



## EDWARD M. KENNEDY ORAL HISTORY PROJECT

### **Interviewer's Briefing Materials** **Nan Aron Interview, 01/26/2007**

Robert A. Martin, Research Director

#### **Miller Center Documents<sup>1</sup>**

- Edward M. Kennedy Judicial Nominations Timeline.

#### **Secondary Source Materials**

- Nan Aron bio, [www.afj.org](http://www.afj.org).
- Adam Clymer, *Edward M. Kennedy: A Biography* (New York: William Morrow, 1999) pp. 416-422, 440-441, 449-456, 470-471, 481, 495-497.
- Carolyn Osolinik memo to Edward M. Kennedy, "Souter Update," John F. Kennedy Presidential Library, 08/28/1990.

#### **Oral History Interviews**

- Burt Wides interview, Kennedy Oral History Project, Miller Center, University of Virginia, 02/02/2007.
- William Taylor interview, Kennedy Oral History Project, Miller Center, University of Virginia, 01/25/2006.
- Melody Barnes interview, Kennedy Oral History Project, Miller Center, University of Virginia, 08/16/2006.

#### **Other**

- "Senator Kennedy – Bork Chronology," undated.
- Jeff Blattner memo to "Bork Nomination – Overview of Efforts in Process," 07/17/1987.
- Carolyn Osolinik, Jeff Blattner, and Tony Podesta memo to EMK, "Bork Nomination – Public Strategy," 07/31/1987.
- Carolyn Osolinik memo to EMK, "Bork Meeting with Senators, 1:15 pm today," 08/06/1987.
- "Key Topics in Senator Kennedy's Questioning of Robert Bork," undated.
- Jeff Blattner, "Memo: To Clarence Thomas File," 07/16/1991

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<sup>1</sup> These are original documents created by Miller Center researchers for the Edward M. Kennedy Oral History Project. Please acknowledge credit for any use of these materials.

## EMK JUDICIAL NOMINATIONS TIMELINE

Prepared by Anne Mariel Peters and Rob Martin  
Miller Center, University of Virginia, 02/06/2007

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### 1962

*November* Edward Moore Kennedy (EMK) is elected to the U.S. Senate in a special election to fill the seat his brother John F. Kennedy (JFK) had vacated after winning the 1960 presidential election. EMK is assigned to the Judiciary Committee and reportedly develops a good working relationship with the committee's chairman, Senator James O. Eastland (D-MS). (Adam Clymer, *Edward M. Kennedy: A Biography*, New York: William Morrow and Company, 1999, pp. 46-47; Theo Lippman, *Senator Ted Kennedy: The Career Behind the Image*, USA: W.W. Norton and Company, 1975, p. 4)

### 1965

*January* Robert Francis Kennedy (RFK) is sworn into the Senate on the 4<sup>th</sup>.

*June* On the 28<sup>th</sup>, Abe Fortas is nominated by President Lyndon B. Johnson (LBJ) to replace Arthur Goldberg as Associate Justice on the Supreme Court. Fortas is a close friend and adviser of LBJ. (*1965 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1965, p. 74; "Supreme Court Nominations," [www.senate.gov](http://www.senate.gov))

*August* On the 5<sup>th</sup>, Fortas participates in a three-hour Senate session during which he successfully defends himself against allegations of his involvement in Communist activity, the Owen Lattimore case, and the Walter Jenkins affair. (*The Washington Post*, 08/06/1965)

On the 10<sup>th</sup>, the Judiciary Committee unanimously approves the Fortas nomination. (Denis Steven Rutkus and Maureen Bearden, "CRS Report for Congress: Supreme Court Nominations, 1789-2005: Actions by the Senate, the Judiciary Committee, and the President," Congressional Research Service, The Library of Congress, 01/05/2006; *The New York Times*, 08/11/1965)

On the 11<sup>th</sup>, Fortas is confirmed by voice vote after Senators Carl T. Curtis (R-NE), Strom Thurmond (R-SC), and John J. Williams (R-DE) speak against the nomination. (*1965 Congressional Quarterly Almanac*, p. 1430)

*September* On the 2<sup>nd</sup>, EMK signals to LBJ via Attorney General Nicholas Katzenbach that he would like LBJ to nominate Boston municipal judge and friend of Joseph P. Kennedy (JPK) Francis X. Morrissey for a federal judgeship. LBJ reportedly tells Katzenbach that the nomination would be a favor to JPK, and LBJ aide Marvin

Watson warns LBJ to frame the nomination in terms of “Senator Kennedy’s interest and belief that this man was qualified.” (Clymer, p. 74)

On the 24<sup>th</sup>, EMK meets with LBJ at the White House. They call JPK to inform him that Morrissey will be nominated.

On the 26<sup>th</sup>, LBJ announces Morrissey’s nomination as a federal district judge in Massachusetts. The Morrissey nomination is received poorly; Morrissey’s qualifications are assailed by *The Boston Globe*, members of the American Bar Association (ABA), and the senior judge on the court to which Morrissey has been nominated. During a tough closed door meeting with Senate Minority Leader Everett Dirksen (R-IL), Morrissey admits that his law practice has been “inconsequential” and that it was “very stupid” of him to attend Southern Law School. (Clymer, pp. 74-75)

*October* On the 12<sup>th</sup>, Rep. John McCormack (D-MA) and EMK lead eight witnesses in their praise of Morrissey. Dirksen and an ABA representative claim that Morrissey is not qualified for the position in terms of legal training and experience. (1965 *Congressional Quarterly Almanac*, p. 1432)

On the 15<sup>th</sup>, Morrissey is recommended 6-3 by the Judiciary Committee. EMK votes in favor. (*The New York Times*, 09/30/1965)

After *The Boston Globe* publishes a series of stories that contradict Morrissey’s Senate testimony, senators that were less concerned with Morrissey’s qualifications become angered by his apparent lies. Senator Joseph Tydings (D-MD) presses EMK and RFK to withdraw the nomination. RFK and EMK meet with Dirksen, who is threatening to use reports that EMK and Morrissey had met with a deported Mafia don on Capri in 1961, and RFK tells him, “You hate the Kennedys.” (Clymer, pp. 75-76; Burton Hersch, *The Education of Edward Kennedy*, New York: William Morrow and Company, Inc., 1972, pp. 247-248)

On the 20<sup>th</sup>, EMK privately tells LBJ that he intends to back down on the Morrissey nomination. According to LBJ domestic policy advisor Joseph Califano, LBJ did not actively lobby for the Morrissey nomination until he was sure it would be defeated. (Clymer, p. 76)

On the 21<sup>st</sup>, EMK agrees to send the Morrissey nomination back to the Judiciary Committee. After EMK leaves that night for Vietnam, RFK has Morrissey write LBJ and ask that the nomination be withdrawn. (Clymer, p. 77; *The New York Times*, 10/22/1965)

## 1967

*June* On the 13<sup>th</sup>, U.S. Solicitor General Thurgood Marshall is nominated by LBJ to succeed Associate Justice Tom C. Clark, who is retiring from the Supreme Court.

Marshall was previously appointed by JFK as a justice for the Second Circuit of the U.S. Court of Appeals. Marshall also served as counsel to the National Association for the Advancement of Colored People (NAACP) for twenty-five years, arguing thirty-two cases in front of the U.S. Supreme Court. RFK lauds the nomination and introduces Marshall with Senator Jacob Javits (R-NY). (*1967 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1967, p. 1150; *The New York Times*, 6/14/1967, 7/13/1967; U.S. Senate Homepage)

*July* During a confirmation hearing on the 13<sup>th</sup>, Marshall is questioned by Senator John McClellan (D-AR) about his views on wiretapping, confessions, and the right to counsel at police line-ups. Marshall refuses to give his views, claiming that to do so would prejudice appeals cases already on the Supreme Court docket. Joined by Senators Birch Bayh (D-IN), Philip Hart (D-MI), Hiram Fong (R-HI), and Roman Hruska (R-NE), EMK says that he will vote favorably on the Marshall nomination. (*The New York Times*, 07/13/1967)

*August* On the 3<sup>rd</sup>, the Judiciary Committee votes 11-5 in favor of the Marshall nomination. EMK votes in favor. (*1967 Congressional Quarterly Almanac*, p. 1165; *The New York Times*, 08/04/1967)

On the 30<sup>th</sup>, Marshall is confirmed by the Senate 69-11. EMK and RFK vote in favor of the nomination. Marshall, as the first African-American to serve on the Supreme Court, joins an unprecedented number of African Americans appointed by LBJ this year to executive departments, agencies, federal courts, the diplomatic service, and the government of the District of Columbia. (*1967 Congressional Quarterly Almanac*, pp. 804, 41-S; *The New York Times*, 08/30/1967)

## 1968

*June* On the 5<sup>th</sup>, RFK is assassinated in Los Angeles.

