutor. My one exposure to politics was when I worked on Capitol Hill, when I was a junior in college, for Congressman [Lunsford] Richardson Preyer, who was a North Carolina Congressman, which is where I was from. So Nick came up here, and I had crammed into my head everything I could possibly intuit about the student loan industry. At that point, I knew probably about as much about the student loan industry as Nick did, so we had a lively conversation. The job had been hanging open for a while. Terry Hartle had left.

Heininger: Terry had gone?

Spencer: He had gone in the fall, so this was all the way into the spring. Ellen Guiney was there as the K–12 person, so they were looking for a higher education person. At some point that spring, I went down and met the Senator, and then I came back up to Boston and then moved down that June.

Heininger: So you came in basically to take Terry Hartle's place in higher education.

Spencer: Yes.

Heininger: What happened once [William] Clinton came in? What did Clinton want to accomplish with education policy?

Spencer: When I arrived, Clinton had been President since January. He basically came to the national stage having learned as a Governor that education is one of the top issues of public concern. Whether nationally or at the state level, education is a top issue for voters. The difference is that the states have a direct and substantive role, both in the funding and provision of education, in a way that the feds don't. At the federal level, the role in both K–12 and higher education is much more marginal. In higher education, which is my area, it's basically student aid, grants and loans, and the federal research compact with the universities. But most of what universities are doing is funded either by private universities, through endowments and tuition, or by states at public universities. So the federal government, in higher education, is exercising a role somewhat at the margins. The same is true in K–12, where the states and the localities are the primary providers and funders of education.

Every national politician—and Clinton took this farthest as President—wanted to look like he had a purchase on education. So basically he came in with an education agenda that one could call "cradle to grave." It began with the renewal of Head Start; moved to Goals 2000, which was the standards-based reform of K–12; and ended with school to work. I'm missing a few. National service was one component, which wasn't technically education but was part of the progression. In higher education, there wasn't discretionary funding to give a lot of new money to education, so he decided to focus on how to change the delivery of student loans.

The big battle—and I arrived on the day of the markup of this bill in the Senate Labor Committee—was over moving from the guaranteed student-loan system—where state guarantee

agencies and banks served as the middlemen in the system, each taking a cut, and each of those cuts coming out of higher loan fees for students—to a proposed direct student-loan system. Senator Kennedy's role in this was to deliver the Clinton education agenda, including direct lending. When I arrived, I parachuted in on the markup of the direct-lending bill.

I literally had the moving van—it felt like it was 100 degrees or 90-something in Arlington—at my house, and I had left my kids with my parents. I went over to Capitol Hill, where they were marking up the direct-lending bill, which was very contentious because even the Democrats on the committee had banks in their states, like Chris Dodd, who was chairman of the Banking Committee, I think. Barbara Mikulski, I remember, was invested in either their state guarantee agencies or banks in such a way that she did not want to move to direct lending. I could go on ad infinitum.

Heininger: Why had student loans become a problem? Talk a little bit about the default rate.

Spencer: Throughout the '80s, beginning under President [Ronald] Reagan and under the Republican control of Congress, basically the student loan system was available to all institutions of higher education—everything from Joe's Truck Driving School to Harvard, Princeton, and Yale. Many of the proprietary institutions are very good, and they provide important kinds of training, and they are part of an important diversity in the higher education system. But there are also much lower barriers to entry, so there were bad proprietary schools that would charge students a lot of money, encourage them to take out loans, and then wouldn't give degrees that were valuable enough to give students the basis for paying them back. So there were high default rates. It was a big part of the reauthorizations of the Higher Education Act in '86 and '92, both of which predated me, to try to get a handle on those default rates.

The reason why direct lending became so important is that when Clinton came in, he wanted to eliminate the federal deficit, and moving to direct loans was part of that strategy. Going back a bit, there was a change in the Credit Reform Act of 1991. This is a technical provision, but it's absolutely material to how the history of direct lending unfolded. Under [George H. W.] Bush, there was a change in the way students' loans were carried on the books. It used to be that student loans were recorded as cash out when they went out. In credit reform, they were carried as an asset—meaning the expected payback over the life of the loan—and the capital that was lent up front was not booked each year as cash out.

