



## EDWARD M. KENNEDY ORAL HISTORY PROJECT

### **Interviewer's Briefing Materials Melody Barnes Interview, 08/16/2006**

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

- Melody Barnes Timeline.

#### **Secondary Source Materials**

- Melody Barnes bio, <http://www.americanprogress.org>.
- "White House Calls the Shots, As Illegal Alien Bill Clears," *1996 Congressional Quarterly Almanac* (Washington: Congressional Quarterly Almanac) pp. 5-3 – 5-7, 5-10 – 5-13, 5-16 – 5-17.
- Jack Torry, "Senate Bill Would Curb Entry, Jobs for Illegal Aliens," *Pittsburgh Post-Gazette*, 05/03/1996.
- "New Law Discourages Gay Marriages," *1996 Congressional Quarterly Almanac* (Washington: Congressional Quarterly Almanac) pp. 5-26 – 5-27, 5-29, 5-28.
- Carolyn Lochhead, "Late Bid by Gays Would Link Marriage Bill to Job Bias," *The San Francisco Chronicle*, 06/10/1996.
- Carolyn Lochhead, "Late Senate Battle on Restricting Gay Marriages, Kennedy Says Bill Appeals to Nation's 'Darkest Side'," *The San Francisco Chronicle*, 07/12/1996.
- Thomas Oliphant, "Kennedy's Deft Maneuver Changes the Impeachment Game," *The Boston Globe*, 01/12/1999.
- "Statement by Senator Edward Kennedy [At Clinton Impeachment Trial] <<http://www.australianpolitics.com/usa/clinton/trial/statements/kennedy.shtml>>.
- "After Standoff, Conferees Cut Hate Crimes Provisions from Defense Authorization," *2000 Congressional Quarterly Almanac* (Washington: Congressional Quarterly Almanac) pp. 15-27 – 15-29.
- Jon Sawyer and Karen Branch-Brioso, "Second Day Focuses on Ashcroft's Past, Role as State Attorney General," *St. Louis Post-Dispatch*, 01/18/2001.

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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.

- “Longstanding Judicial Vacancies Revive ‘Smaller is Better’ Crusade,” *2000 Congressional Quarterly Almanac* (Washington: Congressional Quarterly Almanac) pp. 15-41 – 15-43.
- “Acrimony Reigns Over Judicial Picks,” *2002 Congressional Quarterly Almanac* (Washington: Congressional Quarterly Almanac) pp. 13-12 – 13-13.
- “Judicial Nominee Battles Intensify,” *2003 Congressional Quarterly Almanac* (Washington: Congressional Quarterly Almanac) pp. 13-19.

## MELODY BARNES TIMELINE

*Prepared by Kyle M. Lascurettes*

*Miller Center, University of Virginia, 07/20/2006*

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### 1995

- June* Senator Alan Simpson (R-WY) proposes two separate bills to the immigration subcommittee of the Judiciary Committee, one dealing with illegal immigration and another with legal immigration. The illegal immigration bill would prohibit illegal immigrants from receiving state and federal welfare benefits, thus eliminating, in Simpson's view, a major motive for many illegal immigrants to come to America. Senator Edward M. Kennedy (D-MA) (EMK) proposes an amendment that would allow illegal immigrants to petition for benefits after becoming legal citizens or working in the U.S. for five years. The amendment fails, 2-5. Simpson's illegal immigration bill would cap the number of refugees permitted annually to 50,000, but EMK and Senator Charles E. Grassley (R-IA) propose an amendment to remove the cap, which passes 5-1. The subcommittee approves the bill, 5-2, with EMK and Senator Paul Simon (D-IL) voting against it. (*1995 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly Inc., 1995, pp. 6-16 – 6-18)
- November* Simpson proposes his bill to limit legal immigration. The bill would reduce the annual cap from 675,000 to 540,000 immigrants allowed per year. Ethnic groups as well as business interests oppose such reductions, arguing that it will be bad for the economy. EMK successfully amends the bill, adding a provision that would prohibit a business from hiring a foreign worker if it had recently fired an equally qualified American worker. EMK and Simon vote against the bill, but it passes 5-2, as does a motion to unite the illegal and legal immigration bills into one when considering the issue in the full Judiciary Committee. Congress adjourns before the bill is given further consideration. (*1995 Congressional Quarterly Almanac*, pp. 6-16 – 6-18)
- December* Melody Barnes begins working for EMK. She begins as general counsel but eventually becomes his chief counsel on the Senate Judiciary Committee.