On the 13<sup>th</sup>, Chief Justice Earl Warren informs LBJ of his intention to retire from the Court contingent on the confirmation of his successor. (*1968 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1968, p. 531)

On the 26<sup>th</sup>, the Senate receives LBJ's nomination of Fortas for Chief Justice and of Federal Circuit Judge Homer Thornberry for Associate Justice. If both are confirmed, Thornberry will take Fortas's seat. (Congressional Research Service, p. CRS-21)

*July* Beginning on the 11<sup>th</sup>, confirmation hearings are held for Fortas and Thornberry. Senator Robert P. Griffin (R-MI) protests what he perceives to be political manipulation to ensure that the "lame duck" LBJ can appoint two new justices, denying the next president the opportunity. It is widely suspected that Griffin will

attempt to mount a filibuster. (Congressional Research Service, p. CRS-21; *The New York Times*, 07/13/1968)

On the 12<sup>th</sup>, Dirksen sides with LBJ's nominations, and chides Griffin for attempting to block the Fortas and Thornberry nominations solely on the basis that the two men are close acquaintances of LBJ. (*The New York Times*, 07/13/1968)

*September* On the 10<sup>th</sup>, EMK returns to the Senate for the first time since RFK's assassination. He spends most of the day at a closed-door confirmation session for Fortas, whom he supports. (*The New York Times*, 09/11/1968)

On the 13<sup>th</sup> and 16<sup>th</sup>, further confirmation hearings are held for Fortas and Thornberry. During the course of the confirmation hearings, Griffin has rallied a coalition of Republicans and Southern Democrats against the nomination. He makes allegations of cronyism, claiming that there is legally no vacancy on the Court and that Warren's contingent retirement is meant to force two Democratic Court appointments to the Court. (*1968 Congressional Quarterly Almanac*, pp. 94, 531; Congressional Research Service, p. CRS-21)

On the 17<sup>th</sup>, the Senate Judiciary Committee approves the Fortas nomination 11-6, setting the stage for a filibuster in the full Senate debate the following week. EMK votes to approve, as does Dirksen. (Congressional Research Service, p. CRS-21; *The New York Times*, 09/18/1968)

From the 25<sup>th</sup> to the 30<sup>th</sup>, Senate debate occurs on the Fortas nomination after a surprise motion by Senate Majority Leader Mike Mansfield (D-MT). Griffin's filibuster begins on the 25<sup>th</sup>. (*1968 Congressional Quarterly Almanac*, pp. 531, 536; Congressional Research Service, p. CRS-21)

On the 27<sup>th</sup>, after many of his Republican colleagues have sided with Griffin, Dirksen abandons his support of the Fortas nomination, claiming himself "neutral." (*1968 Congressional Quarterly Almanac*, p. 531)

On the 29<sup>th</sup>, Mansfield's motion to invoke cloture is read and signed by twenty-six senators. (*1968 Congressional Quarterly Almanac*, p. 531)

*October* On the 1<sup>st</sup>, Mansfield's motion to invoke cloture is voted down 45-43; EMK votes in favor. (*1968 Congressional Quarterly Almanac*, pp. 94, 531; Congressional Research Service, p. CRS-21)

At the request of Fortas, LBJ withdraws the nomination on the 2<sup>nd</sup>. Withdrawal messages for both Fortas and Thornberry are received in the Senate on the 4<sup>th</sup>. (Congressional Research Service, p. CRS-21; *1968 Congressional Quarterly Almanac*, p. 531)

## 1969

*January*      EMK defeats Senator Russell Long (D-LA) for the post of Senate Majority Whip.

*May*            On the 5<sup>th</sup>, some Republicans call for the resignation of Fortas following the disclosure that he had received (and later returned) a \$20,000 fee from the family foundation of convicted securities manipulator Louis Wolfson. There are no statements of support for Fortas from the senators who sought his confirmation. EMK suggests that Fortas might consider explaining the situation to the Judiciary Committee. (*The New York Times*, 05/06/1969)

On the 15<sup>th</sup>, Fortas resigns. (*The New York Times*, 05/16/1969)

On the 23<sup>rd</sup>, Federal Circuit Judge Warren Burger is nominated by President Richard Nixon to replace Warren.

*June*            On the 3<sup>rd</sup>, the Judiciary Committee votes unanimously in favor of the Burger nomination. (*1969 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1969, p. 126)

On the 9<sup>th</sup>, the Senate approves the Burger nomination 74-3; EMK votes in favor. (*1969 Congressional Quarterly Almanac*, p. 7-S)

*July*            The accident at Chappaquiddick on the 18<sup>th</sup>.

*August*          On the 18<sup>th</sup>, Federal Circuit Judge Clement F. Haynsworth is nominated by Nixon to fill Fortas' empty seat as Associate Justice. Haynsworth is the federal judge who had voted for EMK in his law school moot court final years earlier. At the time of the nomination, Nixon addresses allegations that during the Kennedy administration, Haynsworth voted to overturn the guilty conviction of a company to which he had financial ties. Nixon claims that then-Attorney General RFK had concluded that the charges against Haynsworth were without basis. Haynsworth's nomination is immediately opposed by the NAACP, the American Jewish Congress, and the Americans for Democratic Action. All are unhappy with Haynsworth's opinions in several civil rights cases before the Fourth Circuit Court of Appeals. (Henry B. Hogue, "Supreme Court Nominations Not Confirmed, 1789-2004," Congressional Research Service, Library of Congress, 03/21/2005, p. CRS-21; *The Wall Street Journal*, 08/19/1969)

On the 20<sup>th</sup>, the American Federation of Labor and the Congress of Industrial Organizations (AFL-CIO) announces its opposition to the Haynsworth nomination based on two cases in which Haynsworth sided with textile mill owners against the right of workers to organize. Both of Haynsworth's rulings were subsequently overturned by the Supreme Court. However, *The New York*

*Times* proclaims that the chances that Haynsworth will not be confirmed are remote, as no senators have avowed outright opposition to his nomination. Labor leaders initially ask Senator Philip Hart (D-MI) to lead the fight against Haynsworth in the Senate. When Hart declines, labor leaders reportedly consider EMK, but turn instead to Bayh to lead the fight in the Senate. (John P. Frank, *Clement Haynsworth, the Senate, and the Supreme Court*, University Press of Virginia, Charlottesville, Virginia, 1991, p. 30; *The New York Times*, 08/21/1969; *Newsweek*, 10/20/1969)

*September* From the 16<sup>th</sup> to the 26<sup>th</sup>, confirmation hearings are held for Haynsworth, who is introduced by Senator Ernest Hollings (D-SC) and Thurmond. Thirteen leaders from the civil rights and labor community agree to testify against Haynsworth, including NAACP President Roy Wilkins. (Hogue, Congressional Research Service, p. CRS-21; *The New York Times*, 09/07/1969)

On the 17<sup>th</sup>, EMK and Bayh reportedly get into a heated argument with three Haynsworth supporters, Senators Sam Ervin, Jr. (D-NC), Hruska, and Eastland, about RFK's 1964 clearance of Haynsworth. While the three Haynsworth supporters argue that then-Attorney General RFK had cleared Haynsworth of any ethical impropriety, EMK and Bayh argue that RFK had only found insufficient evidence to support charges of bribery. (Frank, p. 39; *The Washington Post*, 09/18/1969)

*The Washington Post* reports on the 22<sup>nd</sup> that Haynsworth had failed to recuse himself from a case against Brunswick, a company in which he owned stock. *The Chicago Daily News* and *The New York Times* had previously reported questions of impropriety concerning Haynsworth's relationship with the Vend-a-Matic company. (Frank, p. 43)

*October* On the 5<sup>th</sup>, Joe Rauh of the NAACP and Clarence Mitchell of the Leadership Conference on Civil Rights charge in a study that Haynsworth has "actively opposed desegregation."

On the 9<sup>th</sup>, the Judiciary Committee approves Haynsworth 10-7. EMK votes against the nomination, and along with Senator Quentin Burdick (D-ND), Bayh, Hart, and Tydings, he requests that Nixon withdraw the Haynsworth nomination. (*1969 Congressional Quarterly Almanac*, p. 346; Hogue, Congressional Research Service, p. CRS-21)

*November* Beginning on the 13<sup>th</sup>, Senate debate on the Haynsworth nomination occurs. (Hogue, Congressional Research Service, p. CRS-21)

On the 21<sup>st</sup>, the Haynsworth nomination is rejected 45-55. This is the first time since 1930 that the Senate has voted down a Supreme Court nomination, and Nixon is reportedly furious. EMK votes with the majority, which also includes the Republican Senate leadership, Senate Minority Leader Hugh Scott (R-PA), Chair

of the Republican Conference Margaret Chase Smith (R-ME), and Griffin. Haynsworth's chief aide and brother, Harry Haynsworth, later complains that they could not compete with the resources of the opposition Senators, which he suspected had been pooled under the effective control of EMK aide Jim Flug. (Frank, p. 43, 93) Clymer suggests that the reason for Haynsworth's rejection is Democratic retaliation for Republican efforts to filibuster the Fortas nomination for Chief Justice and the subsequent Republican pressure that forced Fortas to resign. (*1969 Congressional Quarterly Almanac*, pp 337, 29-S; Adam Clymer, *Edward M. Kennedy: A Biography*, New York: William Morrow and Company, 1999, pp. 160-161; Hogue, Congressional Research Service, p. CRS-21)

## 1970

### January

On the 19<sup>th</sup>, the nomination of Federal Circuit Judge G. Harrold Carswell for Associate Justice is received in the Senate. The nomination is Nixon's second attempt to fill Fortas' vacant seat. Civil rights groups immediately come out against the nomination, although unions are largely indifferent. Most senators, like Nixon, think that the nomination will pass because they believe that the Senate cannot withstand another judicial nominations battle. Furthermore, little is actually known about the details of Carswell's judicial record. As a result, there is no early action in the Senate against the nomination. Civil rights lawyer Marian Wright Edelman begins conducting some preliminary research on Carswell, finding a controversial 1948 speech and evidence of Carswell's involvement in incorporating a public golf course into an all-white golf club during his time as a U.S. attorney in Florida. She shares this information with Rauh, who is counsel to the Leadership Conference on Civil Rights and vice president of Americans for Democratic Action. (Richard Harris, *Decision*, New York: E.P. Dutton, 1971, pp. 26-27, 36-38; Clymer, p. 161; Hogue, Congressional Research Service, p. CRS-21)

On the 23<sup>rd</sup>, Flug holds a brief meeting on the Carswell nomination with Hart, Tydings, Bayh, and civil rights and labor lobbyists. Bayh reportedly argues that a senator is needed to lead the fight against Carswell. However, Bayh and Hart have been wounded by prior judicial battles, Tydings has a difficult election coming up, and EMK is still less than a year removed from Chappaquiddick. Flug is reportedly the only attendee at the meeting who believes that Carswell can be defeated. The meeting ends without a leader being designated. (Clymer, p. 161; Frank, p. 106; Harris, p. 37)

After launching a very brief preliminary investigation, Flug sends EMK a memo on the 24<sup>th</sup> calling Carswell "a mediocre candidate with no indications of particular intelligence, leadership, insight, or respect among his brethren." (Frank, p. 106) Flug suggests that Carswell is a white supremacist and adds that further evidence is being compiled. (Clymer, p. 161) Flug also points out that a former Democratic Florida governor, LeRoy Collins, has been touting Carswell publicly, but privately claims that Carswell is not really Supreme Court caliber and that he



has not examined his judicial record. He suggests that EMK join with Bayh and Hart to persuade Eastland to postpone the hearings, allowing more time for investigation. The same day, a Justice Department employee named Norman Knopf phones Tydings' office and claims that he has information against Carswell. Knopf later reveals that, as a federal elections observer, Carswell used intimidating tactics against minorities and Northern lawyers sent to supervise Florida elections. (Harris, pp. 37-38)

