



## **EDWARD M. KENNEDY ORAL HISTORY PROJECT**

### **FINAL EDITED TRANSCRIPT**

### **INTERVIEW WITH BIRCH BAYH**

September 10, 2009  
Washington, D.C.

**Interviewer**  
*University of Virginia*  
Janet Heininger

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### INTERVIEW WITH BIRCH BAYH

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**Heininger:** This is an interview with Senator Birch Bayh on September 10, 2009. Why don't we start at the beginning; tell me when you first met [Edward M.] Kennedy and what your first impressions of him were.

**Bayh:** Of course Ted and I were elected on the same day. He was elected to fill the unexpired term of his brother, so he had to run again in two years. I guess upon first meeting him, him being a Kennedy, I felt a degree of—maybe inferiority is not the right word, but I felt that I'd have to labor to keep up with anybody who bore the Kennedy name, and I didn't know exactly what to expect.

Here was a young man who had been born with a silver spoon in his mouth, and if one looks at his life, I think he did more to help people who couldn't help themselves than anybody I know, and coming from his status in life, I think there are a lot of folks who couldn't accomplish that. I was taken aback. I was impressed with his friendliness. There were no airs. He quickly ingratiated himself with a lot of the older members, as well as some of us newcomers—we had a big new class there in '62—because he was just one of the boys, one of the guys. He didn't want special favors and he worked as hard or harder than anybody else.

**Heininger:** So you came in with a view of him as here he was, very young, just barely 30, silver-spoon guy. Did your impression of him change fairly quickly, or did it grow over time?

**Bayh:** I really didn't have a chance to develop a negative impression. What I saw was what I got, as far as a colleague and a friend, and I came to cherish that. Our friendship grew stronger because of the fact that we shared common values as to what the process ought to accomplish. It was good to work with him as a partner and colleague, to try to right some of the unfortunate, unfinished business that had been left unattended.

**Heininger:** What was that group in 1962 like?

**Bayh:** Well, I think all of us Democrats were reading from the same page, from the same Bible, so to speak, as far as feeling that we had a responsibility to make government respond to the needs of the people and to deal with some of the unfinished business that kept it possible for all of our citizens to share equal values in our democratic system. I like to think that because we were all committed to that, we made a difference in that body. The first thing that comes to mind that one tends to overlook because it didn't get a whole lot of press, but I think our votes made it possible to pass the Medicare legislation. It had been impossible; they tried once before and

didn't get it done. We brought enough extra votes, and Ted's, mine, [Daniel] Inouye's and others, made it possible now to have something that's lasted a long, long time.

Of course all the civil rights legislation. I like to feel that the '64 Civil Rights Act and the Voting Rights Act of '65 were probably one of the final chapters of the Emancipation Proclamation, because there we had, well, 100 years of unfinished business, lip service. It wasn't being followed in many areas of the country, and not all of those were in the South. Some of us up North liked to look down our nose and think that all this discrimination was going on in the South. I wasn't aware of it going on in my home state, but once I got elected and began to know my state better, I found out that there was a lot of second-class citizenship observed in my state and in other states in the North, that we could hardly look down our nose at anybody else. We needed to clean up our own dirty laundry.

**Heininger:** Do you think when busing became such an issue—my sense was that this is when it became abundantly clear to people in the North that the problem was in their own backyards, not just over there down South. Did you find that it exacerbated the problems in Indiana?

**Bayh:** Well, it created a tremendous political problem for me, I think, because I felt that we needed to deal with the fact that our schools were, from a practical perspective, segregated. The Supreme Court had said separate isn't equal, but there was a lot of inequality going on, perhaps some of it intentionally, but probably a lot of it was because of a historical precedent that was followed, that people were—many of them tended to be comfortable with.