- 1996** In early spring, the Senate Judiciary Committee considers Simpson's combined bills. Simpson believes that keeping the bills together is crucial to their passage and makes several concessions to avoid its division into separate legal and illegal immigration reforms. Yet when an amendment to split the bill comes before the committee on March 14<sup>th</sup>, it passes, 12-6, with EMK voting for it. He says of the split that it is "a welcome sign that Congress won't let legitimate concerns about illegal immigration create an unjustified backlash against those who enter the country legally under our immigration laws." (*St. Louis Post-Dispatch*, 03/20/1996)

The Judiciary Committee takes up the illegal immigration bill (S. 1664) first in mid March. The bill would increase border patrol security, streamline deportation logistics, and create pilot programs toward the eventual creation of a national verification system for all immigrants seeking employment. Most controversially, the bill would also restrict public benefits for all illegal and some legal immigrants. Specifically, the bill would require that legal immigrants would have to add their income to the income of their sponsor when applying for public benefits (such as welfare, school aid, etc.), virtually ensuring that most would not be eligible for public benefits. This provision would apply to all existing legal immigrants for five years and for any immigrants entering the country after the bill is passed for ten years. EMK tries to eliminate this income-eligibility requirement through an amendment, but loses 7-8. He then tries to exempt school aid from this provision. This amendment also fails, 7-9. Finally, he successfully adds an amendment allowing female illegal immigrants to become eligible for federal prenatal aid after three years. The final version of the bill also contains a weakened version of the pilot programs for a national verification system, now requiring more congressional approval to continue the programs after three years. On March 21, the illegal immigration bill passes the Judiciary Committee 13-4, with EMK voting against it. (*1996 Congressional Quarterly Almanac*, pp, 5-4 – 5-17)

The Judiciary Committee then begins debate on the legal immigration bill (S. 1665) in late March. Simpson's original bill would cut family reunification visas to 450,000 and would eliminate eligibility for these visas for some types of family members altogether. It would also cut employment visas from 140,000 to 90,000. EMK and Senator Spencer Abraham (R-MI) propose an amendment that would install a much more limited restructuring of the family reunification system. Specifically, it would actually increase these visas from 480,000 to 500,000 in order to help clear out waiting lists, and would then drop the number of family reunification visas to 425,000 after ten years. The amendment would also give greatest preference to certain types of relatives, but would not entirely eliminate visas for other types as the Simpson's original does. Simpson complains that this is virtually an acceptance of the status quo, but the amendment passes on March 28<sup>th</sup>, 11-4. By another amendment, all restrictions on employment-related immigration restrictions are also eliminated, 11-4. However, another successful amendment strengthens limits on the H-1B program, which allows employers to import temporary workers. EMK attempts to impose even stiffer restrictions on H-1B, including requiring employers to seek out US workers first, and restricting work-related visas from 140,000 to 100,000. Both amendments fail, but EMK succeeds with his amendment eliminating the 10,000 visas set aside for unskilled labor visas. The bill passes the Judiciary Committee, 13-4, on March 28<sup>th</sup>. (*1996 Congressional Quarterly Almanac*, pp, 5-4 – 5-17)

When the illegal immigration bill reaches the Senate floor, Democrats try to attach to it an increase in the minimum wage, leading Senate Majority Leader Bob Dole (R-KS) to remove it from the floor on April 15<sup>th</sup>. Facing strong opposition

from business lobbyists, the legal immigration bill never even makes it to the Senate floor. Simpson attempts to add the major provisions from his failed legal immigration reform as amendments to the illegal immigration bill when the Senate takes that bill back up on April 24<sup>th</sup>-25<sup>th</sup>. His amendment to cap reunification visas at 480,000 and give strong preferences to relatives likely to live in the same home as U.S. citizens is rejected, with EMK strongly opposing it. EMK also firmly opposes a similar ‘compromise’ amendment from Senator Dianne Feinstein (D-CA) that was slightly less restricting than Simpson’s but would eliminate an existing sibling reunification program that had originally been an EMK initiative. Wanting to propose a cut of employment-based visas from 140,000 to 100,000, yet realizing it has no chance of passing, Simpson does not even offer this as an amendment. EMK and others attempt to weaken the public benefits restrictions on legal immigrants in the bill, but are unsuccessful. The Senate passes Simpson’s illegal immigration bill (S. 1664) on May 2<sup>nd</sup>, 97-3, with EMK voting for it. After the illegal immigration bill passes in conference, the White House attempts to weaken parts of it and to attach the entire bill to a contentious omnibus appropriations bill. EMK works with President Bill Clinton to demand removing the remaining restrictions on welfare benefits for sponsored legal immigrants. In the end, most of these are removed. Republicans concede, thus removing what was left of Simpson’s original program to curb legal immigration. Clinton signs the illegal immigration bill as part of the larger omnibus appropriations bill on September 30<sup>th</sup>. (*1996 Congressional Quarterly Almanac*, pp, 5-4 – 5-17)