On the 27<sup>th</sup>, confirmation hearings for Carswell begin after Eastland turns down all requests for a postponement. EMK questions Carswell sharply on his attempt to convert the public golf course into a whites-only club.) Carswell denies any recollection of his name on the incorporation documents from the club. EMK also asks Carswell for a list of the clients he had represented in private practice who later appeared before him in court. Griffin angrily interrupts EMK and claims that the request is nothing more than "a fishing expedition." (Harris, p. 60; Hogue, Congressional Research Service, p. CRS-21)

While the hearings are in progress, Flug sends EMK a memo entitled "How to Beat Carswell," claiming, "I smell blood. I think it can be done if we can get the full civil-rights apparatus working, which it's beginning to do..." Flug then lays out a projected head count of senators who could be expected to oppose Carswell based on his civil rights record, along with swing votes. Overall, Flug expects only thirty-nine senators to support Carswell; they are primarily very conservative Republicans and Southern Democrats. (Harris, pp. 58-59)

According to EMK biographer Adam Clymer, Flug meets with some resistance from Eastland's staff when he orders Carswell's unpublished opinions. (Clymer, pp. 162-163)

#### *February*

On the 3<sup>rd</sup>, hearings for Carswell end. By now, only a few influential public figures have stated their opposition to Carswell: George Meany, the head of the AFL-CIO, Senators William Proxmire (D-WI) and Walter Mondale (D-MN), and John Gardner, former Secretary of Health, Education, and Welfare and now director of the Urban Coalition. Carswell opponents now try to buy time to conduct further research and organize by delaying the floor debate until after March 1<sup>st</sup>, the day scheduled to debate the extension of the Voting Rights Act of 1965. (Harris, p. 60)

On the 4<sup>th</sup>, Flug and Thomas Bennett, legislative aid to Senator Gaylord Nelson (D-WI), hold an anti-Carswell meeting for thirty Senate staffers. Rauh presents the case against Carswell, and Flug then goes through the same projected head count he had sent EMK. Flug later claims, "That was dangerous, since no guy likes to be told how his boss is going to vote before his boss has voted... But it worked, because after Rauh spoke everybody saw that Carswell was a terrible choice and then the theoretical vote count showed that he could be stopped..." (Harris, p. 80)

On the 5<sup>th</sup>, Senator Charles Goodell (R-NY) denounces Carswell's nomination on the Senate floor. This surprise statement encourages Carswell opponents, who reportedly believed that the nominee could not be defeated without Republican opposition. (Harris, pp. 60-70)

On the 16<sup>th</sup>, the Judiciary Committee votes 13-4 in favor of Carswell. EMK votes against the nomination, and is joined by Hart, Tydings, and Bayh. The four senators write a minority report arguing that Supreme Court nominees ought to "evidence some degree of achievement and eminence in law," and that Carswell's record indicates that he is insensitive to civil rights. (*1970 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1970, pp. 158-159) EMK takes the lead in negotiating the common language in the senators' minority report. (Hogue, Congressional Research Service, p. CRS-21)

### *March*

In the March issue of the *Yale Law Journal*, Professor Charles L. Black, Jr. emphasizes the role of the Senate in checking presidential power through advice and consent. Later in the month, the Yale, University of Virginia, and Howard Law Journals are joined by twenty-one Stanford University law professors and the American Federation of Teachers issue statements opposing Carswell. (Harris, pp. 94, 114)

On the 10<sup>th</sup>, Bayh agrees to lead the Democrats in the floor fight against Carswell. Senator Edward Brooke (R-MA), who is African-American, agrees to round up Republican opposition. Tydings also decides to take a lead in the opposition. (Clymer, p. 163)

Beginning on the 13<sup>th</sup>, Senate debate on the Carswell nomination occurs. (Hogue, Congressional Research Service, p. CRS-21)

After the press reports that several prominent judges, including Elbert Tuttle, have reconsidered their decisions to testify on Carswell's behalf, Hruska defends Carswell in a radio interview arguing, "Even if he were mediocre, there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance? We can't have all Brandeises and Frankfurters and Cardozos and stuff like that there." (Frank, p. 112)

On the 25<sup>th</sup>, Bayh meets with Carswell opponents in Mansfield's office to discuss prolonging the floor vote by two more weeks. Senator Jacob Javits (R-NY) says that he will not participate in a filibuster as a delay tactic, as does Hart. The idea of a filibuster is dropped.

*The Washington Post* runs a front-page story describing a meeting that took place in Carswell's Washington hotel on January 26<sup>th</sup>, during which ABA committee members Charles Horsky and Norman Ramsey met with Carswell to ask about his role in the incorporation of the segregated golf club. Upon Flug's request, Horsky

drafts a memo of the encounter that is circulated to EMK and Tydings. The memo reveals that Horsky had showed the papers from the Certificate of Incorporation on which the names and signatures of the incorporators of the club appeared, Carswell being one of them. Thus, Carswell had lied about his knowledge of the papers during his confirmation hearings. (Harris, pp. 133-134)

*April* On the 6<sup>th</sup>, Bayh's motion to recommit the nomination to the Judiciary Committee is defeated; EMK votes in its favor.

On the 8<sup>th</sup>, the Carswell nomination is rejected 51-45; EMK votes against it. (1970 *Congressional Quarterly Almanac*, pp. 20-S, 21-S; Clymer, p. 163; Hogue, Congressional Research Service, p. CRS-21)

On the 14<sup>th</sup>, Federal Circuit Judge Harry Blackmun is nominated to fill Fortas' vacant seat as Associate Justice. Blackmun espouses a conservative interpretation of the Constitution and is a close friend of Burger, who is rumored to have helped the White House select the nominee. (U.S. Senate Homepage; *The Wall Street Journal*, 04/15/1970)

On the 30<sup>th</sup>, the Judiciary Committee completes its hearings on the Blackmun nomination after a friendly, day-long session that produces no opposition to the nomination. Blackmun is praised by both conservatives, who laud his strict constructionist approach, and liberals, who believe that their efforts have resulted in the selection of a superior jurist. When EMK asks Blackmun to respond to a list of Nixon policies that EMK claims are eroding individual rights, Blackmun remarks that while many of these issues are political or economic, some of them could indeed fall under the jurisdiction of the Court. Blackmun claims that his opinions on the Eighth Circuit reflect sensitivity to civil rights and labor issues, and says that the Court will continue to be "the real bastion of freedom and liberty." EMK proclaims that the Blackmun nomination "vindicates what the Senate did on the two earlier nominations." (*The New York Times*, 04/30/1970; *The Wall Street Journal*, 04/30/1970)

*May* On the 5<sup>th</sup>, the Judiciary Committee recommends Blackmun 17-0 for confirmation. (*The New York Times*, 05/06/1970)

On the 12<sup>th</sup>, Blackmun is confirmed 94-0 by the Senate after less than an hour of debate. EMK votes in favor of the nomination. (*The New York Times*, 05/13/1970; Frank, p. 123)

## **1971**

*January* EMK loses his Majority Whip post 31-24 to Senator Robert Byrd (D-WV).

*October* On the 22<sup>nd</sup>, former ABA president Lewis Powell, Jr. and Assistant Attorney General William H. Rehnquist are nominated by Nixon to replace Associate

Justices Hugo Black and John Marshall Harlan II, respectively. Both nominations are met with cautious approval in the Senate. Other candidates that Nixon had floated before making his final decision included Byrd, as well as Rep. Richard Poff (R-VA), a former judge with a reportedly poor record on civil rights. (*The New York Times*, 10/22/1971; U.S. Senate Homepage)

*November* On the 3<sup>rd</sup>, EMK questions Rehnquist on his position with regards to wiretaps and electronic surveillance. As Assistant Attorney General, Rehnquist had reportedly provided the Nixon Administration with the legal justification for the use of wiretapping and electronic surveillance. Pundits speculate that liberals are devoting all of their energies to Rehnquist, knowing that they will not succeed in defeating the Powell nomination. (*The Wall Street Journal*, 11/04/1971)

On the 5<sup>th</sup>, EMK criticizes Rehnquist, claiming that the nominee's record on civil liberties and civil rights is not satisfactory. EMK has also said that Rehnquist was Nixon's "lawyers' lawyer during the time when the President made perhaps more legal errors than... any predecessor." White House Communications Director Herbert H. Klein calls EMK's allegations "irresponsible." (*The Washington Post*, 11/06/1971)

On the 9<sup>th</sup>, EMK rebukes Joseph Rauh of the Leadership Conference on Civil Rights for accusing Rehnquist of lying about participation in the rightist John Birch Society. EMK calls Rauh's attacks "unwarranted," indicating that Rehnquist's integrity should remain unchallenged without sufficient evidence, and that EMK's primary point of disagreement is with Rehnquist's judicial philosophy. (*The Washington Post*, 11/10/1971; *The New York Times*, 11/11/1971)

On the 16<sup>th</sup>, EMK tells guests at a Brandeis University dinner that the Senate will have to endure another divisive confirmation battle over Rehnquist. (*The New York Times*, 11/17/1971)

On the 23<sup>rd</sup>, the Judiciary Committee endorses Powell unanimously and Rehnquist 12-4. With Bayh taking the lead against Rehnquist, Senator John Tunney (D-CA), Hart and EMK also vote against the nomination. Burdick was also expected to vote against the Rehnquist nomination, but changed his position. (*The New York Times*, 11/24/1971)

On the 30<sup>th</sup>, Bayh, Hart, Tunney, and EMK ask the full Senate to reject the Rehnquist nomination. Their minority report expresses concern that "Mr. Rehnquist's record reveals a dangerous hostility to the great principles of individual freedom under the Bill of Rights and equal justice for all people." (*The New York Times*, 12/01/1971)

*December* *Newsweek* reports that Rehnquist had written a memo as a law clerk to Justice Robert Jackson reaffirming *Plessy v. Ferguson*. Rehnquist claims that he had

written the memo as a statement of Jackson's views, but the claim is questioned by Jackson's former personal secretary.

