



EDWARD M. KENNEDY ORAL HISTORY PROJECT

Interviewer's Briefing Materials Birch Bayh Interview, 09/10/2009

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Miller Center Documents¹

- Birch Bayh Timeline.
- Birch Bayh Fact Sheet.

Secondary Source Materials

- Birch Bayh bio, <http://bioguide.congress.gov>.
- Adam Clymer, *Edward M. Kennedy: A Biography* (New York: William Morrow and Co., 1999) pp. 45, 109-110, 127, 160-163, 185, 245, 266-267, 328.
- Robert Shrum, *No Excuses: Concessions of a Serial Campaigner* (New York: Simon & Schuster, 2007) pp. 89.
- "Russell's Proxy kept Byrd in the Race," *The New York Times*, 01/ 22/1971.
- Richard Lyons, *The New York Times*, 05/16/1974.
- Tom Wicker, "A Charter for Spying?" *The New York Times*, 09/20/1977.
- Birch Bayh, "Bayh-Dole: Don't Turn Back the Clock," *Speech at the Licensing Executives Society 2006 Annual Meeting*, 09/12/2006 pp. 216.

Oral History Interviews

- Edward M. Kennedy interview, Kennedy Oral History Project, Miller Center, University of Virginia, 3/23-24/2005, 08/08/2007, 04/03/2007.
- Burt Wides interview, Kennedy Oral History Project, Miller Center, University of Virginia, 02/02/2007.
- Thomas Susman interview, Kennedy Oral History Project, Miller Center, University of Virginia, 05/23/2007.

¹ 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.

- Charles Mathias interview, Kennedy Oral History Project, Miller Center, University of Virginia, 03/10/2006.
- Don Dowd interview, Kennedy Oral History Project, Miller Center, University of Virginia, 08/09/2005.
- James Flug interview, Kennedy Oral History Project, Miller Center, University of Virginia, 11/27/2007.
- Stephen Breyer interview, Kennedy Oral History Project, Miller Center, University of Virginia, 06/17/2008, 09/28/2008.
- Edward Brooke interview, Kennedy Oral History Project, Miller Center, University of Virginia, 08/16/2006.
- Thad Cochran interview, Kennedy Oral History Project, Miller Center, University of Virginia, 09/19/2006.
- Marcia Greenberger interview, Kennedy Oral History Project, Miller Center, University of Virginia, 02/21/2007.
- George McGovern interview, Kennedy Oral History Project, Miller Center, University of Virginia, 03/22/2006.
- Ralph Neas interview, Kennedy Oral History Project, Miller Center, University of Virginia, 01/26/2007.
- Martin Nolan interview, Kennedy Oral History Project, Miller Center, University of Virginia, 09/14/2006.
- Thomas Oliphant interview, Kennedy Oral History Project, Miller Center, University of Virginia, 11/15/2006.

BIRCH BAYH TIMELINE

*Prepared by Bryan Craig; revised by Janet E. Heining, Ph.D., 09/08/09
Miller Center, University of Virginia, 09/03/2009*

1962

November Edward M. Kennedy (EMK) is elected to fill John F. Kennedy's vacated Senate seat. Birch Bayh is elected to the Senate from Indiana. Though both enter the Senate in the same electoral year, EMK has seniority over Bayh, as EMK is elected in a special election and is sworn in immediately. (*New York Times*, 11/09/1962)

1963

January Judiciary Committee Chairman James O. Eastland (D-MS) places Bayh and EMK on the Constitutional Rights and Administrative Practice and Procedure Subcommittees. Bayh is also assigned to the Juvenile Delinquency and Constitutional Amendments Subcommittees.

August On the 10th, Senator Estes Kefauver (D-TN), chairman of the Constitutional Amendment Subcommittee, dies. Bayh becomes its chairman in September. (Kate Cruikshank, *The Art of Leadership: A Companion to an Exhibition from the Senatorial Papers of Birch Bayh*, Bloomington, Indiana: Indiana University, 2007, pp. 27)

1964

June EMK's back is broken in a plane crash on the 19th that kills his administrative assistant, Edward Moss, and pilot Edwin Zimny. EMK had just voted on the civil rights bill in the Senate and was flying to accept his party's endorsement at the Democratic state convention in West Springfield, Massachusetts. EMK's plane crashes during its landing approach in Southamptton, Massachusetts. Bayh and his wife, Marvella, are also injured in the crash but are able to pull EMK from the wreckage. (Adam Clymer, *Edward Kennedy: A Biography*, New York: William Morrow and Co., 1999, pp. 59-64)