I'm a little vague at this point on the details, but the gist is this: it meant that moving from the guaranteed student loans to direct loans ended up being a several-billion-dollar savings in budget reconciliation. This is the reason why it was passed. When Clinton wanted to balance the budget, he had to find billions of dollars to do it with. By taking advantage of this change in credit reform, he could squeeze out $3 billion or so. I think that $4.3 billion was the original reconciliation target for the Labor Committee.

This was important to Kennedy because the only portion of the Labor Committee's jurisdiction that came out of mandatory funds was student loans. Kennedy's role in all other areas, because he was chairman of an authorizing committee, was authorizations for discretionary amounts. So although Kennedy is an enormous player in health care, labor, et cetera, it's through authorizing bills. If Kennedy wanted to be a player in what was the big game in town then—which was

budget reconciliation, which is the coercive bill to drive savings—his one way to do it was through direct lending. I parachuted into the Senate having no clue of any of this. Meanwhile, Kennedy was trying to cut a deal with his colleagues on the Labor Committee to move to a phase-in over a period of four years of direct lending. He wanted to do this to meet the Labor Committee's reconciliation target, but he ran into difficulties because of the enormous lobbying power of the guarantee agencies in the states and the banks.

This is a funny story. When I arrived, day one was the markup, and it was like I was on Mars. I had no clue what was going on, and I was following some person around, trying desperately to figure out which end was up. In the next couple of weeks, there was a series of occasions as we led up to trying to get a bill through the committee. I immersed myself, and I wrote a detailed memo on why direct lending was so much better to begin with, how it saved us money, how we could handle the phase-in, et cetera. Then Nick Littlefield, who was chief of staff of the Labor Committee, whom I worked for, said, "Good, let's go show this memo to the Senator." We had already sent it to Carey Parker and to the Senator.

We go in to the Senator's office, and the first thing the Senator does was very ceremoniously offer me the big wing chair that looked lived-in enough that I was smart enough to figure out that this was the oldest trick in the book, to get me to sit in his chair and be embarrassed while the rest of the staff looked on. So I didn't do that. Then he sits down, and there's Carey Parker, Nick Littlefield, probably Paul Donovan, who was chief of staff, because this was a big issue, and it was our only way to play in reconciliation, and all of a sudden this new little staffer is in charge of it, and I'm clueless.

The Senator says, "So Clayton, I've read this memo on direct lending. It's a good memo. Did they teach you how to write like this in Yale Law School?" I'm kind of preening, and I say, "Well, yes," and he says, "Well, this is great. I see you have the phase-in figured out; you have the budget savings figured out. How many votes do you have for this?" I say, "Votes?" and he says, "Yes, votes. Has anybody told you that you're working in the United States Senate and that you need 51 votes to get legislation passed? But you need more than 60 to keep it from being a filibuster, and before you even get there, you need to get it out of committee."

I'm sitting there gulping and he says, "Why don't you take a little stroll with me?" He didn't tell me where we were going. We walked down the hall a little way, and I see the nameplate on the door for Senator [James] Jeffords, who was the swing vote on our committee. He was still a Republican then, but a moderate Republican. Nancy Kassebaum was ranking, and Jim Jeffords was behind her, and if we could get Jim Jeffords, that was one step of the way toward building the majority we needed to get it out of the committee.

We walk into Senator Jeffords's office, and the Senator comes out, and Senator Kennedy says, "Jim, I'd like to introduce you to my new education staffer, Clayton Spencer. She thinks it would be great if we could go right to direct lending over the next four years, get there at 100 percent in four years. What do you think?" Jeffords says, "Well, I'm not getting a lot of enthusiasm on my side of the aisle for that." The Senator says, "I figured that." We turn around and he says, "OK, in about two weeks we'll have the votes we need to get it out of committee, but we may have to reduce those percentages a little bit." So that was my first lesson in vote counting.