*June*

In response to the burnings of more than 30 Southern black churches over the past year, the House passes a bill on the 18<sup>th</sup> giving the federal government more power to fight such crimes. The bill would expand the circumstances under which the federal government could prosecute cases involving the destruction of religious property, primarily by removing the previous threshold of \$10,000 worth of damage that had to be met in order for the federal government to get involved. It would also double the penalty for church arsons from ten to twenty years. On the 19<sup>th</sup>, EMK and Senator Lauch Faircloth (R-SC) introduce an even more expansive version of the House bill in the Senate. In addition to the provisions in the House bill, their version would allow the Treasury Department to hire more agents to assist local investigations of church burnings, and would also give the Housing and Urban Development Department authority to make loan guarantees to lenders providing loans to victimized churches. The bill passes in the Senate, 98-0, on the 26<sup>th</sup>, and the House adopts the Senate version the next day. Clinton signs the bill into law on July 3<sup>rd</sup>. (*1996 Congressional Quarterly Almanac*, pp. 5-31 – 5-32; *USA Today*, 06/27/1996)

*April-Sept.*

In late 1995, EMK votes against the Abortion Procedure Ban, which would make it a federal crime for doctors to perform late-term abortions (also known as partial-birth abortions) unless the pregnancy was life-threatening. After some Senate revisions to the original House bill, it passes in the Senate and the changes are approved in the House. Clinton vetoes the bill on April 10<sup>th</sup>, based on the fact

that Congress would not add ‘endangering the *health* of the mother’ (as opposed to ‘the *life* of the mother’) to the proposed ban. The House overrides the veto on September 19<sup>th</sup>, but the Senate votes to sustain the veto on the 26<sup>th</sup>, nine votes short of the two-thirds needed to override. EMK votes to sustain the veto. (1996 *Congressional Quarterly Almanac*, p. 6-43)

*September* EMK opposes the Defense of Marriage Act, which aims to bar federal recognition of gay marriage and would allow states the right to not recognize gay marriages performed in other states (thus exempting states on the issue of gay marriage from adhering to the ‘full faith and credit’ clause in Article IV of the U.S. Constitution). Though the bill has strong support in both Houses of Congress, EMK threatens to add an amendment which would extend employment discrimination protection under the 1964 Civil Rights Act to the issue of sexual orientation. EMK agrees to offer his proposal as a separate bill rather than an amendment as long as it is considered on the same day as the Defense of Marriage Act. EMK’s bill, which is also sponsored by Senators James Jeffords (R-VT) and Joe Lieberman (D-CT), is defeated 49-50 on the 10<sup>th</sup>. Senator David Pryor (D-AK) says he probably would have voted for it had he not been at home with his dying son, and Vice-President Al Gore pledges that he would have left the campaign trail (for Clinton’s reelection) to break the tie in EMK’s favor. The Senate passes the Defense of Marriage Act with a veto-proof majority (85-14) on the same day, with EMK voting against it. Clinton ‘quietly’ signs the bill early in the morning on the 21<sup>st</sup>. Though lawmakers supporting the bill insist that it is mostly about preventing judicial and state activism from overtaking federal authority, EMK remains skeptical: “We all know what is going on here. I regard this bill as a mean-spirited form of Republican legislative gay-bashing cynically calculated to try to inflame the public eight weeks before the Nov. 5 election.” (1996 *Congressional Quarterly Almanac*, pp. 5-26 – 5-29; *The New York Times*, 09/13/1996)