On the 7<sup>th</sup>, Powell is confirmed by the Senate 89-1. EMK votes in favor. (*1971 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1971, p. 65-S; *The Washington Post*, 12/07/1971)

On the 10<sup>th</sup>, Rehnquist is confirmed by the Senate 68-26. EMK votes against the nomination. (*1971 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1971, p. 67-S; *The New York Times*, 12/11/1971)

## 1975

*November* Although there has been speculation in favor of female nominee, Federal Circuit judge John Paul Stevens is nominated by President Gerald Ford for Associate Justice on the 28<sup>th</sup>. The appointment would replace William O. Douglas, one of the most outspoken civil libertarians in the Court's history. Pundits predict a quick confirmation because Stevens is seen as a centrist. (*1975 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1975, p. 536; *The New York Times*, 11/29/1975; U.S. Senate Homepage)

*December* On the 3<sup>rd</sup>, Senator Charles McC. Mathias, Jr. (R-MD), Bayh, Burdick, Hart, Tunney, and EMK ask Eastland in writing for a full investigation into the health, tax returns, and former law practice of Stevens. (*The New York Times*, 12/04/1975)

Following three days of hearings, Stevens is unanimously recommended by the Judiciary Committee on the 11<sup>th</sup>. (*The New York Times*, 12/12/1975)

On the 17<sup>th</sup>, Stevens is confirmed 98-0 by the Senate. EMK votes in favor of the nomination. (*The New York Times*, 12/18/1975)

**1979** Following the retirement of Eastland, EMK becomes Chairman of the Judiciary Committee. (Senate Judiciary Committee Homepage, <http://judiciary.senate.gov/chairman.cfm>)

**1981** Thurmond replaces EMK as Chairman of the Senate Judiciary Committee. (*1981 Congressional Quarterly Almanac*, p. 407)

*August* On the 19<sup>th</sup>, Arizona Court of Appeals judge Sandra Day O'Connor is nominated by President Ronald Reagan to replace the moderate-to-conservative Potter Stewart as Associate Justice. (*1981 Congressional Quarterly Almanac*, p. 409; U.S. Senate Homepage)

*September* On the 15<sup>th</sup>, the Senate Judiciary Committee approves the nomination 17-0. EMK votes in favor. (*1981 Congressional Quarterly Almanac*, p. 410)

On the 21<sup>st</sup>, the O'Connor nomination is approved by the Senate 99-0. EMK votes in favor. O'Connor is the first woman to serve on the Supreme Court. (1981 *Congressional Quarterly Almanac*, pp. 409, 47-S)

## 1986

*June* On the 20<sup>th</sup>, Rehnquist is nominated by Reagan to replace Burger as Chief Justice and, on the 24<sup>th</sup>, Federal Circuit judge Antonin Scalia is nominated to replace Rehnquist as Associate Justice. EMK, like most Democrats, “reserves judgment,” although Minority Whip Alan Cranston (D-CA) deems Rehnquist an “ideological extremist.”(U.S. Senate Homepage; *The Washington Post*, 06/18/1986)

*July* On the 29<sup>th</sup>, the Judiciary Committee opens confirmation hearings for Rehnquist. Senator Howard Metzenbaum (D-OH) and EMK suggest that Rehnquist was “less than candid” in his statements during his 1971 confirmation hearings. EMK says that Rehnquist has an “appalling record on race,” and that he is “too extreme” to be Chief Justice. Senator Orrin Hatch (R-UT) claims that EMK’s accusations are “somewhat ridiculous” and too old to take seriously, and witness and former Carter Attorney General Griffin Bell urges the committee to approve the nomination. (*The New York Times*, 07/30/1986; *The Washington Post* 07/30/1986)

On the 30<sup>th</sup>, EMK and Metzenbaum question Rehnquist about allegations that he harassed and intimidated voters by inquiring into their personal qualifications and reading abilities at minority precincts in Phoenix during the early 1960s. Rehnquist denies the allegations. He has acknowledged that he did make such inquiries as a Republican lawyer in the 1950s and 1960s, but that these inquiries were meant to instruct other Republican workers on applicable laws and settle disputes over qualifications of Republican challengers. Other ethical concerns arise around this time, including whether Rehnquist had given truthful testimony in his 1971 confirmation hearing regarding the alleged intimidation of minority voters. Other questions include Rehnquist’s failure to recuse himself from a lawsuit against the Secretary of Defense regarding military surveillance of civilians. (*The New York Times*, 07/31/1986)

Also on the 30<sup>th</sup>, Rehnquist acknowledges that a deed on a Vermont vacation home that he purchased in 1974 contained a restrictive covenant prohibiting lease or sale of the property to “any member of the Hebrew race.” Rehnquist claims he was unaware of the restriction until several days ago, and that he would like to void the restriction if possible under Vermont law. (*The Washington Post*, 07/31/1986)

On the 31<sup>st</sup>, EMK claims that Rehnquist once owned a house in Phoenix with a deed forbidding the sale to non-whites. Rehnquist claims that he did not know about the existence of this provision on the deed. Metzenbaum and EMK engage in a heated exchange with Republicans, suggesting that both the Arizona and

Vermont deeds might be relevant to Rehnquist's qualifications. (*The New York Times*, 08/01/1986)

Also on the 31<sup>st</sup>, Reagan invokes executive privilege and refuses to release internal memoranda pertaining to civil rights, civil liberties, and surveillance authored by Rehnquist during his time at the Justice Department. EMK accuses Reagan of "stonewalling" to protect advice given by Rehnquist to Nixon and his attorney general, John N. Mitchell. (*The New York Times*, 08/01/1986)

Also on the 31<sup>st</sup>, EMK tells reporters that Rehnquist has agreed to have his medical records examined by a physician to be selected by the Judiciary Committee, and to make his personal doctor available for testimony. Until his records are examined, there will be no questioning on Rehnquist's health. Rehnquist was hospitalized in 1982 after suffering adverse effects from a drug intended to ease back pain. (*The Wall Street Journal*, 08/01/1986)

#### August

On the 5<sup>th</sup>, confirmation hearings for Scalia begin. Scalia emerges confident and unscathed. EMK questions Scalia on his views on *Roe v. Wade*, to which Scalia responds that although he has no agenda for the Court, he will not say that he will never overrule a Supreme Court precedent. EMK says, "The nomination of Judge Scalia presents none of the troubling issues with respect to truthfulness, candor, judicial ethics and full disclosure that have marred the nomination of Justice Rehnquist." (*The Washington Post*, 08/06/1986)

On the 7<sup>th</sup>, Senator Paul Simon (D-IL) and EMK request and receive access to additional memos dating from Rehnquist's time as head of the Office of Legal Counsel under Nixon. While other Democrats are circumspect about the contents of the documents, EMK claims that he is certain that the documents will reveal that Rehnquist was very much involved in shaping government policy towards surveillance of domestic groups during the antiwar period and the use of the Army and the FBI during the May Day protests in 1971. (*The New York Times*, 08/08/1986)

On the 15<sup>th</sup>, the Judiciary Committee votes 13-5 in favor of the Rehnquist nomination and unanimously in favor of the Scalia nomination. Senators Joseph Biden (D-DE), Patrick Leahy (D-VT), Metzenbaum, Simon, and EMK vote against Rehnquist. EMK reportedly reminds the committee that Carswell was recommended 13-4 by the committee before his nomination was defeated on the floor. (*The New York Times*, 08/15/1986)

On the 26<sup>th</sup>, Metzenbaum, Cranston, Simon, and EMK request that the FBI reopen its investigation into Rehnquist's handling of a trust account set up for a relative in the 1960s. The inquiry would determine whether or not Rehnquist defrauded his ill brother-in-law by keeping the trust a secret from him. (*The Washington Post*, 08/27/1986)

*September* On the 15<sup>th</sup>, Senate Majority Leader Dole proposes a motion to invoke cloture and limit debate on the Rehnquist confirmation. Liberal Democrats, led by EMK, refuse to agree to a time limit, requesting a “full and complete debate,” though not a formal filibuster. Democrats say support for Rehnquist is eroding, though Dole claims he will have sufficient cloture votes. (*The Washington Post*, 09/16/1986)

On the 17<sup>th</sup>, the Senate votes to confirm Rehnquist 65-33 and Scalia 98-0. EMK votes against the Rehnquist nomination and in favor of Scalia. Mathias, who had voted for Rehnquist in committee, switches his vote in the full Senate, claiming to be convinced by new evidence that Rehnquist had helped to shape surveillance policy under Nixon, thereby leading Mathias to believe that Rehnquist had not been truthful in his 1971 confirmation hearings. Rehnquist receives more negative votes than any other justice who has been confirmed to the Supreme Court to date. (*1986 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1986, p. 45-S; *The New York Times*, 09/18/1986)

## 1987

*July* On the 1<sup>st</sup>, Reagan announces his nomination of Federal Circuit judge Robert H. Bork to replace Powell. Bork has spoken out strongly against Supreme Court precedents important to liberals, including *Brown v. Board of Education*, *Griswold v. Connecticut*, and *Roe v. Wade*. EMK calls Archibald Cox to tell him that he will lead the fight against Bork, and asks Cox to help. Cox, whom acting Attorney General Bork had reportedly fired from his position as the first Watergate special prosecutor, declines; he does not want his opposition to Bork to seem like a personal vendetta. (Clymer, pp. 416-417)

Within an hour of the announcement, EMK delivers a controversial floor speech calling for the Senate to reject Bork’s nomination. EMK claims, “Robert Bork’s America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police would break down citizens’ doors in midnight raids...” During the speech, EMK invokes two key arguments against Bork: his involvement in Nixon’s Saturday Night Massacre and his “extremist” judicial interpretation, particularly with regards to civil rights. Although EMK is later criticized for the speech, none of Bork’s proponents issue an immediate rebuke, assuming that the speech would be self-defeating. EMK claims that the statement had to “sound the alarm and hold people in their places until we could get the material together.” Bork, who watched the speech from the White House, later wrote, “Not one line of that tirade was true...this was a calculated personal assault by a shrewd politician...As it turned out, Kennedy set the themes and the tone for the entire campaign.” Former Judiciary Committee chief counsel Mark Gitenstein claims that EMK’s “unqualified” attack forced undecided moderates to delay their opposition to Bork, as well as worrying civil rights leaders. Although Gitenstein claims that there is little evidence that the civil rights community had encouraged EMK’s speech, he also notes that there is general agreement within and without the White House that EMK represents the



civil rights and civil liberties community. (1987 *Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1987, p. 271; Robert Bork, *The Tempting of America*, New York: The Free Press, 1990; Clymer, pp. 417-419; Mark Gitenstein, *Matters of Principle*, New York: Simon and Schuster, 1992, pp. 56, 70; Michael Pertschuk and Wendy Schaetzel, *The People Rising*, USA: Thunder's Mouth Press, 1987, pp. 26-27, 123-124)