The first busing order was handed down by Judge [S.] Hugh Dillin in Indianapolis, and my office was picketed by people who didn't want their children bused. Some of them didn't want them bused because they didn't want them to go to school with blacks. But I like to think in my state, most all of the opposition was the inconvenience that followed the busing order, which according to Dillin's order would have equal busing of blacks and whites into the other school districts. In a way, you could see people's minds. They would buy a house because they were close to a good school, having nothing to do with whether there were blacks or not. Most of those schools had some black children in them, but not a whole lot, and so having made that investment in a home and then suddenly finding you didn't have a neighborhood school anymore—it was a half an hour bus ride away—that caused a real hailstorm.

Having grown up in Fayette Township in Vigo County, Indiana, over on the Illinois line, we didn't discriminate against blacks at all in our township because we didn't have any there. I rode a bus for 45 minutes and it didn't hurt me a bit, and so the busing as a vehicle of getting children to a place where they had a good school—I had no problem with that. From a practical perspective, I think it was only made politically viable when we were able to get one-way busing instead of two-way busing. I don't think that very many parents were upset about having their children have to go with boys and girls who were a different color. I think most of them had long gotten past that. Now maybe their parents or even their grandparents would have looked askance at that, but I don't think most of them did. It was just the inconvenience, the fact that in reality, those black schools were inferior.

**Heininger:** They were.

**Bayh:** You could argue that the only way they were going to become equal is to have white students in them, but that would take a long time. And so when we were able to—I think the final resolve was that the black students were bused into white areas. That was a real

inconvenience to black parents, who were comfortable with being able to have close access. They no longer had neighborhood schools. But I think they were able to trade that inconvenience off against the fact that they knew their children would have a better chance of getting a good education.

**Heininger:** Because the two-way busing didn't really deal with the fundamental issue that in many ways it was economic segregation that was much of the problem, that the areas where you had large concentrations of blacks tended to be lower economic status.

**Bayh:** And thus the facilities were very inferior.

**Heininger:** And the facilities, therefore, were that much more inferior.

**Bayh:** Yes. The tax base of course, in most school—

**Heininger:** The tax base was lower, yes.

**Bayh:** —districts was directly related to the tax around the school. A tax base out in a north-central high school was a strong tax base and could afford to have good schools, black or white or purple, and so I think you're absolutely right. The economics of it was an important factor as far as the quality of schools were concerned.

**Heininger:** What happened to Kennedy's experience with busing?

**Bayh:** Well, one of the most controversial busings was the busing in South Boston. I have to confess I don't know how Ted dealt with that. I'm confident he did, but I don't remember how it was.

**Heininger:** You said your office was picketed. He was heckled. He had crowds chasing him.

**Bayh:** I don't know what he did with it, but I determined I couldn't run from it and my staff thought I lost my capacity to think when I said, "OK, next Monday morning get me access to the convention center, and at 8:30 I'll be there and anybody who wants to come can come." We started at 8:30 and we finished at 2:00 a.m. in the morning, and every question asked was answered. I required that they write them down so that we'd have some ability to follow them in the order in which they were asked. I remember almost all the audience initially was white. They were very upset at first, and they may have been upset when they left, but we got the bile out of the system, because they had a chance to be heard and somebody was listening. This was not perfunctory on my part. I wanted to hear what they had to say and I had a good deal of sympathy with some of the things they had to say.

I remember I had one of the members of my staff taking these questions and putting questions at the bottom of a list and then asking them and I would answer them. About an hour into it this belligerent fellow in the front row jumped up and said, "She didn't put that question at the bottom of the pile in the right order." I said, "Come up here." And he said, "What do you mean?" I said, "Come up here." He got on the stage and he came down to where she was standing and I said, "Now, you're in charge of questions. You keep the order."

**Heininger:** Wow.

**Bayh:** About midnight, this guy said, "You know, I think the Senator was honestly trying to help us here." *[laughter]* That's a little theatrics there, but once in a while it was necessary.