## 1997

*May-October* Senator Rick Santorum (R-PA) proposes legislation to prohibit partial-birth abortions. Though the bill allows abortion doctors slightly more ‘wiggle’ room in terms of legal protection from prosecution, it is essentially the same law passed by Congress and vetoed by Clinton in 1996. The bill passes in the House on March 20<sup>th</sup>, and is sent to the Senate. Though EMK again votes against the bill, it passes in the Senate on May 20<sup>th</sup> with ten more votes (64-36) than it received the previous year (yet still short by three for a veto override). The House clears the Senate version of the bill on October 8<sup>th</sup>, sending it to the President. Clinton again vetoes the bill on October 10<sup>th</sup>, allegedly for the same reason as before. Efforts for a veto override are postponed until 1998. (1997 *Congressional Quarterly Almanac*, pp. 6-12 – 6-18)

*November* At his White House Conference on Hate Crimes, Clinton declares his support for a proposal sponsored by EMK and Senator Arlen Specter (R-PA) to broaden

federal jurisdiction over hate crimes, as well as the definition of ‘hate crime’ itself to include sexual orientation and disability. Their proposal is crafted as an amendment to an existing civil rights law that makes it a crime to “interfere violently with anyone’s exercise of certain federally protected activities because of that person’s race, religion or ethnicity.” Reportedly no further action is taken on their proposal in the Senate this year. (*The Washington Post*, 11/17/1997)

## 1998

*Summer* EMK and Representative Charles Schumer (D-NY) introduce a hate crimes bill in both Houses of Congress. Specifically, the bill would add crimes motivated by a victim’s sexual orientation, gender or disability to the list of what constitutes a hate crime. Under the existing 1968 law, hate crimes were defined only as those motivated by race, color, religion or national origin. The new bill would also expand federal jurisdiction over hate crimes and would provide new grants to states in order to make it easier to prosecute hate crimes cases. The bill makes no notable progress in either house this year. (*The Boston Globe*, 07/20/1998, 07/28/1998, 07/29/1998)

*June* On the 28<sup>th</sup>, the Senate Judiciary Committee approves two nearly identical versions of a flag burning amendment to the U.S. Constitution (they differ only in their enacting clauses). EMK votes against both. Due to a lack of momentum, the two proposals are never taken up on the Senate floor. (*1998 Congressional Quarterly Almanac*, p. 17-11)

*July-Sept.* The Senate Judiciary Committee approves (10-6) legislation that would make it a federal crime to transport a minor across a state border for an abortion in order to escape another state’s parental consent law. In committee, EMK attempts but fails to add an amendment that would require the Justice Department’s certification for prosecution on a case-by-case basis in order to ensure that the case held ‘significant public interest.’ Though the House passes the bill in July, a vote to invoke cloture on debating the issue fails in the Senate on September 22<sup>nd</sup>, thus delaying a vote on the bill indefinitely. EMK votes against cloture. Clinton vows that if the bill is ever passed he will veto it. (*1998 Congressional Quarterly Almanac*, pp. 3-5 -3-6)

*September* On the 18<sup>th</sup>, the Senate fails to override Clinton’s veto of Santorum’s 1997 Abortion Procedure Ban. Votes to override are identical to votes supporting the legislation in 1997, thus falling three short of the two-thirds needed. EMK votes to sustain the veto. (*1998 Congressional Quarterly Almanac*, p. 3-7)

## 1999

*January* On the 8<sup>th</sup>, the Senate holds a closed-door caucus in the Old Senate Chamber to debate on how to proceed with Clinton’s impeachment trial. While the White House and Clinton’s attorneys hope for a quick and decisive vote along partisan