1965

June On the 25th, Congress passes Bayh's sponsored legislation on presidential inability and succession. The states ratify it as the 25th Amendment by 1967. (Cruikshank, pp. 33)

August In the wake of a series of Supreme Court rulings that would become the “one man, one vote” doctrine that challenged disproportional House districts, the Senate rejects, in a 57-39 vote, Senator Everett Dirksen’s (R-IL) efforts to overturn the ruling. Dirksen proposes a constitutional amendment that permits elections of one house of a bicameral state legislature on a basis other than population. EMK and Bayh oppose the bill in Committee and on the Senate floor, because it goes against the Supreme Court’s “one man, one vote” doctrine. (1965 *Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., pp. 525-532)

1967

January Eastland assigns EMK to the Juvenile Delinquency Subcommittee joining Bayh.

May On the 23rd, the Judiciary Committee is considering HR 2058, a bill on redistricting congressional districts. On the 23rd, EMK fails to amend the bill to reduce the variation between the population of the largest and smallest district from 35 to 10 percent for the 1968 and 1970 elections. His amendment would also remove the reference to states determining what degree a district could be compact. Bayh supports his amendment but it loses in a 5-10 vote. (1967 *CQ Almanac*, pp. 553-554)

June On the 8th, the Senate votes on HR 2058, the congressional redistricting bill. EMK successfully amends the bill to reduce the variation to 10 percent. Bayh votes for EMK’s amendment. (1967 *CQ Almanac*, pp. 554)

On the 13th, U.S. Solicitor General Thurgood Marshall is nominated by President Lyndon Johnson (LBJ) to succeed Associate Justice Tom C. Clark, who is retiring from the Supreme Court. (1967 *CQ Almanac*, pp. 1150)

July During a confirmation hearing on the 13th, 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. EMK joins Bayh, Philip Hart (D-MI), Hiram Fong (R-HI), and Roman Hruska (R-NE) to vote in favor of the Marshall nomination. (*New York Times*, 7/13/1967)

November On the 8th, the Senate rejects the conference report on the congressional redistricting bill. The House wants to stall redistricting until the 1970 census. The Indiana Supreme Court rules the state must redistrict or face an at-large election. Bayh, as he reportedly wants to avoid this for his state colleagues, votes for the report, as EMK votes against the report. Both chambers go on to pass a bill to ban any at-large federal elections. (1967 *CQ Almanac*, pp. 555, 55-S)

1968

- June* RFK is assassinated in Los Angeles, California with a .22 caliber revolver. On the 26th, the Juvenile Delinquency Subcommittee begins hearings on the registration of firearms and the licensing of gun owners. EMK writes a letter of support for this legislation. (1968 *CQ Almanac*, pp. 558)
- September* On the 17th, the Judiciary Committee votes for Abe Fortas to be Chief Justice by an 11-6 vote. EMK and Bayh vote in favor. However, LBJ withdraws the nomination as Republican and Southern Democrats threaten to block it. (1968 *CQ Almanac*, pp. 536)
- October* Congress passes major gun control legislation with HR 17735. The Juvenile Delinquency Subcommittee plays an important role in drafting the legislation. The law limits the sale of ammunition and firearms to minors and changes license regulations for anyone in the business or collecting firearms. The law also bans imports of foreign-made military surplus firearms, all mail-order sales, and most out of state rifle, shotgun, and ammunition sales to residents of other states. Bayh and EMK are strong supporters of the bill and both vote for its passage. (1968 *CQ Almanac*, pp. 549-562)

1969

- January* EMK is elected Senate Majority Whip.
- July* On the 11th, in a hearing with Attorney General John Mitchell, Bayh and EMK attack the Nixon administration's voting rights legislation that eliminates filing requirements with the Attorney General before changing state election laws and the decentralization of jurisdiction over voting rights cases in federal courts. (1969 *CQ Almanac*, pp. 421-422; *Chicago Tribune*, 07/12/1969)
- Chappaquiddick.
- August* On the 18th, Federal Circuit Judge Clement F. Haynsworth is nominated by President Richard Nixon to replace Fortas who had resigned as Associate Justice in May. (1969 *CQ Almanac*, pp. 337)
- On the 20th, 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. Labor leaders initially ask