Heininger: So you eventually get the direct lending through.

Spencer: The phase-in, yes.

Heininger: The phase-in through, and the default rates have already been dealt with. What other big issues happened in higher education? I know the reauthorization doesn't come until after [Newton] Gingrich is in.

Spencer: That's right.

Heininger: Under Clinton, was there anything else that he was trying to accomplish?

Spencer: For the rest of his education agenda, direct lending was one of the biggies. National service was big, which was handled by a guy named Tom Sander. The third big thing was Goals 2000, and that was handled by my colleague Ellen Guiney. The next big thing that happened was the Republican takeover of Congress and what we began to do in education then.

Heininger: And you stayed.

Spencer: Yes.

Heininger: At that point, there wasn't a role for Ellen because the K–12 was through, and they had to cut the committee staff.

Spencer: Yes. Before the 1994 election, the staff split was two-thirds majority and one-third minority. We were going to a situation where that was almost reversed, not quite. We expected to lose almost half of our staff. Ellen and I were sort of paired as the education people, and we are very close colleagues and good friends. She was K–12, and I was higher education. She was actively looking to come back to Boston anyway and to run the Boston Plan for Excellence, a K–12 reform organization. She ended up staying for a while after the election, and I ended up recruiting Danica Petroshius as a detailee from the Department of Education. Danica ultimately became the head of the whole education office. I didn't want to have to do higher education and K–12 all by myself, if you will, and so Danica came and did that. In the early days, Ellen and I were both there, but the immediate challenge when the Republicans took over the Senate and Congress was to figure out how to use Clinton's interest in education politically, because we had lost the legislative agenda, if you will, and it was all about Newt Gingrich and budget cutting.

I remember that Kennedy was running in '94 against [Mitt] Romney. Congress had dragged out late into that fall. Kennedy was down 20 points to Romney in the polls, as I recall, but he was stuck in Washington. It was getting closer and closer to the election. He was pretty far down, and it was clear that the A-team had come up, kicked in, and very quickly turned it around. We all took vacation because there's a clear wall between being a staffer on the Hill and working for a campaign. We took vacation days to come up to Massachusetts for the last several days to participate in "get the vote out" efforts, and Ellen and I went to Worcester and called the dedicated voters.

I remember being in a union hall in Worcester, calling people to get them to the polls. I remember calling somebody and saying that I was calling on behalf of Senator Kennedy. They

said, “Oh, yes, is that Ted? Now, after Ted do we get Joe [Kennedy II]?” I remember calling all these people, and they were all incredibly warm and enthusiastic, and I turned to one of my colleagues and I said, “Everybody here is for Senator Kennedy. It’s just amazing.” They said, “Clayton, you’re calling the A list to get them to the polls.” This was my political naiveté.

There was a big celebration in the Park Plaza Hotel that night, and we were all up in somebody’s suite together. Michael Iskowitz, who was in charge of poverty and who was a very vivid political character, had everybody in his office. We were all watching the returns and watching all the states go red, realizing that we were losing Congress. I remember that we went to Kennedy headquarters the next day to celebrate and to have the Senator thank everybody for their work, et cetera. Carol Channing was doing a show in Boston, and she came by and did her rendition of [*singing*], “Hello, Teddy. Well, hello, Teddy. It’s so nice to have you back where you belong.” [*laughter*]

Heininger: Oh, that’s wonderful.

Spencer: That was great. Then I remember Nick saying, before we even left Boston to go back to Washington, “I want a memo from all of you on what you’re going to do strategy-wise.” So Ellen and I began thinking and talking, and it became clear to me that on the higher education front, if Gingrich was trying to balance the budget, we wanted to make sure that we had the high ground in terms of attacking the Republicans on any cuts to student aid, figuring that students are untouchable. I got back to Washington and I remember calling, I think his name was Frank Holleman, who was Secretary of Education [Richard] Riley’s chief of staff. I had worked with Frank and Deputy Secretary Mike Smith. I called Frank and I said, “Can you please take anything out of Clinton’s budget that cuts student aid, because I want us to have clean hands to go after Gingrich and the cuts on student aid.”