lines, many senators, including EMK, want to stay above the kind of ‘partisan meltdown’ that the House succumbed to when voting for impeachment. EMK surprisingly comes to the aid of Senator Phil Gramm (R-TX), an ideological opposite of his, when Gramm calls for a preliminary agreement for a trial to at least hear the House Managers regarding the impeachment charges, rather than simply having a partisan vote right away. EMK and Gramm are widely credited for the agreement that keeps the Senate proceedings more civilized and less partisan than those in the House. EMK, Gramm, Lieberman and Senator Slade Gorton (R-WA) are designated to hash out the details with the lawyers of Senate Majority Leader Trent Lott (R-LA) and Minority Leader Tom Daschle (D-SD). After some tense debates in private, an agreement is reached and a 4 PM Senate vote is scheduled. The plan calls for a two week trial in which the House Managers would have 24 hours to present their case, followed by 24 hours from the White House defense, followed by 16 hours of questions for both sides from the Senate. After this, the plan calls for a vote on two contentious motions, one to dismiss the charges entirely, the other to call witnesses. The proposal seems to succeed precisely because it puts off the contentious issue of calling witnesses (most controversially, Monica Lewinsky) until a later date. As EMK says, “We can get to second base together. Let’s worry about how to get from second base to home plate later.” (Peter Baker, *The Breach: Inside the Impeachment and Trial of William Jefferson Clinton*, New York: Scribner, 2000, p. 292) With a 100-0 vote, the senators unanimously agree on this preliminary schedule for the impeachment trial. Though the agreement represents concessions from both sides, it is seen as more of a win for the Republicans. Rae and Campbell argue, “Some Senate Democrats expressed private annoyance that Kennedy had been so quick to support Gramm because they thought he gave away a tactical advantage held by the Democrats stemming from the Republicans’ fear of looking as partisan as their House counterparts.” (Nicol C. Rae and Colton C. Campbell, *Impeaching Clinton: Partisan Strife on Capital Hill*, Lawrence, KA: University of Kansas Press, 2004, pp. 134-135) Yet overall, EMK’s and Gramm’s collaboration is seen as a successful endeavor. (Baker, pp. 292-293; Adam Clymer, *Edward M. Kennedy: A Biography*, New York: William Morrow, 1999, pp. 601-602; 1999 *Congressional Quarterly Almanac*, p. 13-4)

On the 27<sup>th</sup>, after three days of presentations from House Managers, three days of presentation from Clinton’s defense, and two days of questions from senators for both the prosecution and defense, the Senate votes on a motion to dismiss the impeachment charges. Although it fails, the 44 votes in favor of dismissal (all Democrats) clearly show that finding a two-thirds majority to convict Clinton will be difficult. Yet on the same day, the Senate votes 54-44 in favor of holding and recording the depositions of Lewinsky, White House aide Sidney Blumenthal and Clinton friend Vernon E. Jordan, Jr. EMK votes yes to dismiss the charges and no to depose the three witnesses. Peter Baker notes that while others defiantly called out their ‘ayes’ in favor of dismissing the charges, EMK’s vote is given in a soft, sad voice. (1999 *Congressional Quarterly Almanac*, pp. 13-3, 13-18, S-5; Baker, p. 360)



*February* In his final statement (closed to the public) EMK urges the Senate to reject the articles of impeachment. He argues against conviction mostly on constitutional grounds, saying that the framers of the constitution “clearly did not intend the Impeachment Clause to nullify the vote of the people, except in the most extraordinary cases of great danger to the nation.” Though he agrees that Clinton intentionally “misled the country for many months” he argues that “nothing [Clinton] did rises to the high constitutional standard required for impeachment and removal of a President from office.” With EMK’s permission, his statement is printed as part of the *Congressional Record* for February 12<sup>th</sup>. (<http://www.australianpolitics.com/usa/clinton/trial/statements/kennedy.shtml>)

On the 12<sup>th</sup>, the Senate rejects both articles of impeachment against Clinton. Article I is rejected 45-55 and Article II is rejected 50-50. Ten Republicans joined with all 45 Democrats to reject Article I. Five Northeast moderate Republicans joined with all 45 Democrats to reject Article II. A two-thirds majority was required to convict on either article, though many conservatives were reportedly seeking only a ‘moral’ victory with a 51 vote majority on either article (which was not achieved). EMK votes not guilty on each article. (*1999 Congressional Quarterly Almanac*, pp. 13-3, 13-21)

*April-May* On April 24<sup>th</sup>, the Senate Judiciary Subcommittee on the Constitution approves, 5-3, a proposed constitutional amendment to allow federal courts to prohibit the desecration of the American flag. The Senate Judiciary Committee approves the amendment on May 1<sup>st</sup>, 11-7. EMK votes against it in both subcommittee and committee. The House passes some version of a flag burning amendment for the third time on June 26<sup>th</sup>. Senate Republicans do not appear to arrange a vote on the issue for fear that they are still two votes short of the 67 necessary to send the bill to the states. (*1999 Congressional Quarterly Almanac*, pp. 18-39 – 18-42)

*July* On the 15<sup>th</sup>, the House passes a bill that would provide federal protection to limit state and local governments from intruding on religious expression. The bill faces both support and opposition from a mix of conservative and liberal groups. EMK and Senator Orrin Hatch (R-UT) announce plans to cosponsor and introduce a similar bill in the Senate Judiciary Committee, yet no other action appears to be taken this year. (*1999 Congressional Quarterly Almanac*, pp. 18-42 – 18-44)