Hart 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. (John P. Frank, *Clement Haynsworth, the Senate, and the Supreme Court*, University Press of Virginia, Charlottesville, Virginia, 1991, pp. 30; *New York Times*, 08/21/1969; *Newsweek*, 10/20/1969)

- September* On the 17th, 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 the charges of bribery. (Frank, pp. 39; *Washington Post*, 09/18/1969)
- October* On the 9th, the Judiciary Committee approves Haynsworth 10-7. EMK and Bayh vote against the nomination. Both senators, along with Senators Joseph Tydings (D-MD), Quentin Burdick (D-ND), and Hart request that Nixon withdraw the nomination. (*1969 CQ Almanac*, pp. 346; Henry B. Hogue, "Supreme Court Nominations Not Confirmed, 1789-2004," Congressional Research Service, Library of Congress, 03/21/2005, pp. CRS-21)
- November* On the 21st, 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 and Bayh vote with the majority. (*1969 CQ Almanac*, pp. 337, 29-S; Clymer, pp. 160-161)

1970

- January* Nixon nominates Federal Circuit Judge G. Harrold Carswell to the Supreme Court. On the 23rd, Jim Flug holds a brief meeting on the nomination with Senators Tydings, Bayh, Hart, 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. The meeting ends without a leader being designated. (Clymer, pp. 161; Frank, p. 106; Richard Harris, *Decision*, New York: E.P. Dutton, 1971, pp. 37)
- After launching a very brief preliminary investigation, Flug sends EMK a memo on the 24th 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)

The Carswell nomination is immediately opposed by the Leadership Conference on Civil Rights (LCCR) on the basis of his civil rights record. Senators Joseph Biden (D-DE), Tydings, Bayh, and EMK, aided by Flug, lead the fight against the nomination, which is rejected by the Senate 51-45 in April. (Clymer, pp. 161-163; Hogue, pp. CRS-21; *1970 CQ Almanac*, pp. 20-S, 21-S)

February EMK circulates a memo among his colleagues advocating the lowering of the minimum voting age to eighteen on the basis of legal and political considerations. The memo, drafted by aide Carey Parker, argues that although states have been given primary responsibility for determining voter eligibility, under the Fourteenth Amendment, Congress has the power to legislate voter qualifications if it finds that the states are imposing unreasonable or discriminatory requirements. Bayh, who is chairman of the Judiciary Subcommittee on Constitutional Amendments, has been advocating a constitutional amendment lowering the voting age and is allegedly sympathetic to EMK's proposal. EMK indicates that he might tie the minimum voting age legislative amendment to the Voting Rights Act (VRA) extension bill in early March, although there are reportedly concerns that this might hamper efforts to defeat a Southern filibuster on the VRA, which expires this year. (*Washington Post*, 02/26/1970; *New York Times*, 02/23/1970)

From February 18th to 26th, EMK, Bayh and the Senate Judiciary Subcommittee on Constitutional Rights holds hearings on the VRA extension. (*1970 CQ Almanac*, pp. 194)

On the 16th, the Judiciary Committee votes 13-4 in favor of Carswell. Hart, Tydings, EMK, and Bayh vote against the nomination. 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 CQ Almanac*, pp. 158-159) EMK takes the lead in negotiating the common language in the senators' minority report. (Hogue, pp. CRS-21)

On the 26th, EMK, Bayh, and seven other cosponsors introduce a compromise VRA amendment, engineered by Hart and Senate Minority Leader Hugh Scott (R-PA). The amendment includes a five year extension and two Nixon administration amendments from the House bill: a five-year nationwide ban on literacy tests and a uniform sixty-day residency requirement. The bill has the backing of the Leadership Conference on Civil Rights (LCCR). EMK has indicated that he might tie the minimum voting age amendment to the bill, but not if it would jeopardize passage. (*1970 CQ Almanac*, pp. 196; *Washington Post*, 02/26/1970)

March

On the 9th, EMK testifies in front of Bayh's Subcommittee on Constitutional Rights about lowering the voting age to 18. EMK argues that there are legal precedents that legislation gives Congress the authority to lower the voting age, so a Constitutional amendment would not be necessary. (*1970 CQ Almanac*, pp. 714)