What began then was a pattern, where basically Gingrich and then [Robert] Dole, the majority leader in the Senate, came in saying that they were going to cut the discretionary budget by a third. The Pell Grant program was a discretionary program, a very popular program; anything in student aid except loans was discretionary; Head Start was discretionary—all of these sacred cows. Gingrich didn’t say that he was going to cut Head Start and Pell Grants, but he didn’t say he wasn’t.

I began, almost right away, writing out each of those programs on a piece of paper, and I described what a one-third cut would mean financially, what a one-third cut would mean in the number of students who would be hurt. We began a movement that was picked up by NAICU, the National Association of Independent Colleges and Universities, which was called “not one dime”—e.g., not one dime from student aid. They picked it up. There was a series of hearings. I remember Senator Kennedy asking me to bus students in from Massachusetts. They would come to the hearing and vote with their feet.

So we began what was, as I recall—it felt like the last two-and-a-half years there was one battering ram after another, trying to protect education from cuts. We’re sitting in my office, and on my wall is the battle to protect education funding. We came up with this graphic, and I’ve been ridiculed for this graphic. We showed the apple of education having been gnawed into by the Republican budget, and then how we managed to get a certain amount put back, then a

certain amount put back again by fighting for budget restorations, then getting almost the whole apple back, and then having the Republicans come back with their budget.

Heininger: To do it again.

Spencer: This graphic, which shows this series of apples, was regarded as a way-too-complicated graphic for TV, but it was the best that I, being a nonvisual person, could do. This became a totem object. Minority Leader [Thomas] Daschle's office would call me and say, "Can we have the apple chart?" Every time the Dems would be down on the floor, they wanted the apple chart as they talked about budget cuts. That's the main thing I remember from that era.

Heininger: How did Kennedy differ from Gingrich in terms of his approach to education at this point? Was he trying to make sure that this would be a public issue, that Gingrich would not be able to go after education funding? Up until this time, education had not been a particularly national, federal issue.

Spencer: Right. I would say that Clinton had successfully done the sleight of hand to take education, which was a broad, public issue, and make it a federal issue, partly through what I see as a broader trend in American politics, which is the decline of the institutional notion of: What particular piece of policy do the states have versus the feds? It had become more of: "This is on TV. It's a matter of public concern. We're not going to spend a lot of time distinguishing who does what." Abortion would be a classic example of that. Since when should Congress be fooling with a lot of these issues that have been made part of the national agenda? So Clinton had put education on the national agenda. Senator Kennedy had delivered, soup to nuts, Clinton's education agenda. There were six bills that he delivered in the first two years.

When Gingrich came in, they had already abandoned the idea of attacking the Department of Education, because one of the big achievements of the Democrats had been to create a strong Department of Education and to make sure it had a seat at the table. It had been a Republican position all through the Reagan years that there shouldn't be a Department of Education because we shouldn't federalize education. But Gingrich was all about balancing the budget. Kennedy knew that if he put the faces of students and the future of students right out front as a public issue, then the Republicans couldn't get away with cutting education.

In the early years of the Reagan administration, there had been very deep cuts in education—Pell Grants and everything else—and it was not a national issue in the same way. Kennedy took advantage of the fact that education had become a national issue, and he basically made it untouchable, and he made it an issue that the Democrats started to own under Clinton and kept owning even under the Republican administration. We succeeded over the two years, from 1996 to 1997, in restoring almost all of the cuts that the Republicans wanted to make in education. Thereafter, [George W.] Bush came in and did No Child Left Behind—a huge irony because all of a sudden the guys who were all about local control—the mantra for the Republicans had been "local control"—their No Child Left Behind, under the Republican administration, became the biggest federalization of education we've had in K–12.