**Heininger:** Theatrics go a long way in defusing people's anger.

**Bayh:** Later on, at 4:30, 5:00, slowly but surely, part of the auditorium was filled with minority citizens, as they got off work. The audiences never commingled, but I was proud of them. There was no hostility back and forth. Even when the questions were asked, there was no hissing or booing. Nobody said, "You're a liar," like they did last night about the President. So I was very proud of my constituents, and hopefully we helped ease some of their pain and suffering.

**Heininger:** We're jumping ahead another decade, in the early '70s, but that group of liberals, which was probably even larger than when you came in in '62, all must have been struggling with this same issue of busing, of knowing what they believed was the right thing to do but probably taking a lot of constituent pressure. Did you ever talk about it as a group? Did you talk about it with each other, about what your experiences were? Did you find people defecting in their votes?

**Bayh:** I don't think anybody defected in their votes, but I think collectively we tried to find resolutions to the problem that would accomplish the purpose with the least pain and suffering. Some of the initial legislation was amended, and I remember coming over and asking my staff person when we had a vote, "What do we have this time?" Because there were various efforts, some of them just to scuttle the effort altogether and some of them ignoring the problem on the other hand, but I think most of us were determined. Look, we had a problem and we ought to be able to put into law a way of dealing with this, and requirements that don't vitiate the authority of the courts, take away authority from them, and get the problem solved.

**Heininger:** There were a lot of attacks on the court's authority to order busing.

**Bayh:** Obviously, as Chairman of the Constitutional Amendment Subcommittee, I had to deal with a number of very conservative amendments. I found that when I got the chairmanship of that committee, the committee was a gravesite.

**Heininger:** Or graveyard for—

**Bayh:** A graveyard for whenever there was an unfavorable—whether it was busing, or prayer, or abortion. Good Lord, the abortion one was probably even tougher than busing, and I had to sit there and keep a lid on. I just wasn't going to kowtow. People want to elect federal judges, limit their terms, some of those things that would have done serious damage to the Constitution that we all loved. I found myself the keeper of the graveyard. I think most all of the members were glad there was somebody willing to sit there and take heat for that. They didn't want it out on the floor where they'd all have to vote on it.

**Heininger:** Well, it's kind of like having to chair the D.C. Committee too.

**Bayh:** Right.

**Heininger:** Which nobody wants to have to do, but somebody has to do it. Well, you worked with Kennedy on a couple of things that had to do with your subcommittee. Why don't we talk a little bit about lowering the voting age?

**Bayh:** Surely.

**Heininger:** Something for which someone who turned 18 in that period was very grateful.

**Bayh:** Yes. I was fortunate enough to be there and be able to author the 25th Amendment, which dealt with succession and disability, and then shortly thereafter I introduced a Constitutional amendment, which lowered the voting age. Ted had legislation to lower the voting age by statute,

which I supported, but my concern, which I said to him personally and to his staff and on the floor, was that I was afraid this wouldn't hold Constitutional muster. Sure enough, later on, by an eight-to-zero vote, the Court ruled that they could only apply by statute, legislation at the federal level, totally ignoring a lot of the most serious discrimination going on at the state level.

**Heininger:** In the state elections.

**Bayh:** I think the two went hand in hand, and I think we would not have accomplished what we really wanted to accomplish if it had just been a statute, but getting it done that way was a step in the right direction and I was glad we could work together on it.

**Heininger:** Did he come around to your view that a Constitutional amendment was really the only way to go to tackle the entire problem?

**Bayh:** We had both, of course. He supported our efforts to amend the Constitution. One thing we were able to do was that we had one young fellow particularly who took the responsibility of organizing the state legislatures, so lowering the voting age was—

**Heininger:** A very necessary step.

**Bayh:** I think the Voting Rights Amendment was ratified more quickly than any other. Maybe that's still the case.

**Heininger:** Yes.

**Bayh:** Because we were ready, as soon as it got the necessary two-thirds vote, we got the state legislatures lined up in very quick order.