*July-Oct.* On July 22<sup>nd</sup>, the Senate passes their version of the appropriations bill for the departments of Justice, Commerce and State. EMK successfully adds an amendment that would significantly expand the scope of hate crimes legislation, and is nearly identical to his attempts in previous years. His amendment is dropped from the conference report, which is passed by the House and the Senate on October 20<sup>th</sup>. Clinton vetoes the appropriations bill on November 19<sup>th</sup>, primarily because it did not provide for enough of his legislative priorities and could have jeopardized America’s seat on the United Nations Security Council. Clinton signals his discontent that the hate crimes amendment had been dropped,

yet indicates that its reinsertion into the bill is not necessary for him to sign it. EMK tries and fails to reinsert the hate crime legislation into the revised version of the appropriation bill, which passes in the Senate on November 19<sup>th</sup>. Clinton signs the bill without the hate crimes amendment on November 29<sup>th</sup>. Majority Leader Lott says that the Senate will not take up hate crimes legislation again this year. (1999 *Congressional Quarterly Almanac*, pp. 2-17 – 2-26)

*September* The Senate Judiciary Committee approves, 12-5, a proposed constitutional amendment that would enumerate and expand some rights for victims of violent crimes. Specifically, the amendment would “give victims the rights to be notified of and attend all proceedings related to the crime; to speak or submit statements at each public hearing in the case, including parole or other early release hearings’ to reasonable notice if those convicted in their cases are released or escape; and to restitution.” The Constitution Subcommittee had approved the amendment on May 26<sup>th</sup>, 4-3. Sponsor Senator Jon Kyl (R-AZ) pushes to have the bill debated on the Senate floor by the next spring, and no more action is taken on it this year. The House Judiciary Committee does not signal whether or not it intends to take the measure up. (1999 *Congressional Quarterly Almanac*, pp. 18-38 – 18-39)

## 2000

*March* After long delays and many bitter partisan battles, the Senate finally confirms three of the most controversial Clinton nominees to the federal bench. On the 7<sup>th</sup>, the Senate confirms Julio M. Fuentes to the 3<sup>rd</sup> U.S. Circuit Court of Appeals. On March 9<sup>th</sup>, the Senate votes to confirm both Richard A. Paez and Marsha L. Berzon to the 9<sup>th</sup> U.S. Circuit Court of Appeal in San Francisco, a court Republicans have complained is too liberal and out of touch with mainstream America. Paez had been approved by the Senate Judiciary Committee, 10-8, on July 29<sup>th</sup>, 1999. Berzon was approved by the Committee on July 1<sup>st</sup>, 1999. Despite these confirmations, Democrats remain frustrated at Republicans’ unprecedented blocking of the president’s judicial nominations, as 40 of Clinton’s nominations were still pending at the end of the Congressional session and Clinton’s term in office. (2000 *Congressional Quarterly Almanac*, pp. 15-41 – 15-43)

On the 23<sup>rd</sup>, the Senate Judiciary Committee approves a bill affecting the seizure of private property allegedly linked to the crime in criminal cases. Specifically, the new law would shift the burden of proof from the defendant to the government to show that the property seized is actually connected to the crime. The bill receives little opposition in both the Judiciary Committee and on the Senate floor, where it passes by voice vote on the 27<sup>th</sup>. Clinton signs the bill on April 25<sup>th</sup>. (2000 *Congressional Quarterly Almanac*, pp. 15-36 – 15-37)

Though the House approves a new flag desecration amendment, the proposed amendment falls four votes short of the two-thirds needed in the Senate on March 29<sup>th</sup>. EMK opposes the amendment. (2000 *Congressional Quarterly Almanac*)