On the 10th, 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, pp. 163)

On the 12th, Senator Mike Mansfield (D-MT) successfully attaches an amendment to the VRA (HR 4249) proposing to lower the minimum voting age to eighteen for federal, state, and local elections. HR 4249 passes 64-12 as EMK and Bayh vote in favor. Nixon encourages the Congress to begin work on a constitutional amendment. The House passes the bill and Nixon signs it into law on June 22nd. The amendment is soon found unconstitutional by the Supreme Court if applied to anything other than federal elections. The bill is rewritten as a constitutional amendment and passes on July 1st, 1971. (*1970 CQ Almanac*, pp. 192, 198; Clymer, pp. 163-165; *Washington Post*, 12/22/1970)

April

On the 6th, Bayh loses a motion to recommit the Carswell nomination to the Judiciary Committee. EMK supports the motion. (*1970 CQ Almanac*, pp. 20-S)

On the 23rd, the Senate Judiciary Committee reports on S J Res 1 which substitutes the Electoral College for a direct popular election of the President. Bayh is the author and sponsor of the bill. It would face two failed cloture votes in September with EMK voting with Bayh to end debate. The bill is pulled from the Senate floor. Subsequent similar efforts never pass the Senate. (Cruikshank, pp. 37; *1970 CQ Almanac*, pp. 840-845)

May

On the 5th, the Senate Judiciary Committee unanimously votes for Harry Blackmun as Associate Judge of the Supreme Court. The Senate unanimously confirms Blackmun on the 12th. (*1970 CQ Almanac*, pp. 163-164)

On the 23rd, the Senate passes a D.C. crime bill (S 2601) by a vote of 54-33 as EMK and Bayh vote against the bill. They join eight other Senators in a failed effort to split up some of the provisions into two Senate bills that would reorganize the court system and omit the “no-knock” warrants (allowing police to enter without notice) and a 60 day pretrial detention. (*1970 CQ Almanac*, pp. 218)

September On the 29th, the Senate Judiciary Committee reports to amend HR 17825, the Crime Control and Safe Streets Act of 1968, to authorize \$3.55 billion in federal law enforcement aid through 1973. Hart, EMK, and Bayh argue that the Committee’s version of the bill ignores the areas of greatest need. They oppose the Committee’s removal of the requirements that states share money with local units. They also suggest two changes in the bill: first, to allocate 60 percent of the funds should be allocated among the states based on population and 40 percent to be used at the discretion of the Law Enforcement Assistance Administration (LEAA), and second, to increase federal aid to \$4.5 billion through 1973. (*1970 CQ Almanac*, pp. 562)

1971

January Bayh becomes Chairman of the Juvenile Delinquency Subcommittee of which EMK is a member.

On the 21st, EMK loses his second bid for Majority Whip 31-24 to Senator Robert Byrd (D-WV) in a secret vote. When determining whether to challenge EMK, Byrd calculated that he could have 28 votes, just enough to win, if his dying mentor Senator Richard Russell (D-GA) is still alive. Russell dies just four hours after Byrd wins the election with three more votes than he had anticipated. Bayh releases a statement claiming that he voted for EMK. (*The New York Times*, 01/22/1971)

March EMK and Bayh oppose Nixon’s intervention in Lt. William L. Calley Jr.’s court-martial. Calley had been found guilty of murder and sentenced to life imprisonment in connection with the My Lai killings in Vietnam. Nixon commutes the sentence to house arrest pending his review of the case. (*1971 CQ Almanac*, pp. 744)

In response to the voting age test case, the Senate passes on the 10th, and the House on the 23rd, a Constitutional amendment lowering the voting age in federal, state, and local elections to 18. EMK had attempted to attach a rider providing full D.C. representation, but the amendment had been tabled by a vote of 68-23. Bayh had voted with EMK on this rider amidst reported reservations about it hurting the

chances for the bill's passage. The 26th Amendment secures ratification by three-fourths of the states on June 30th. (1971 *CQ Almanac*, pp. 475-476)

July On the 31st, the Judiciary Committee reports S 215, a constitutional conventions bill. Bayh and EMK's efforts fail on two provisions to increase the simple majority to two thirds of state legislatures necessary to mandate a convention and to shorten the time during which a state's call for a convention remains effective. (1971 *CQ Almanac*, pp. 759)