**Heininger:** Why do you think it went through so quickly? Was it because of Vietnam or was it because the timing was right and people bought the argument that if you're old enough to go to war, you should be old enough to vote for the politicians, or was it just plain the right time to do it, which is a lead-in to the next question, which is ERA [Equal Rights Amendment].

**Bayh:** Well, in my judgment it was the right time to do it, but I think the equity of and the common-sense argument that it's not fair to ask young men—it was mostly young men at that time—to give their lives or risk their lives in a battle when they're too young to have a vote for the people who sent them there. I like to think—see, in my state legislature, I tried to lower the voting age in Indiana, and we were unsuccessful. I tried to get the state constitution changed and was unsuccessful, so I had some feeling for what it was like to try at the state level and to fail. So I was very happy to be able to do that.

**Heininger:** Which leads into well, that one went through quickly, but ERA never did. Why was it not possible, and again, Kennedy did not support the initial effort to do it via Constitutional amendment. He opposed doing that initially. He came around to it. Why couldn't it get through?

**Bayh:** I was in a position of not only wanting to but it being necessary to support equality for women, because I married a 19-year-old wheat farmer's daughter who had done everything you could possibly imagine to qualify her to go to any school in the United States. Her dream was to go to the University of Virginia and her application was returned, "Women need not apply."

**Heininger:** Yes, until about 1980.

**Bayh:** So Birch Bayh voted for equal pay for equal work in the state legislature when I was Speaker. That's the only vote I cast, in '79. And so I was glad to be able to deal with this. I had

no idea of the degree of discrimination that existed against women. I was familiar with the discrimination in the educational process, but it was only when we started holding hearings on the Equal Rights Amendment on equal pay for equal work, equal access to inheriting property, some other prohibitions that imposed restrictions on access to the job market or to the production line, that are directly related to keeping the women out, even criminal penalties. In some states they were penalizing women more severely than they were men for committing exactly the same crime. Why? Women shouldn't do that kind of thing. Well, that's ridiculous, but that's why I thought it was important to have something that wiped the slate clean of these discriminatory factors.

We were able to ultimately get it passed in both the House and the Senate, and then we came back again when we hadn't been able to get it ratified and extended for seven years. The limitation, I think, is irrelevant, because the Court had ruled previously that the Constitution doesn't say you can limit the time for ratification. So I think it's out there right now. If we could get three more states, it would be the law of the land. But I think a lot of the discrimination has been taken care of because of the awakening of the women's movement throughout the country, in every state, and state legislators in I think all the states now have made great progress. I don't know that they've done away with all of it, but most, if not all, the discrimination against women has been taken care of because it's particularly dangerous not to.

**Heininger:** On the books at least.

**Bayh:** Yes. It's a step in the right direction. And still, in the marketplace—I think while having gone through this after I left the Senate, in establishing my own law firm and then the Clarence Thomas experience of Anita Hill being discriminated against, and the gall of this man saying it was a black lynching, when she was the same color as he was. That was a period of time in which I was not easy to deal with, because I had a knot in the pit of my stomach. I wish I could have been there to do with him what we were able to do with [Clement F.] Haynsworth and [George Harrold] Carswell.

**Heininger:** What did you think of Kennedy's performance at that hearing? This was hardly what he did on Haynsworth and Carswell.

**Bayh:** I sat there and I yearned for somebody to take the guy on. Nobody did. Howell Heflin came as close as anybody did, and I thought he was going there, but he didn't. I think the reason that Ted and some of the others were not more vigorous is that they didn't want to look as if they were against a black person, that what they had done over lunch, to bring up this "black lynching," that made some people hesitant to do what they normally would like to have done.

**Heininger:** Do you think his personal life kept him from talking?

**Bayh:** I have no opinion on that. I don't know how it would. No, I don't think, because he wasn't alone. Other people on the committee didn't do what they should have done. I feel hesitant to judge the conduct of my former colleagues when I'm no longer there, but I tell you, I yearned to—that's probably the only time—

**Heininger:** You wished you were still there.

**Bayh:** —before or since, that I wished I were back in the Senate, because I like to think I wouldn't have let that son of a gun get on the bench. I think he, to this very day, is a blight on the Court.