On the 2<sup>nd</sup>, EMK hires Anthony Podesta, People for the American Way (PFAW) founding president and a veteran of EMK's 1980 campaign, to organize opposition to the Bork nomination. (Clymer, p. 420) He also calls prominent civil rights lawyer Bill Taylor to coordinate constitutional law scholars and law school deans that are opposed to Bork. Taylor is joined by Herman Schwartz of American University, Laurence Tribe of Harvard, Walter Dellinger of Duke, Philip Kurland of Chicago, and PFAW's John Haber and Seidman. Although the ABA has given Bork its highest rating, the opposition to Bork within the legal community is strong, and many lawyers and scholars even take it upon themselves to organize against the nominee. This high level of participation stands in stark contrast to previous confirmation proceedings. (Pertschuk, pp. 189-190; Norman Vieira and Leonard Gross, *Supreme Court Appointments*, Carbondale: Southern Illinois University Press, 1998, p. 143)

On the 7<sup>th</sup>, the Bork nomination is received by the Senate. EMK, Metzenbaum, and Senate Judiciary Committee Chairman Biden decide to postpone the hearings until after August recess. Biden, who is running for president, tells civil rights groups that he, not EMK, is in charge, and that he will lead the fight against Bork. One year ago, Biden had said that while somebody like EMK would vote against someone like Bork, Biden would vote for him. Biden later explains that he would not oppose Bork to replace a more conservative justice, but that Powell's swing status is a complicating factor. (Clymer, p. 420; *The Washington Post*, 10/24/1987; Congressional Research Service, p. CRS-21)

On the 9<sup>th</sup>, *The New York Times* reports that "civil rights activists had been keeping files on Judge Bork in anticipation of this moment." (*The New York Times*, 07/09/1987)

On the 11<sup>th</sup>, NARAL holds its annual convention in Washington and maps out a national campaign against the Bork nomination. (Bork, p. 285)

On the 27<sup>th</sup>, Democratic Whip Alan Cranston (D-CA) decides that Bork opponents should abandon a filibuster strategy. EMK and Biden agree, and Neas tells the Leadership Conference on Civil Rights (LCCR) to stop talking about a filibuster. (Gitenstein, p. 276)

*July/August* At EMK's private meeting with Bork, Bork later writes in his book that EMK is accompanied by several aides and "seemed mildly depressed and was mostly

silent... Every so often, Kennedy looked up at me –about three or four times, I suppose—and said, ‘Nothing personal.’” (Bork, pp. 280-281)

Later in the summer, Senators Arlen Specter (R-PA), Biden, and EMK study Bork’s writings and discuss them with law professors. Tribe plays Bork for EMK and Biden in mock-hearings. (Clymer, p. 421)

#### *August*

Early in the month, EMK meets with twenty “Block Bork” coalition leaders to discuss strategy. They decide to “freeze the Senate” by urging no position on the Bork nomination until the end of the confirmation hearings. There is also a desire within the coalition to keep pressure low-profile to prevent undecided senators from bucking. EMK encourages the coalition members to hold weekly meetings with key Judiciary Committee staffers, something they had already been doing since Powell’s resignation. Pertschuk claims that although EMK welcomes the “Block Bork” coalition as trusted allies, some coalition members are concerned about being perceived as part of EMK’s apparatus. The coalition consists of more than three hundred national organizations, including PFAW, the 190-member umbrella group of the LCCR and NARAL. LCCR lobbyists already have a close relationship with EMK and his chief counsel Carolyn Osolinik. PFAW has a close relationship with Judiciary Committee members, and PFAW’s legal director, Ricki Seidman, later becomes an EMK aide and Labor Committee staffer. (Pertschuk, pp. 95-102, 125)

While vacationing in Massachusetts during the Senate recess, EMK makes hundreds of calls to black political leaders and ministers, particularly in the South, and directly lobbies his Senate colleagues with Bork briefing books and phone calls to their VIP constituents. The annual conferences of the NAACP and the National Education Association are subsequently used as anti-Bork platforms. EMK also calls each of thirty executive members of the AFL-CIO and holds a conference call with forty state labor leaders to organize opposition. According to Podesta, EMK worked harder at organizing the anti-Bork forces than he had for his 1980 presidential campaign. (Clymer, pp. 420-421; Pertschuk, p. 27; Bork, p. 283; *The Washington Post*, 10/24/1987)

In a press release, the AFL-CIO claims that Bork is “a man moved not by deference to the democratic process but by an overriding commitment to the interests of the wealthy and powerful in our society. He has never shown the least concern for working people, minorities, the poor, or for individuals seeking the protection of the law to vindicate their political and civil rights.” (Bork, p. 286)

On the 12<sup>th</sup>, EMK sends a letter to 6,200 black political leaders reportedly arguing that Bork is an opponent of civil rights.

Between the 13<sup>th</sup> and the 17<sup>th</sup>, Boston pollster Thomas Kiley surveys voters on the Bork nomination for the American Federation of State County and Municipal Employees (AFSCME). He concludes that Bork is vulnerable on three grounds:

civil rights, privacy and individual freedom, and big business versus the individual. Furthermore, he concludes that voters will be turned against Bork if they perceive him as not “fair-minded,” and that the best way to increase voter skepticism is to attack Bork’s record on civil rights. A Roper poll of voters in twelve southern states shows that fifty-one percent oppose confirmation. Bork opponents use these figures to help win over swing votes in the Senate—the Southern Democrats, who now represent large black constituencies. Focus groups have also indicated that the public is indifferent to Bork’s role in Watergate. (Pertschuk, pp. 134, 142, 154; Vieira, p. 152; *The Washington Post*, 10/24/1987)

On the 31<sup>st</sup>, the American Civil Liberties Union (ACLU) sends a cable claiming that “Detailed research reveals Bork far more dangerous than previously believed... We risk nothing short of wrecking the entire Bill of Rights... His confirmation would threaten our system of government... Time is short...” (Bork, pp. 287-288)

*September* On the 2<sup>nd</sup>, Biden releases a report on Bork attacking his record on civil rights and antitrust law. (Bork, pp. 287, 291)

On the 11<sup>th</sup>, EMK delivers a speech at Georgetown Law School, railing against Bork’s argument that the *Griswold v. Connecticut* decision invented a right to privacy without a constitutional basis, in addition to attacking Bork’s contempt for judicial precedent. Reagan deems attacks on Bork as “pure politics,” defending Bork’s commitment to individual freedom and equality. (Clymer, p. 422; *The Washington Post*, 09/12/1987)

On the 13<sup>th</sup>, *The Washington Post* reports that EMK has been urged not to repeat his initial outburst against the nomination during the confirmation hearings. It is also reported that three committee members are considered genuinely undecided: Senators Howell Heflin (D-AL), Dennis DeConcini (D-AZ), and Specter. Specter is considered the most likely to oppose the nomination, but Heflin, a former chief justice of the Alabama Supreme Court, is viewed as the most important vote by both sides. (*The Washington Post*, 09/13/1987)

Prior to and during the confirmation hearings, PFAW runs sixty-second television ads featuring actor Gregory Peck, who claims that Bork “defended poll taxes and literacy tests, which kept many Americans from voting.” (Bork, p. 288)

On the 15<sup>th</sup>, confirmation hearings begin for Bork. *The Washington Post* calls the give and take between Bork and EMK “electrifying and instructive.” (*The Washington Post*, 09/16/1987) EMK gives Bork a scathing greeting, not covered or re-capped by CBS, in which he portrays Bork as hostile to women and blacks, irreverent to judicial precedence, and the superiority of the executive to the legislative branch. EMK then jostles Bork until he admits having made an “intellectual mistake” by writing articles for *The New Republic* and the *Chicago Tribune* attacking civil rights. The exchanges frequently reach the level of

“profound constitutional debate,” but Bork’s cold, technical discussion of essentially political issues is often overpowered by EMK’s media-ready sound bites accusing Bork of being “an activist of the right” and “hostile to the rule of law.” Biden passes EMK congratulatory notes throughout the questioning, but avoids berating or interrupting Bork himself. Clymer observes that the different approaches of EMK and Biden are complementary: EMK rallies the outside opposition, and Biden focuses on winning over senators on the committee. Others find Biden too restrained. (Clymer, pp. 422-424) In his account of his exchanges with Democrats and Specter, Bork claims, “Because I was, out of necessity, patient with him [Specter], a lot of people not versed in constitutional law got the impression that this was a serious constitutional discussion. Nor was there any serious discussion of the law with the Democratic senators. Kennedy kept insisting that I was against everybody’s rights. He and Metzenbaum tried to establish, but could not, that my discharge of Archibald Cox was illegal... It was left to Metzenbaum, however, to make some of the most egregious accusations about my attitudes toward women.” (Bork, p. 306; Patrick McGuigan and Dawn Weyrich, *Ninth Justice: The Fight for Bork*, USA: Free Congress Foundation, 1990, p. 108; Congressional Research Service, p. CRS-21)

On the 17<sup>th</sup>, EMK focuses on Bork’s conception of presidential power, referring to the myriad number of cases in which Bork had sided with the executive branch against Congress. Bork addresses each case individually, but not the broader issue: Bork’s conception of presidential power. This issue is of particular importance to Byrd, who is still one of four undecided committee members. (Clymer, p. 425)

On the 18<sup>th</sup>, EMK challenges the sincerity of Bork’s claims to the committee that he will not overrule precedent even if he thinks that the logic behind the precedent is incorrect. (Clymer, p. 425)

On the 21<sup>st</sup>, three prominent black leaders describe Bork as “too risky” while testifying at his confirmation hearings. William T. Coleman, Jr., Transportation Secretary under Ford, former representative Barbara Jordan (D-TX), and Atlanta Mayor Andrew Young claims that Bork has consistently opposed the expansion of minority rights. Jordan claims that she is “incredulous” at some of the more moderate claims Bork has made during his testimony, and that she would give “little weight” to them. (*The Washington Post*, 09/22/1987)