August On the 6th, Bayh introduces the ERA Amendment to S 659 (Higher Education Act of 1965), but it is rejected as non-germane under the terms of a unanimous consent agreement. (Cruikshank, pp. 45; 1971 *CQ Almanac*, pp. 587, 596, 598)

October Nixon nominates former ABA president Lewis Powell, Jr. and Assistant Attorney General William H. Rehnquist to the Supreme Court. EMK and Bayh oppose the Rehnquist nomination, reportedly due in part to Rehnquist's civil rights and civil liberties record. (*New York Times*, 10/22/1971)

On the 12th, Bayh announces he will not seek the 1972 Democratic nomination for president after waging a campaign tour of 47 states, opting to help his wife, Marvella, recuperate from surgery for breast cancer. The latest Gallup poll has EMK in the lead, but he declines to run. (*New York Times*, 10/13/1971)

On the 19th, Bayh successfully amends the constitutional convention bill (S 215) to make it necessary for two thirds of the state legislatures to require Congress to call a convention. EMK supports the amendment. The bill goes on to pass 84-0, but the House does not act. (1971 *CQ Almanac*, pp. 759, 41-S)

November On the 23rd, the Judiciary Committee endorses Powell unanimously and Rehnquist 12-4. Bayh takes the lead against Rehnquist; EMK also votes against it. Hart, Bayh, and EMK prepare a minority report opposing confirmation. (1971 *CQ Almanac*, pp. 67-S; *New York Times*, 11/11/1971; *Washington Post*, 11/06/1971)

On the 30th, Senators John Tunney (D-CA), Bayh, Hart, 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." (*New York Times*, 12/01/1971)

December On the 7th, the Senate confirms Lewis Powell to the Supreme Court by a vote of 89-1. (1971 *CQ Almanac*, pp. 67-S)

On the 10th, the Senate confirms Rehnquist by a vote of 68-26. EMK and Bayh vote against the nomination. (1971 *CQ Almanac*, pp. 67-S; *New York Times*, 12/11/1971)

On the 11th, the Judiciary Committee reports on S 907, a bill allowing any state to enter a joint pollution agreement without Congressional approval. EMK, Bayh, Hart, and Tunney oppose the bill on the grounds that it should include interstate commissions voting in public sessions and the agreements should not undercut state environmental standards. The bill is sent to the Public Works Committee. (1971 *CQ Almanac*, pp. 733)

1972

February On the 15th, Nixon nominates Richard Kleindienst for U.S. Attorney General. Bayh and EMK question Kleindienst about juvenile delinquency, handguns, and the Kent State shootings. He is unanimously confirmed by the committee. (1972 *CQ Almanac*, pp. 207-209)

On the 28th, the Senate passes by voice vote a Bayh amendment to S 659 to prohibit sex discrimination in all educational programs or activities receiving federal aid, except undergraduate admissions to private colleges. The original version of S 659 passed in 1971 had no provisions on sex discrimination. Bayh's amendment is much stronger than the one passed by the House in 1971, which had prohibited discrimination in graduate schools but exempted all undergraduate admission policies. (1972 *CQ Almanac*, p. 393; *New York Times*, 02/29/1972)

March On the 2nd, the Judiciary Committee re-opens the Kleindienst confirmation hearings after a news report states Kleindienst lied about his role in the settlement of an antitrust suit against International Telephone and Telegraph Corp. (ITT) in exchange for an ITT contribution to the 1972 Republican convention. (1972 *CQ Almanac*, pp. 209-219)

Bayh proposes the Senate version of an ERA to the U.S. Constitution on the 14th, which states that "Equality of Rights under the law shall not be denied or abridged by the United States or by any state on account of sex." EMK switches from opposing to favoring passage reportedly because more conventional alternatives, such as Supreme Court decisions or Equal Employment Opportunity Commission (EEOC) regulations, have proven unsuccessful. The Senate passes the bill on the 22nd, by a margin of 84-8. The House had approved the bill on October 12th, 1971. Ultimately, the ERA does not receive approval by three-fourths of the state legislatures necessary for ratification. (Clymer, pp. 185; 1972 *CQ Almanac*, pp. 199-204)