**Heininger:** You worked with Kennedy to stop two other ones who some would argue could have been a blight on the Court too. Why don't you tell me about Carswell and Haynsworth?

**Bayh:** Before we leave the Equal Rights Amendment, maybe we ought to say how did Title IX come to pass.

**Heininger:** Yes, and how much did Kennedy have to do with it.

**Bayh:** He certainly was a strong supporter of it. We were having problems getting the Equal Rights Amendment out of Judiciary Committee. In fact, the very day that Chairman [James O.] Eastland had said, "OK, I'll let you chair this committee meeting at 2:30 in the afternoon and we'll get that women's thing out of our hair"—that very day, before we went up to pass out the Equal Rights Amendment, we decided to take the educational component and attach it to the Higher Education Bill as Title IX, and we ruled down on the point of order. I can tell you the ridiculous nature, saying that because sex wasn't in the language of the bill then it wasn't omnipresent and something that needed to be taken care of in the higher education. So we were able to come back later and get it taken care of, and it now is Title IX.

**Heininger:** Did you have any sense of the impact that this was going to have? I'm assuming you did, because it was the right thing to do.

**Bayh:** It was the right thing to do. My judgment was, as we held here—see, I don't think the impact of discrimination was apparent to any of us until we held the hearings on the Equal Rights Amendment. And of all of the discrimination that existed, it seemed to me the most hideous, the most damaging, was the way we discriminated against women to keep them from getting a good education. Give them a good education and then they'll have a chance to do a lot to remedy their own problems and to gain what they want for themselves and their families. So to me, why would you take one section out instead of others? Well, here was a target of opportunity. This Higher Education Bill was coming down. One of the very important members of my staff said, "Look, why don't we do this?" I said, "Let's go ahead and do it." We came back, of course the following year and made sure that it was germane, and it now is Title IX.

The answer to your question is no. I don't think anybody realized the impact it would have, and I thought from the beginning—I mean, nobody even thought about sports. To me, this was an effort to get education academically for young women. I thought the big advantage, perhaps the only advantage, because I wasn't going to think about sports at the time, even though my father had coached four sports at Indiana State and I was active in sports myself. So the thing that's happened now is that women's equality in athletics is a very visible sign, but I still think that's the tip of the iceberg as far as the value of Title IX. I think the real value still is academic.

**Heininger:** But one problem is that it's really easy to rectify on the sports end because you're talking about money. When it gets to things like tenure decisions, those are subjective. You can deny people tenure and you can deny women tenure for subjective reasons that can't be challenged in the way that, "*Hello?* You have all this money in the football program and you have nothing in women's sports." That's an inequality that is apparent and visible because it's money. Tenure is different.

**Bayh:** We're still spending \$2 for men's sports for every \$1 for women's sports.

**Heininger:** Yes, that still exists.

**Bayh:** The football program is the elephant in the room. What you do about that I don't know.



**Heininger:** And women's sports don't make the money that men's sports do.

**Bayh:** But that's a bill that may come. You look at what the University of Connecticut has done. They decided, *OK, we're going to give them the publicity, we're going to fill the hall*, and they did.

**Heininger:** Yes, they did.

**Bayh:** And they continued to win championships and to fill up the arenas, and so was Purdue. When our women's team won the national championship, Mackey Arena was being filled.

**Heininger:** Tennessee has done the same thing with basketball.

**Bayh:** Yes. And I think the same thing could be done elsewhere. I'm not sure where we were on the question. Forgive me.

**Heininger:** Well, let's go back to Carswell and Haynsworth, because—

**Bayh:** Haynsworth and Carswell, yes. [*chuckles*]

**Heininger:** It started with Haynsworth. Why was it possible to stop these two? What was Kennedy's role in it, what was his staff's role in it, and did you think they could be stopped?