On the 23<sup>rd</sup>, Biden withdraws his candidacy for president under the weight of charges that he committed plagiarism as a law student. (Clymer, p. 427)

On the 26<sup>th</sup>, Bork visits the White House and requests that Reagan address the nation next week on prime-time television on his behalf. Bork claims, “I’ve been trying to do this on my own. You guys aren’t doing everything you can. I need the President.” Gitenstein claims that the White House’s strategy from the beginning

was to keep Reagan, who is suffering from Iran-Contra fallout, in the background of the confirmation proceedings. (Gitenstein, p. 11)

At the end of the month, Dole begins to visibly distance himself from Bork, incurring the wrath of right-wing organizations. (*The Washington Post*, 10/24/1987)

The confirmation hearings end on the 30<sup>th</sup>, after EMK and Biden persuade Bork's eager opposition that their testimony would draw attention to the groups themselves and negatively affect their campaign in the Senate against Bork. (1987 *Congressional Quarterly Almanac*, p. 273; Clymer, p. 427)

*October* On the 1<sup>st</sup>, Senators David H. Pryor (D-AR), Terry Sanford (D-NC), and Bennett Johnston (D-LA) announce that they will vote against Bork. Later in the day, Specter also announces his opposition. (*The Washington Post*, 10/24/1987)

On the 5<sup>th</sup> and 6<sup>th</sup>, Citizens for America and We the People run full-page ads in *The Washington Post* and *USA Today* attacking the anti-Bork advertising campaign. The ad claims that some of the anti-Bork senators have "serious personal character flaws." Of EMK, the ads claim, "You always wondered how he ever made it from the Chappaquiddick incident or getting expelled from Harvard for cheating." (Gitenstein, p. 297)

On the 6<sup>th</sup>, the Judiciary Committee votes 9-5 against the Bork nomination; the Committee reports on the 13<sup>th</sup>. (Congressional Research Service, p. CRS-21)

On the 8<sup>th</sup>, Bork delivers a statement in the White House press room in which he admonishes the public relations campaign against him and states, "I harbor no illusions...If I withdraw now, that campaign would be seen as a success and I would be mounted against future nominees. For the sake of the federal judiciary and the American people that must not happen." (Bork, p. 314)

On the 13<sup>th</sup>, Reagan publicly acknowledges that Bork will probably not be confirmed by the Senate. Later in the day, at a meeting with the New Jersey Chamber of Commerce, Reagan attacks anti-Bork senators, claiming that they have turned Bork's confirmation battle into a "political joke." Reagan's words undermine White House chief of staff Howard Baker's attempts to tone down Reagan's remarks on the Bork nomination in order to devote time to finding a more acceptable nominee. (*The Washington Post*, 10/14/1987)

Senate debate on the Bork nomination begins on the 21<sup>st</sup>. Biden opens the debate by dismissing charges that Bork is the victim of "lynch mobs" as "nothing but a smokescreen to distract the Senate and the American people" from Bork's Judiciary Committee testimony. EMK calls the criticism of the confirmation process by Bork's defenders "preposterous and hypocritical." Bork's wife and son leave the Senate chamber when EMK speaks, and return after EMK is finished.

(1987 *Congressional Quarterly Almanac*, p. 274; *The Washington Post*, 10/22/1987)

The Bork nomination is rejected 42-58 on the 23<sup>rd</sup>. EMK votes with the majority and warns Reagan not produce another nominee equivalent to Bork in judicial philosophy. (1987 *Congressional Quarterly Almanac*, p. 60-S; Clymer, p. 427; Congressional Research Service, p. CRS-21)

On the 29<sup>th</sup>, Reagan announces the nomination of Federal Circuit judge and Bork colleague Douglas H. Ginsburg to replace Powell. (1987 *Congressional Quarterly Almanac*, pp. 272, 274)

*November* On the 7<sup>th</sup>, Reagan accepts Ginsburg's request to withdraw his nomination following the revelation that Ginsburg had smoked marijuana while a professor at Harvard Law School. (1987 *Congressional Quarterly Almanac*, p. 275)

On the 30<sup>th</sup>, Federal Circuit judge Anthony Kennedy is nominated to replace Powell. Kennedy is perceived as a moderate conservative, and during his twelve years as an appeals court judge, he has accumulated a comprehensive record on social and constitutional issues. Unlike those of Bork, most of Kennedy's opinions address the issues directly involved in the case at hand, and do not extend to broader, more controversial issues. (1987 *Congressional Quarterly Almanac*, p. 275)

*December* On the 14<sup>th</sup>, hearings for Kennedy begin. EMK questions Kennedy on his decision to rule against the right of homeowners to act as "testers" in challenging real estate practices that allegedly steered blacks out of certain neighborhoods. The ruling was later overturned by the Supreme Court. EMK also questions Kennedy on his membership to the all-male Olympic Club in San Francisco and Kennedy's failure to protest the club's all-male, no-minority policy until his name appeared on a short list of potential Supreme Court nominees. In his answers, Kennedy assures EMK of his commitment to civil rights. Most of the civil rights groups that opposed the Bork nomination have remained silent on Kennedy except for the National Organization for Women. (1987 *Congressional Quarterly Almanac*, p. 276; *The New York Times*, 12/15/1987)

## **1988**

*January* On the 27<sup>th</sup>, after only three days of hearings, the Judiciary Committee votes 14-0 to recommend confirmation of Kennedy. (1987 *Congressional Quarterly Almanac*, p. 276)

*February* On the 3<sup>rd</sup>, the Senate confirms Kennedy 97-0. EMK votes in favor. (1987 *Congressional Quarterly Almanac*, p. 276; 1988 *Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1988, p. )

## 1990

- February* On the 6<sup>th</sup>, EMK spends less than ten minutes questioning Equal Opportunity Employment Commission head Clarence Thomas during his confirmation hearing as a nominee to the D.C. Court of Appeals. EMK questions Thomas on job discrimination cases and receives Thomas' responses favorably. EMK has relied on the advice of William T. Coleman and Senator John Danforth (R-MO), who had hired Thomas out of law school to be a Missouri assistant attorney general. (Clymer, pp. 481-482)
- April* On the 5<sup>th</sup>, the nomination of Samuel A. Alito, Jr. to the U.S. Circuit Court of Appeals is quickly and unanimously approved by the Judiciary Committee, where EMK says he is "sure" that Alito will be a successful judge. (*The Washington Post*, 11/01/2005)
- July* On the 25<sup>th</sup>, Judge David Souter is nominated by President George H.W. Bush to replace the liberal William J. Brennan, Jr. as Associate Justice. Souter has most recently spent four months on the U.S. First Circuit Court of Appeals in Boston, and is dubbed by the media as the "stealth justice," an unknown judge with uncertain values. Pundits speculate that the nomination of Souter is related to Souter's close friendship with Senator Warren Rudman (R-NH). The Leadership Conference on Civil Rights, which had fought Bork and remained silent on Kennedy, opposes Souter, whereas the ACLU and the People for the American Way do not express opposition. (*1990 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1990, pp. 510-511; U.S. Senate Homepage; *The Washington Post*, 10/02/1990, 10/03/1990)
- During the summer, senators scour whatever material they can find on Souter, from his tenure in the New Hampshire courts to his four-month stint on the U.S. Court of Appeals, in order to flesh out his views on judicial activism, abortion, and civil rights. EMK speaks for hours with aides Carey Parker, Carolyn Osolinik, and Jeff Blattner, as well as with Harvard Law School professors Kathleen Sullivan and Tribe. (*1990 Congressional Quarterly Almanac*, p. 509; Clymer, p. 481)
- August* On the 6<sup>th</sup>, EMK tells an annual meeting of the ABA, "In this day and age, the Senate will not confirm a blank slate to the Supreme Court of the United States." U.S. Attorney General Dick Thornburgh, also in attendance, responds angrily that Souter has a distinguished judicial record. (*1990 Congressional Quarterly Almanac*, p. 509; *Christian Science Monitor*, 08/08/1990)
- September* On the 13<sup>th</sup>, confirmation hearings for Souter begin. EMK questions Souter on some of the positions he took as New Hampshire Attorney General, including defending the state's refusal to provide the federal government with a racial breakdown of its employees. EMK argues that there is little in Souter's record that demonstrates a dedication to civil rights.

On the same day, Souter refuses to answer Biden's questions on *Griswold v. Connecticut*, the landmark contraceptives case that provides the basis for the *Roe v. Wade* decision legalizing abortion. Souter claims that the Court will likely review *Roe v. Wade* in the future, and thus it would be inappropriate for him to give his views. However, Souter assures the committee that he will approach abortion and other sensitive issues like affirmative action with an open mind. He also claims to accept a right to privacy under the due process clause. (*The New York Times*, 09/14/1990, 09/15/1990)

On the 14<sup>th</sup>, EMK portrays Souter as taciturn and legalistic, calling Souter's denial of unemployment compensation to two elderly men while he was a New Hampshire Supreme Court justice "hostile and heartless." EMK also questions Souter about an argument he made as Attorney General claiming that state literacy tests were valid in order to prevent the dilution of votes. EMK and Souter engage in a sharp exchange after Souter claims that while committee members would believe that his personal views would play no role in his interpretation of *Roe v. Wade*, the American public would not share such beliefs. EMK responds, "What do you know and I know that's superior to the common sense of the American people?" After the hearing, leading women's and abortion groups announce their opposition to Souter. (*The New York Times*, 09/15/1990; *The Washington Post*, 09/15/1990)

On the 24<sup>th</sup>, Cranston is the first senator to announce that he will vote against Souter, claiming that he cannot support Souter's views on abortion and contraceptives. Cranston is not on the Judiciary Committee. (*The New York Times*, 09/24/1990)

On the 27<sup>th</sup>, the Judiciary Committee approves the Souter nomination by a 13-1 vote. EMK casts the only dissenting vote, fearing that as a swing voter, Souter has the capacity to erode civil rights and the right to privacy. Biden claims that he was frustrated by Souter's unwillingness to provide his views on abortion and that his vote was a "close decision," but that Souter was probably the best nominee that the Democrats could hope for under the Bush administration. (1990 *Congressional Quarterly Almanac*, pp. 510-511)