*June-Oct.* EMK and Gordon Smith (R-OR) cosponsor an amendment to a defense authorization bill that would expand federal hate crimes law. Nearly identical to EMK's earlier attempts, the proposal would expand the definition of a hate crime to include sexual orientation or disability, and would allow for federal prosecution of hate crimes even if federally protected activities were not involved. (Under the existing 1968 law, the federal government was only allowed to intervene in hate crimes cases if they occurred on federal property or during federally-protected activities such as voting). Speaking in support of the amendment, EMK says on the Senate floor, "Crimes based upon hatred and bigotry wound not only the individual, but they also wound and scar an entire community." The amendment is successfully adopted on June 20<sup>th</sup>, 57-42. The defense bill passes in the Senate on July 17<sup>th</sup>, 97-3, with EMK's amendment still intact. Though Republican leadership in the House does not allow the hate crimes amendment to come up on the floor, the House successfully votes on September 13<sup>th</sup> to instruct their conferees to keep EMK's amendment in the final conference report. Nevertheless, the hate crimes amendment is removed from the defense bill in conference committee on October 5<sup>th</sup>. The bill passes without EMK's amendment on October 12<sup>th</sup>, 90-3, with EMK voting for it. Despite his urging that Congress accept the hate crimes amendment, Clinton signs the defense bill without it on October 30<sup>th</sup>. (*Congressional Quarterly Almanac*, pp. 8-3, 15-27 – 15-29; *The Denver Post*, 06/22/2000)

On June 29<sup>th</sup>, the Senate Judiciary Committee approves a five-year reauthorization of the 1994 Violence Against Women Act. The new bill would also create a new grant program to provide legal assistance to help female victims of violence. The measure is eventually combined with a series of other crime bills dealing with sex trafficking, sexual predators, tightening the sale of alcohol over the internet, and aiding victims of international terrorism. This larger anti-crime bill passes in the Senate on October 11<sup>th</sup>, 95-0, with EMK voting for it. Clinton signs it on October 28<sup>th</sup>. (*2000 Congressional Quarterly Almanac*, pp. 15-19 – 15-26)

*July-Sept.* On July 27<sup>th</sup>, the Senate unanimously passes the bill introduced in 1999 protecting religious groups from state and local governments that EMK and Hatch co-sponsor. Speaking in support of the bill, EMK says, "Our goal in passing this legislation is to reach a reasonable and constitutionally sound balance between respecting the compelling interests of government and protecting the ability of people to freely exercise their religion." The bill reportedly enjoys greater support than in 1999 because it is now limited to only land-use disputes. The House passes the bill on same day as the Senate, and Clinton signs it on September 22<sup>nd</sup>. (*2000 Congressional Quarterly Almanac*, p. 15-45)

## 2001

*Jan.-Feb.* EMK opposes President George W. Bush's nomination of John Ashcroft for Attorney General. Ashcroft served in the Senate (R-MI) from 1994-2000. Though

they had served on the Judiciary Committee together, EMK and Ashcroft had clashed on most issues, including abortion, gun control and hate crime legislation. Democratic opposition in Judiciary Committee hearings focuses heavily on Ashcroft's blocking of many of Clinton's nominations. Most notable had been his successful campaign to defeat the confirmation of Ronnie L. White, a Clinton nominee to the U.S. District Court in 1998-1999. EMK also focuses on Ashcroft's stance on civil rights legislation and publicly doubts Ashcroft's willingness to uphold current protections. In particular, he refers to Ashcroft's opposition to a school desegregation/ busing plan for St. Louis when he was governor of Missouri that had killed that legislation. When it came to civil rights and women's rights, EMK says, "you've demonstrated you'll do everything you can to undermine the law." (*St. Louis Post-Dispatch*, 01/18/2001) The Judiciary Committee approves Ashcroft's nomination on January 31<sup>st</sup>, 10-8. The Senate confirms Ashcroft on February 1<sup>st</sup>, 58-42, with eight Democrats joining all Senate Republicans in voting in favor of Ashcroft. EMK votes against Ashcroft both in committee in the full Senate, though never follows through on his threat to filibuster the nominee. (*2001 Congressional Quarterly Almanac*, pp. 10-3 – 10-4; *Omaha World Herald*, 01/18/2001; *The San Francisco Chronicle*, 01/31/2001)

*October* On the 25<sup>th</sup>, EMK votes with the vast majority (98-1) for the passage of the USA PATRIOT Act. The law broadly expands law enforcement's surveillance and investigative powers. Among other things, it permits issuance of nationwide search warrants, eases restrictions on electronic surveillance and permits disclosure of grand jury testimony to various federal agencies. Bush signs it into law on the 26<sup>th</sup>. (<http://www.ala.org>)