**Bayh:** I know exactly how it started. I had Lester David, my former administrative assistant, and my recollection was the same. I had been blessed by having strong support from organized labor, and of course the major problem they had with Haynsworth, although they didn't vote the way they would have liked for him to have voted on the racial matters, but the thing that they were concerned about was the fact that he voted against the right of the textile workers to bargain against the textile industry, and that at the time was probably the hottest labor management issue there was. Twice he voted against them, and later on, after all this came to pass, the Supreme Court overturned his decisions from the 4th Circuit.

My wife and son and I had been—we toured Russia and we were coming out and I'd been putting off what to be done. We had a situation here where we had—our normal leader was Phil Hart, and we all recognized him as the leader of the liberal bloc. He didn't want to do it because he was running for reelection, and Bob Griffin, his junior colleague, had taken on and gotten Abe Fortas kicked off the Court, and he didn't want to look like he was getting his pound of flesh.

**Heininger:** Right.

**Bayh:** Ted had that unfortunate experience in Chappaquiddick, so he didn't. So we're going down the seniority, and who is number three? Little old Birch here. And so they were turning to me. I was not at all comfortable with getting involved with something like that. I remember getting a call as we were coming out of Russia. We stopped at the Brown Hotel. I'm just having my memory refreshed this noon. In the middle of the night I got a call from Bob Keefe, my administrative assistant. He said, "These labor people have really been pushing. We've got to give them an answer. They want you to ask some questions." And I said, "Tell them I'll ask the questions, but also tell them that my strong feeling is that in a situation like this, there's a strong preference for supporting the President." There hadn't been any challenge made for a number of years, since the case in West Virginia.

**Heininger:** The '30s.

**Bayh:** And I did. I started asking the questions, and it was apparent that—well, first of all, we had some good staff work. I had some very great staff people who found out some things that had happened behind the scenes and we let members of the press know about it, and they ran with the ball. They did an amazing job of dealing with some of the problems that he had. He had major conflicts of interest. His family had a major Vend-A-Matic Company that did millions of dollars of business, I don't know how many, but the company did business only with the textile industry. His wife was on the board, I think maybe he was on the board, and she was a secretary of this company, and yet he voted to support industry instead of recusing himself.

**Heininger:** That's a problem.

**Bayh:** And we found there were other examples. He owned stock in the Greenville Bank—one of my interns discovered that—and then we also discovered that he owned stock in Grace Van Lines, and he voted against a seaman who had been scalded in one of the boiler rooms. So we found these conflicts of interest, and it was rather clear that he had been a fairly decent judge on the 4th Circuit. You can't say that—

**Heininger:** He wasn't incompetent.

**Bayh:** No, he wasn't incompetent at all. This was before one's philosophy really became an issue, like it became in the [Robert] Bork nomination and has since then. So I did what I said I would do. Armed with these issues, I started asking questions. One of our folks found the *Commonwealth Coating* case, where in a nine-to-zero vote, the Court had ruled that a judge has the responsibility of recusing himself for a much lower conflict than Judge Haynsworth had.

**Heininger:** That he had not recused himself, yes.

**Bayh:** But the conflict was significantly less than the amount that he had involved in the conflict. I remember I never thought I'd ever be involved in something like this. Here you had the fellow's father and mother and his children sitting there, and this Senator from Indiana is inferring that their loved one is not qualified to serve on the Supreme Court of the United States. I confess that I was trying to find the way in which he would maybe be able to escape his dilemma, and I remember asking him, "Judge Haynsworth, I can speak for myself, but I think most of us who serve in the Senate have, a time or two, maybe even more in our lives, made mistakes, and we've recognized those mistakes and tried not to make them again. I would assume that with all respect, I'm sure that judges are not perfect and maybe that happens. Now that we have this Supreme Court case that shows that a conflict in your nature should have caused you to recuse yourself, would you change your vote if this matter comes before you again? Would you recuse yourself on other subsequent matters, as *Commonwealth Coating* said?"