#### October

On the 2<sup>nd</sup>, the Senate votes to confirm Souter 90-9 after less than four hours of debate. Only Democrats, including Senator John F. Kerry (D-MA) and EMK, stand in opposition to the nominee, and only three of them declare their opposition in floor speeches: Senator Brock Adams (D-WA), Cranston, and EMK. *The Washington Post* notes that the powerful liberal coalition that had thwarted the Bork nomination fell apart due to lack of ammunition, even though EMK personally tried to rally civil rights groups against Souter. (1990 *Congressional Quarterly Almanac*, p. 508, 515; *The Washington Post*, 10/02/1990; *The New York Times*, 10/03/1990)



## 1991

*Spring*      EMK's nephew, William Kennedy Smith, is charged with sexual battery in Palm Beach. EMK had been with Smith earlier on the night in question and is later called to testify. (Clymer, pp. 488-491; Edward M. Kennedy Biography, *Almanac of American Politics* 2000)

*July*      On the 8<sup>th</sup>, Thomas is nominated by Bush to replace Marshall as Associate Justice. Thomas is the only African American on Bush's short list of conservative nominees, and Bush calls Thomas "the best qualified," despite a minimal legal experience in entry-level jobs and an unremarkable year on the appeals court. Thomas is strongly supported by Danforth. (Clymer, p. 493; *The New York Times*, 07/07/1991; U.S. Senate Homepage)

Also on the 8<sup>th</sup>, the NAACP delays its stance on Thomas at its annual convention, opting to meet with Thomas to discuss his views before coming to a decision. (*The New York Times*, 07/09/1991)

On the 21<sup>st</sup>, the National Urban League votes to take no position on the Thomas nomination. (*The New York Times*, 08/01/1991)

On the 31<sup>st</sup>, the NAACP and the AFL-CIO declare their opposition to Thomas in coordinated statements. The NAACP, which reveals that it met with Thomas to discuss his views earlier in the month, charges him with an inconsistent view of civil rights policy, and the AFL-CIO calls the nomination a "disgraceful" attempt to pack the Court with conservatives. The White House and Danforth play down the significance of the opposition. Specter, who has not yet announced his position, says that the NAACP's opposition is "not going to help." (*The New York Times*, 08/01/1991)

*September*      The Conservative Victory Committee and Citizens United air a commercial questioning the ethics of Biden, Cranston, and EMK, who are all expected to oppose the Thomas nomination. The ad notes EMK's suspension from Harvard for cheating, Chappaquiddick, and the recent rape charges filed against EMK's nephew, William K. Smith. Danforth calls the commercial "sleazy" and the White House deems the personal attacks "reprehensible." (*The New York Times*, 09/04/1991)

On the 5<sup>th</sup>, EMK aide and Labor Committee staff member Seidman interviews University of Oklahoma Law Professor Anita Hill as part of a systematic review of Thomas's colleagues. When asked about rumors that Thomas sexually harassed Hill while she was his colleague at the Department of Education and the Equal Opportunity Employment Commission, Hill indicates that she needs more time to decide whether she will discuss the issue. (*The New York Times*, 10/08/1991)

On the 9<sup>th</sup>, Hill tells Seidman that she is willing to discuss Thomas's allegedly inappropriate sexual advances. Osolinik and Blattner tell Seidman that this is not time for EMK to become involved in a sexual harassment case—both for his own sake and because such an accusation would not be credible coming from EMK. Seidman refers Hill to a second Labor Committee staff member, Jim Brudney. (Clymer, p. 496; *The New York Times*, 10/08/1991)

On the 10<sup>th</sup>, confirmation hearings for Thomas begin. Biden interrogates Thomas on his philosophy towards abortion and property rights. EMK then briefly questions Thomas on his views on sexual discrimination in the workplace. (*The New York Times*, 09/11/1991)

Also on the 10<sup>th</sup>, Hill tells Brudney her story. Metzenbaum is not interested, and tells his staff to pass it along to Biden. (Clymer, p. 496)

On the 11<sup>th</sup>, the Labor Committee passes Hill's allegations on to the Judiciary Committee with the recommendation that they contact Hill. The Judiciary Committee responds that Hill will have to contact them instead.

On the 12<sup>th</sup>, Thomas faces the toughest questioning yet from Democrats, who have become frustrated by Thomas's unwillingness to disclose his views on abortion and other social issues. Biden further grills Thomas on natural law and sexual relations between unmarried couples, and deems one of Thomas' hollow responses "the most unartful dodge that I have heard." (*The New York Times*, 09/13/1991)

Also on the 12<sup>th</sup>, Hill contacts the Judiciary Committee and speaks with Harriet Grant, the chief communications counsel. Hill requests that the allegations be kept secret from Thomas, but is told that the nominee must have a chance to respond. (*The New York Times*, 10/08/1991)

On the 16<sup>th</sup>, EMK chief of staff Ranny Cooper contacts Ellen Lovell, chief of staff to Leahy, reportedly concerned that nothing is happening with the Hill accusations.

On the 18<sup>th</sup>, the Judiciary Committee receives a call from a Hill associate who claims that Hill had complained to her about Thomas's behavior in the spring of 1981. (*The New York Times*, 10/08/1991)

On the 19<sup>th</sup>, Hill informs the Judiciary Committee that she wants the full committee to know of her concerns and asks to be apprised of her options. (*The New York Times*, 10/08/1991)

Also on the 19<sup>th</sup>, Leahy appeals to Biden to move on Hill's allegations, and Biden asks the FBI to investigate. Hill is unwilling to speak with the FBI. (Clymer, p. 496)

On the 23<sup>rd</sup>, Hill sends Biden a four-page account of Thomas's attempts to date her while she worked for him, his discussions of pornographic movies, and his admission that it would ruin his career if she ever told anyone. Biden informs the White House and Thurmond, the senior Republican on the Judiciary Committee, of Hill's willingness to testify, touching off a hasty FBI inquiry into Hill's allegations. (Clymer, pp. 496-497; *The New York Times*, 10/08/1991)

On the 25<sup>th</sup>, two days before the Judiciary Committee's scheduled vote on the nomination, the FBI reports its findings to the White House and Biden. (*The New York Times*, 10/08/1991)

Following Leahy's announcement of his opposition earlier in the week, Senator Herb Kohl (D-WI) and Heflin announce their opposition to Thomas on the 26<sup>th</sup>. All Democrats opposed to the nomination have not cited any single issue as a reason, but broad dissatisfaction with the quality of Thomas's responses, which they believe to be lacking in substance and rehearsed for specific audiences. Although they have not yet formally announced their intentions, Simon, Metzenbaum, and EMK are expected to oppose the nomination as well. Clymer states that EMK did not stake out an early position due to the delayed responses of rights groups and his current partnership with Danforth on a civil rights bill. (Clymer, p. 494; *The New York Times*, 09/27/1991)

On the 27<sup>th</sup>, the Judiciary Committee votes 7-7 on the Thomas nomination and sends it to the floor, even though a tie could have held the nomination in committee. (Clymer, p. 497)

*October* On the 5<sup>th</sup>, the Hill story is broken in the press. (Clymer, p. 497)

On the 7<sup>th</sup>, Hill holds a news conference in which she defends her accusation of sexual harassment against Thomas and assails the Judiciary Committee for giving her allegations short shrift. (*The New York Times*, 10/08/1991)

On the 8<sup>th</sup>, the full Senate vote on the Thomas nomination is postponed in favor of three additional days of Judiciary Committee hearings.

Additional Judiciary Committee hearings take place from the 10<sup>th</sup> to the early morning of the 14<sup>th</sup>. Hill discusses her allegations against Thomas in excruciating detail, yet Biden gives into the Republican offensive led by Specter, who accuses Hill of fantasy, resentment, political conspiracy, and later perjury. Although EMK has done some private negotiating for Hill witnesses, he has little to say but for a short defense of Hill's character on the 13<sup>th</sup>. EMK tells witnesses testifying on behalf of Hill, "Some people just don't want to believe you." (Clymer, pp. 497-498; *The New York Times*, 10/14/1991)

On the 15<sup>th</sup>, the day of the full Senate vote, EMK denounces on the floor the Judiciary Committee's treatment of Hill. Specter hits back, saying, "We do not need characterizations like 'shame' in this chamber coming from the Senator from Massachusetts," and Hatch adds, "Anyone who believes that—I know a bridge up in Massachusetts that I'll be happy to sell them." Thomas is confirmed 52-48. EMK votes against the nomination. (*1991 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1991, p. 29-S; Clymer, p. 499)

EMK is criticized for not taking a more active role in attacking Thomas and defending Hill, and a post-confirmation Gallup poll finds that EMK has garnered only a twenty-two percent approval rating, whereas Specter receives a rating of forty-eight percent. A *Boston Globe* editorial speculates that EMK did not take a more definitive stand against Thomas due to his own reputation as a womanizer, and feminist columnist Anna Quindlen writes that EMK's behavior during the Thomas hearings proved that personal behavior does matter to political fitness. (Clymer, p. 499; *The New York Times*, 10/19/1991, 10/21/1991)

## 1993

### June

On the 14<sup>th</sup>, Federal Appeals Court Judge Ruth Bader Ginsburg is nominated by President Bill Clinton to succeed Byron White as Associate Justice. Ginsburg is known as a thoughtful moderate who eschews judicial activism. (*1993 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1993, p. 319)

The Ginsburg nomination is a disappointment for EMK, who favored the nomination of Harvard Law professor and Chief Justice of the U.S. Court of Appeals for the First Circuit Stephen Breyer, formerly an EMK aide and Chief Counsel to the Judiciary Committee. Breyer appeared to be the leading choice in late May and early June, but Senator Daniel Patrick Moynihan (D-NY) quietly backed Ginsburg until it was revealed that Breyer did not pay Social Security taxes for his house cleaner and he failed to impress Clinton in a highly publicized personal interview. Still, EMK praises Ginsburg's work for women's rights, eliciting a sigh of relief from the White House, which had feared offending EMK with the Ginsburg nomination. (Clymer, pp. 526-527; U.S. Senate Homepage)

### July

Confirmation hearings for Ginsburg take place from the 20<sup>th</sup> to the 23<sup>rd</sup>. During the first day of questioning, EMK prompts Ginsburg to discuss her efforts to break down legal barriers to the advancement of women. (*The New York Times*, 08/21/1993)

On the 29<sup>th</sup>, the Judiciary Committee unanimously approves the Ginsburg nomination. (*The New York Times*, 07/30/1993)

### August

On the 3<sup>rd</sup>, Ginsburg's nomination is approved 96-3 by the full Senate. EMK votes in favor. Ginsburg is the first Supreme Court justice to be nominated by a

Democratic president since LBJ's nomination of Marshall, and her confirmation comes at a time when a woman's right to an abortion is hanging by a thread: the Court upheld it by a scant 5-4 vote in *Planned Parenthood of Southeastern Pennsylvania v. Casey* of 1992. (*The New York Times*, 08/04/1993)

## 1994

### April

On the 6<sup>th</sup>, Blackmun announces his retirement from the Supreme Court. Clinton has said he would like to place an individual with real-world political experience on the bench, and Senate Majority Leader George Mitchell (D-ME) becomes the leading contender to replace Blackmun. (Clymer, p. 539; *1994 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1994, p. 303)

On the 12<sup>th</sup>, Mitchell announces that he will not take the post, claiming that it would compromise his ability to get health insurance legislation passed. EMK quickly advances Breyer's name to Clinton once more, who is also considering Federal Circuit judge Richard S. Arnold and Secretary of the Interior Bruce Babbitt as potential nominees. (Clymer, p. 539)

### May

On the 7<sup>th</sup>, ranking Republican on the Judiciary Committee Hatch tells Clinton and EMK that he will oppose Babbitt, urging EMK to make the case for Breyer.