The Democratic Policy Committee—which is the issues committee in the Senate that works under the majority leader, who was Daschle, who then became the minority leader—my staff and

I generated materials for them in education. And we had—because health care had failed under Clinton to get off the ground—the hottest issue against the Gingrich/Dole team, so it was a fascinating time. Senator Kennedy loved it. I mean, he would go after it. Other issues were the minimum wage, poverty wages, and home alone.

Basically Senator Kennedy had certain issues that he was pounding away on relentlessly. What I admired incredibly and learned from him was that he approached his role now as ranking member of the Labor Committee, and as one of the leaders of the Dems in the Senate in the minority, with as much zeal as he had approached his chairman role. He was not off licking his wounds or sulking because he had lost his chairmanship. It was just a reason to fight harder. It was amazing to watch.

Heininger: What was it like to work for him?

Spencer: It was great. I had always heard that Kennedy had good staff, so I thought, *Oh, I'm one of those good staff.* But what I learned from him was the difference between being the principal and being the staff—and the value he added. There was never a time I was with the Senator that he wasn't taking whatever I gave him and putting it into his own framework and own calculus that added value. My view of Senator Kennedy is like, aren't we thankful that Michelangelo didn't go to law school? The deal is, you want Michelangelo to paint the Sistine Chapel. Senator Kennedy was meant to be a politician. He gets up every day and approaches his Senate job with a relentlessness and idealism that is incredible. But he's also very funny and very thoughtful.

Since I've been off his staff, which is now more than ten years, every time I've gotten a promotion or something at Harvard, he writes a personal note to me. He also writes a note to my boss, Neil Rudenstine or Larry Summers, and says, "Clayton is A plus" or something—I mean, incredible personal touch. I noticed that when Larry Summers, at Harvard, when his presidency was in severe trouble and it was clear that the end was near, Senator Kennedy was on the phone, on the morning that it came out that Larry would resign, to say, "Larry, I've been through some tough times—" So at the personal level, he was always like that.

Another example of the difference between being staff and being Senator: There was a big education bill—I don't remember which one it was—and one of Senator Kennedy's things was, "Make all of the amendments go away," so that when he's managing the bill on the floor, there aren't a bunch of random amendments fouling up the votes, slowing it down, and giving you a lot of stuff that you don't want in the bill. The deal was to negotiate and to get language in the bill that was acceptable to both sides, and then to make the process on the floor smooth, rather than having contentious amendments on the floor that created difficult votes.

This was late in the game. The Republicans were in control of Congress, I think it was. It may have been while we were still in control, but Senator [Slade] Gorton, from Washington, had a bill on school violence, and school violence was a big thing. He had written an amendment with language that was overly broad that basically said, "If a little boy is twitchy in his seat, you can bounce him out." That's how it read at its worst. I had written the Senator a memo, a briefing book, the night before we were going to manage the bill, so I guess we must have still been in the majority. I wrote him a memorandum on the bill that said, "The deal is, Senator, we've negotiated away all of the amendments except two." One was something I don't remember, and

the other was the amendment on school violence by Senator Gorton. I wrote, "You have to stand up and oppose this because it's very over broad and would be very destructive."

So I go home that night, and the Senator calls me after an event he had, probably between 10:00 and 11:00 that night, and he says, "Clayton, have you written me the speech yet that's in favor of school violence and that opposes the position against school violence?" I said, "Well, no." He said, "So how am I supposed to get up on the floor and attack Senator Gorton's amendment? Because that's going to be the debate." I said, "Oh, OK." He said, "Just meet me here at 8:00 a.m." So, bright and early, I go meet him on the Senate floor, and there's Senator Gorton, waiting to pounce with his school-violence amendment. The Senator walks me over to Senator Gorton and he says, "Slade, this is my education staffer, Clayton Spencer, and she's dying to talk to you about your amendment. I hope you guys will come back to me when you have it all worked out." So I spent a day in the Republican cloakroom trying to get an agreement on this amendment, which I ultimately did.

Heininger: A classic case of how Kennedy operates.

Spencer: Yes.

Heininger: Well, this has been wonderful. I know you have to go.

Spencer: I apologize.

Heininger: That's not a problem. Thank you.