He got indignant and said, "I've done no wrong." I came at it a second time, maybe a third time. I said, "In other words, if you're on the Supreme Court and next time there's an issue, it's going to be eight-to-one instead of nine-to-zero?" "I haven't done anything." He just got indignant and I thought, *OK, we're going to get you*, and we were able to. The question of a conflict got a lot of notoriety. For instance, the press ran with this, and we were able to get I think 55 votes against him.

**Heininger:** How active was Kennedy on it?

**Bayh:** He strongly supported everything we were doing. I just happened to have been in the catbird seat because of default. [laughs] Ted's problem with Chappaquiddick didn't keep him

from actively voting and supporting us in the committee and trying to get the committee to do what we couldn't get them to do because of the southerners and the conservatives and the Republicans.

**Heininger:** Did he have his staff work on it too?

**Bayh:** Yes. Jim Flug on his staff worked on it. I noticed in the papers—I don't have the recollection of Jim playing the role that apparently he has said that he played. I don't want to dispute his contribution to Ted, but as far as the deliberative process, I don't recall him having a significant impact. He did what any staff person would do, and that is to advise his Senator as mine advised me. Now we'll move on to Carswell.

**Heininger:** Yes. Haynsworth goes down. [Richard M.] Nixon at this point decides, *Fine, I'll send you someone even worse.*

**Bayh:** I asked myself how could this happen.

**Heininger:** This doesn't make any sense to me, but I suppose this is Nixon.

**Bayh:** I can't know what was in his mind, but obviously he was very angry. I could hear him saying, "John Mitchell, find me a Goddamned candidate who doesn't have any stock." Well, almost by definition, if a lawyer doesn't have some stock, maybe he's not a successful lawyer. And so they came up with Carswell, who in my judgment was not worthy of carrying Clement Haynsworth's briefcase.

**Heininger:** For whom, shall we say, competence was an issue.

**Bayh:** Yes, indeed.

**Heininger:** But it's a very bruising process, to think about taking on another one.

**Bayh:** I have to tell you, I looked for a place to hide, but there was no one else there, and I thought maybe one Horatio Alger battle is enough, but here it came. I have a good recollection of how this all happened, because I had been sort of commissioned to lead the charge here. I got together in my office all of the groups. The interest groups were involved, the labor people and Jewish people and the minority group. I don't know whether Jim was in that meeting or not. I don't think so, because I remember going around the room and saying, "What do you think?" Now, we knew then that Carswell, as a young 25-year-old, when he was running for the state legislature in Georgia, had said, "I yield to no man in my belief in white supremacy." We knew that, but was that enough?

**Heininger:** It's pretty damning.

**Bayh:** Well, but you know—

**Heininger:** But we all say things in our youth.

**Bayh:** I tell you, everybody was exhausted fighting the Haynsworth thing. There was no stomach left for another battle. And as we went around the room, here are these people who had thrown themselves on the spears of the opposition to Haynsworth, who said, "You know, Senator, there's been a lot of changes in the South since then, and you know none of us want to be responsible for everything we said when we were 25."

It was that way all the way around until we got to Clarence Mitchell, who was the executive director of the NAACP [National Association for the Advancement of Colored People], one of

the nicest persons I've ever met, totally committed to the cause of equality. Nobody felt more fervent about it and nobody was more able to control his passions and deal with them in a gentlemanly fashion. We got around to him. It was almost as we were getting ready to leave. He said, "Gentlemen, I respect where you're all coming from, but in my lifetime of experience, I've found that once a person ever feels that way, they never, ever really change their mind."