On the 10<sup>th</sup>, EMK and Clinton speak about national health insurance at a meeting of the American Federation of Teachers. In a corridor of the Hyatt Regency Hotel, Clinton praises EMK's new health insurance plan in front of a reporter. EMK thanks Clinton for spending time with his son Patrick, who is running for a House seat in Rhode Island. EMK then turns Clinton so the reporter cannot hear and tells him what a great selection Breyer would make. As Breyer's other allies, such as White House counsel Lloyd Cutler, push the nomination in the coming days, EMK continues to call Clinton, convinced that his 1993 failure was due to the fact that Moynihan spoke to Clinton last. (Clymer, pp. 539-540)

On the 13<sup>th</sup>, Clinton announces his selection of Breyer as Associate Justice after Judge Richard Stearns tells him that Babbitt would write fine dissents, but that Breyer would be a leader. Arnold's recent diagnosis with cancer has eliminated him from the pool, and Breyer's clear bipartisan support is appealing to Clinton, who is pursuing a loaded legislative agenda. (Clymer, p. 540; *The New York Times*, 05/14/1994)

On the 17<sup>th</sup>, Breyer's nomination is received by the Senate. (U.S. Senate Homepage)

### July

Confirmation hearings for Breyer are held from the 12<sup>th</sup> to the 15<sup>th</sup>. During the hearings, Breyer tries to dispel his technocratic image, avoids saying too much on topical issues such as voting rights and abortion, and comments most extensively

on the importance of the separation between church and state. Breyer is generally well-received; his most vocal critic is Metzenbaum, who questions Breyer on a potential conflict of interest between Breyer's investments with Lloyd's of London and several pollution cases over which he presided. (*1994 Congressional Quarterly Almanac*, pp. 308-309)

On the 19<sup>th</sup>, Breyer is approved 18-0 in the Judiciary Committee. Although he expresses fears that Breyer will not look out for the interest of consumers and small business in antitrust cases, Metzenbaum still votes for Breyer. (*1994 Congressional Quarterly Almanac*, p. 310)

On the 29<sup>th</sup>, Breyer is confirmed 87-9 by the full Senate. EMK votes in favor. Senator Richard Lugar (R-IN) leads the opposition based on Breyer's investments with Lloyd's. (*1994 Congressional Quarterly Almanac*, pp. 310, 42-S)

## 2003

*January* President George W. Bush nominates John Roberts, Jr. to the D.C. Circuit Court of Appeals. The Judiciary Committee approves Roberts 16-3, with Senators Richard Durbin (D-IL), Charles Schumer (D-NY), and EMK in opposition. (*The Washington Post*, 06/02/2003)

*May* On the 8<sup>th</sup>, the Senate unanimously votes in favor of Roberts. (*The Washington Post*, 06/02/2003)

## 2005

*July* On the 29<sup>th</sup>, Roberts is nominated as Associate Justice by Bush. (U.S. Senate Homepage)

*September* On the 6<sup>th</sup>, Roberts is nominated as Chief Justice by Bush. (U.S. Senate Homepage)

On the 12<sup>th</sup>, confirmation hearings for Roberts begin.

On the 13<sup>th</sup>, EMK questions Roberts on his positions on the constitutionality of extant civil rights legislation, such as the 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1968 Fair Housing Act. EMK particularly focuses on voting rights, which Roberts had previously claimed was beyond the jurisdiction of the Court. Roberts points out that at the time he expressed these opinions, he was a staff lawyer at the Department of Justice under Reagan. (Roberts Confirmation Hearings Transcripts, <http://www.washingtonpost.com/wp-dyn/content/linkset/2005/09/14/LI2005091402149.html>)

On the 14<sup>th</sup>, EMK follows up with Roberts on civil rights and affirmative action. (Roberts Confirmation Hearings Transcripts)

On the 20<sup>th</sup>, Senate Minority Leader Harry Reid (D-NV) announces his opposition to Roberts. (*The Boston Globe*, 09/23/2005)

On the 21<sup>st</sup>, EMK and Kerry declare their opposition to the Roberts nomination. On the same day, ranking Democrat on the Judiciary Committee Leahy announces his support of Roberts. (*The Boston Globe*, 09/23/2005)

On the 22<sup>nd</sup>, Roberts is approved by the Judiciary Committee 13-5. Three of the committee's eight Democrats join all ten Republicans in supporting the nomination. EMK is joined in the opposition by Senators Dianne Feinstein (D-CA), Schumer, Durbin, and Biden. (*The Boston Globe*, 09/23/2005)

On the 29<sup>th</sup>, Roberts is confirmed 78-22 by the full Senate, and is sworn in as Chief Justice just hours later. Senate Democrats split 22-22 on the vote. Democrats voting against Roberts include moderates with presidential aspirations, such as Senators Hillary Rodham Clinton (D-NY), Evan Bayh (D-IN), and Biden. (*The Washington Post*, 09/30/2005)

*October* On the 7<sup>th</sup>, Harriet Miers is nominated as Associate Justice. (U.S. Senate Homepage)

On the 27<sup>th</sup>, Miers requests that Bush withdraw her nomination following a Republican attack on her judicial and conservative credentials. At the withdrawal announcement, both Miers and Bush cite concern for Judiciary Committee requests for documents regarding Miers's work as White House counsel, which the administration has withheld as privileged. (*The Washington Post*, 10/28/2005)

On the 31<sup>st</sup>, Alito is nominated by Bush as Associate Justice.

*December* On the 1<sup>st</sup>, Schumer demands to know why Alito omitted references to a seventeen-page abortion strategy memo in a Judiciary Committee questionnaire, and EMK claims that "a credibility gap is emerging with each new piece of information released on Judge Alito's record." (*The Washington Post*, 12/02/2005)

On the 5<sup>th</sup>, EMK asks Alito to provide a fuller explanation of why he failed to recuse himself from a 2002 case involving the Vanguard investment company after telling the Senate in 1990 that he would not rule on Vanguard matters due to his investments in the firm. (*The Washington Post*, 12/06/2005)

On the 22<sup>nd</sup>, EMK sends a request to Judiciary Committee Chairman Specter requesting a subpoena for documents belonging to *National Review* editor William Rusher, sealed at the Library of Congress until Rusher's death. EMK believes that the documents may expose information about Alito's involvement in Concerned Alumni of Princeton (CAP), a conservative group founded by Rusher

that opposed the admission to Princeton of women and minorities. Alito included his CAP membership on a 1985 job application for a position at the Department of Justice under Reagan.

## 2006

### January

On the 9<sup>th</sup>, confirmation hearings for Alito begin. In opening statements, EMK focuses on the Vanguard case and Alito's belief with regards to executive authority, privacy, and job discrimination, claiming that, "...the record troubles me deeply." (Alito Confirmation Hearings Transcripts,

<http://www.washingtonpost.com/wp-dyn/content/article/2006/01/09/AR2006010900755.html>)

On the 10<sup>th</sup>, EMK questions Alito further on Vanguard, his alleged deference to "government over individuals," and Alito's concept of executive power, focusing on Alito's advocacy of "presidential signing statements" as a DOJ official under Reagan. EMK alleges that a presidential signing statement was issued in December by Bush to exempt the executive branch from a recent anti-torture law. (Alito Confirmation Hearings Transcripts; *The Washington Post*, 01/11/2006)

On the 11<sup>th</sup>, EMK grills Alito further on the Vanguard case, claiming that Alito violated his promise to the committee to recuse himself. In addition, EMK requests that Specter motion to vote on the subpoena of Rusher's documents pertaining to CAP. Rusher agrees to grant EMK's staff access to the records, although Specter cites a November 26<sup>th</sup> *New York Times* article by David Kirkpatrick claiming that Kirkpatrick had access to the documents and did not find substantial evidence of Alito's participation in CAP. Alito denies having participated actively in the group, and that he did not know until recently that CAP advocated beliefs discriminating against women and minorities. (Alito Confirmation Hearings Transcripts)

On the 12<sup>th</sup>, Specter announces to the committee that Alito's name was not mentioned in Rusher's records, and Rusher claims Alito was not heavily involved in CAP, if at all. (Alito Confirmation Hearings Transcripts)

On the 19<sup>th</sup>, EMK, Judiciary Committee Ranking Democrat Leahy, Durbin, and Senator Ken Salazar (D-CO) announce their opposition to Alito. EMK calls the confirmation vote "the vote of a generation," but does not mention CAP or Vanguard. (*The Washington Post*, 01/20/2006)

On the 24<sup>th</sup>, Alito is recommended 10-8 along party lines by the Judiciary Committee. Two days later EMK and Kerry call for a filibuster of the Alito nomination. They acknowledge the possibility that the filibuster may fail, but hope that extended debate will draw further attention to Alito's record on abortion, civil rights, and presidential power. Unlike during the Roberts



confirmation process, EMK has placed little emphasis on civil rights during the Alito confirmation.

On the 31<sup>st</sup>, the Senate confirms Alito 58-42. EMK votes against confirmation.