**2002** Controversy from Senate delays in confirming Clinton's judicial nominations carries over into Bush's presidency, as Democrats delay many of Bush's most important judicial nominees throughout much of the year. According to *Congressional Quarterly*, "Bush's 77 percent success rate on judicial nominees during his first two years in office was lower than that of the previous two presidents." On March 14<sup>th</sup>, the Judiciary Committee rejects, 10-9, Charles W. Pickering, Jr. for the 5<sup>th</sup> Circuit Court of Appeals in New Orleans, based primarily on his record on abortion and civil rights. EMK accuses the nominee of not having "the temperament, the moderation or the commitment to core constitutional...protections that is required for a life tenure position on the appeals court." (*Times-Picayune*, 03/15/2002) Priscilla Owen is rejected by the same vote for the same court for similar reasons (abortion) on September 5<sup>th</sup>. Miguel Estrada, Bush's nominee for the important D.C. Circuit Court of Appeals, never even gets a vote by the committee. In 2000, he had been working for the law firm that represented Bush before the Supreme Court in the 2000 election dispute, a fact that reportedly plays a role in Senate Democrats' opposition to his nomination. (*2002 Congressional Quarterly Almanac*, pp. 13-12 – 13-13)

*June* On the 10<sup>th</sup>, the entire Senate takes up a hate crimes bill sponsored by EMK and Smith that is nearly identical to EMK's numerous attempts in previous years.

Republicans opposed to the measure threaten to kill it through numerous amendments and protracted debate. When a cloture vote initiated by Daschle fails, 54-43, on June 11<sup>th</sup>, the bill is pulled from the floor indefinitely. (2002 *Congressional Quarterly Almanac*, pp. 13-11 – 13-12; *The San Francisco Chronicle*, 06/11/2002)

*November* On the 14<sup>th</sup> the Senate Judiciary Committee passes an anti-child pornography bill. The bill comes in response to a Supreme Court decision in April (*Ashcroft v. The Free Speech Coalition*) that overturned a 1996 child pornography law. Specifically, the Court had found that the law, which prohibited any pornographic material that even *appeared* to involve minors, had been too general. Critics of the new law claim that it is not much different from its 1996 predecessor and will be overturned. The full Senate passes the law on the same day by voice vote. Though the House had passed a version of the bill on June 25<sup>th</sup>, the two houses are not able to agree on a final version before the Congressional session ends. (2002 *Congressional Quarterly Almanac*, pp. 13-11 – 13-12)

**2003** Senate battles over Bush's judicial nominations continue and intensify. Throughout the year, "Senate Democrats mounted the first coordinated filibusters against judicial nominations in more than a quarter of a century," blocking six of Bush's most important nominees. In March, they filibuster on Estrada, and a cloture vote on the 6<sup>th</sup> fails. On September 4<sup>th</sup>, after six more cloture votes, Bush withdraws the nomination at Estrada's request. Owen is blocked by filibusters and unsuccessful cloture votes between May and November, while Pickering is blocked in late October. Also blocked by filibusters are 11<sup>th</sup> Circuit nominee William H. Pryor Jr. (July through November), 9<sup>th</sup> Circuit nominee Carolyn Kuhl (November), and D.C. Circuit nominee Janice Rogers Brown (November). Majority Leader Bill Frist (R-TN) threatens to amend Senate rules to lower the threshold for a successful cloture vote. The Senate Rules and Administration Committee approves this on June 24<sup>th</sup>, but the measure does not come up on the Senate floor in 2003. (2003 *Congressional Quarterly Almanac*, p. 13-19)

*January* 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 voting in opposition. (*The Washington Post*, 06/02/2003)

*Early* Congress takes up the anti-child pornography bill from the end of 2002. On February 24<sup>th</sup>, the Senate passes a more comprehensive 'crimes against children' bill, 84-0, with EMK voting in support. The Senate Judiciary Committee had approved the bill on January 30<sup>th</sup>. The House passes its version on March 27<sup>th</sup>. The bill would bolster the AMBER alert program for missing children, outlaw child pornography including "virtual" child pornography, create mandatory life sentences for two time child sex offenders, drop the statute of limitations on sexual crimes involving children, and strictly limit federal judges from departing from sentencing guidelines in such cases. EMK objects to the limits on judges,

arguing that they would undermine the U.S. Sentencing Commission, yet he drops his objection and supports the final conference report. The Senate overwhelmingly approves the conference report on April 10<sup>th</sup>, 98-0, with EMK's support. Bush signs the bill into law on April 30<sup>th</sup>. (*2003 Congressional Quarterly Almanac*, pp. 13-3 – 13-5)

*March* Barnes ends her work with EMK.