We all adjourned, and he caught me as we were going out and said Joe Tydings was supposed to make some remarks for the Civil Rights Leadership Council, which was assembled in town, having nothing to do with the Supreme Court nomination, but to try to lobby for the '65 Voting Rights Act, to which Nixon and Mitchell were opposed. That's why they came to town. He said, "Would you come over and say a few words?" I couldn't turn Clarence down, nor Joe for that matter, so I walked into that room. It was like I was in a funeral parlor at a wake. All those people who had faced [Eugene] "Bull" Carter and the streets where the police dogs, had sat in at lunch counters and led the charge across the country to try to get the '64 Civil Rights Act passed and the '65 Voting Rights Act passed, were confronted with the fact that everything they worked for could be vitiated by getting a person who is a racist on the Supreme Court. I tried to give them a little pep talk about the Voting Rights Act, "...and the system worked pretty well, and I'm glad you're all participating." I didn't know what more to say. I didn't deal with the Supreme Court nomination, which I think was in the back of people's minds.

This is a highly personal experience, but since you're recording me here I'll do it. I got home that night and had trouble going to sleep, and I was rolling and tossing. In fact, I got out of bed and crawled into a bed in the guest room because I didn't want to bother Marvella [Bayh]. Somewhere about 2:30—this event was going on. Rocks are being thrown through the windows at the Justice Department; cars were turned over on Rock Creek Parkway and set on fire.

In our home, while all this is going on, we kept saying, "Evan [Bayh], we work through the system to solve these problems. We don't go out in the streets and be civilly disobedient. We work through the system." Somehow or other it came to me that if my face was black and Evan's face was black, and Clement Haynsworth got on the Supreme Court of the United States, we would—and I said, "Son, we're going to work through the system." He'd say, "Dad, the system has already said what it thinks about us." The next morning I got my staff together and I said, "Come on, we're going to rally the troops. I think we've got 25 people who will stand up against this guy."

**Heininger:** Twenty-five isn't enough to defeat Carswell at this point.

**Bayh:** No, but at least there would be 25 that the people in America will know are willing to stand up and fight this.

**Heininger:** But you didn't think you could win at that point.

**Bayh:** I didn't think we could win. In reading some of the things that Jim said, I know exactly how the mediocrity question came to pass, and I know exactly how we were able to harness the forces, because there were about six or seven students and a professor from Yale, law students, who came to my office and said, "What can we do to help?" Frankly, I didn't think there was anything to do to help because everybody had exhausted themselves. A lot of the Republicans, Everett Dirksen and others, Hugh Scott, had gone down to the White House and said, "Mr. President, we can't be with you on Haynsworth, but we'll be with you the next time." And here came Carswell, and they didn't think they could go back on their pledge. So I said, "I'll tell you

what you do. Why don't you go back and you review every case that he's decided, explore how his record stands with other judges."

And they did. They read every word he'd written. They examined every decision he cast, at the district level and at the state level. Those young people found out that he'd been reversed more than any other sitting judge. The law professors said, "This guy can't put two words together. He isn't even mediocre." So those kids were the ones that discovered the mediocre question. There was no evidence of all that at the time. And they were the ones who found out that every time he had a chance to vote for open occupancy for school, for housing, for equal educational opportunity, for swimming-pool desegregation, every time, even proper conduct in the courtroom, he always voted no when he had a chance to vote yes. So what this permitted us to do was to take the intemperate words of a 25-year-old and say that as a sitting judge, he still believes that.

**Heininger:** It's a pattern.

**Bayh:** It's a pattern. We also found, by the way, he had whites only coming up to his house. We found out that as a lawyer he had taken a public course private to keep black golfers out in Florida. That's the way we were able to put this thing, so that when Roman Hruska asked about mediocrity on the court, he said, "Well, there's a lot of mediocre people in America, and they need representation on the Supreme Court." That caused the Bar Association to revisit the situation.

**Heininger:** To go bonkers. They reversed their assessment of him.

**Bayh:** They reversed their assessment. I think they split as to whether they may have given him a "qualified" instead of "exceptionally qualified," but they really were running for cover, because they understood what they had. I'm going to have to run for cover here.

**Heininger:** To be resumed.