- April* On the 7th, the Senate Judiciary Committee votes to resume the Kleindienst hearings. EMK and Bayh vote for continued hearings, which last until the 27th. In a committee meeting on the 27th, EMK and Bayh call for further hearings but are voted down. Tunney, Bayh, and EMK write a minority report against Kleindienst's nomination. They state there was "an appearance of impropriety" with Kleindienst and the ITT settlement. (1972 *CQ Almanac*, pp. 223-225)
- Spring* Congress passes S 659, the 1972 Education Amendments (PL 92-31), including the landmark Title IX prohibition against sex discrimination in almost all education programs receiving federal funds. The Senate adopts the final conference report for the bill (63-15), with EMK voting against it because of the inclusion of anti-busing provisions. Many of the Democrats who vote against the bill oppose these provisions. (1972 *CQ Almanac*, pp. 385-93, 397)
- June* On the 8th, EMK moves for further hearings on the nomination of Kleindienst as attorney general. The motion fails by a 20-63 vote with Bayh supporting it. Kleindienst is confirmed by the Senate 64-19 with EMK and Bayh voting against confirmation. (1972 *CQ Almanac*, pp. 225-226, 30-S)
- On the 17th, four men are arrested for breaking into the Democratic National Committee's headquarters in the Watergate office building. (Michael A. Genovese, *The Watergate Crisis*, Westport, CT: Greenwood Press, 1999, p. xxii)
- EMK, as chairman of Ad Prac, begins an informal investigation of the Watergate break-in, proceeding slowly because of legal, political and Senate jurisdictional issues involved.
- August* On the 7th, during consideration of S 2507, Bayh's gun control bill to outlaw sales of cheap handguns called "Saturday Night Specials," EMK's amendment to require licensing of gun owners and registration of all firearms through a national system fails by a vote of 11-78. Bayh votes against EMK's amendment, but EMK votes to pass the bill by a 68-25 vote two days later. The House does not report its own bill. (1972 *CQ Almanac*, pp. 520-522, 51-S, 53-S)
- September* The Watergate grand jury only brings in narrow indictments against the individuals personally involved in the break-in. The Department of Justice shows no interest in investigating possible ties to the White House. (Theo Lippmann, Jr. *Senator Ted Kennedy*, New York: W.W. Norton, 1976, p. 204)
- October* EMK, as chairman of Ad Prac, begins a formal investigation of the Watergate break-in after Representative Wright Patman (D-TX) fails to get subpoena authority for his House Banking Committee investigation on the 3rd and Ervin decides not to conduct the investigation in his Constitutional Rights

Subcommittee. Ervin instead urges EMK on the 10th to open his own investigation. Patman's efforts had reportedly been blocked by the Nixon White House pressuring committee Republicans and vulnerable Democrats. EMK directs his Ad Prac investigation to focus on the White House "dirty tricks" campaign and not the pending criminal investigation of the break-in. (*The Washington Post*, 10/10/1972; Lippmann, p. 204; Clymer, pp. 192-193)

November Nixon defeats George McGovern in the presidential election.

After discussing with EMK less politically-charged alternatives to his Ad Prac investigation, Mansfield writes letters to Eastland and Ervin suggesting that one of them take over the Watergate investigation. According to Clymer, Mansfield wanted to find a prominent Democrat with no presidential aspirations to lead the investigation. (Clymer, p. 194)

1973

February The Senate votes 70 to 0 to create the Senate Select Committee on Presidential Campaign Activities (the Watergate Committee) to investigate the Watergate break-in and cover up, campaign espionage and sabotage, and campaign financing. Ervin is chosen to chair the committee. Ad Prac ends its investigation and turns over its materials to the Watergate Committee. EMK and his staffers provide the Watergate Committee "with a great deal of assistance." (Genovese, p. xxiv; *Watergate: Chronology of a Crisis*, p. xxii; Lippmann, p. 206)

May EMK helps draft legislation creating a special prosecutor to investigate the Watergate affair. Archibald Cox, President Kennedy's former solicitor general, is appointed special prosecutor. EMK plays an important behind-the-scenes role in Cox's selection and the writing of Cox's mandate, convincing Elliott Richardson that the Senate would not confirm him as Attorney General unless he agrees to select a strong, independent prosecutor.

October In what later comes to be known as the "Saturday Night Massacre," Nixon fires Cox on the 20th, abolishes the special prosecutor's office, and accepts the resignations of Richardson and Deputy Attorney General William French Smith, who each in turn refuse to follow Nixon's orders to fire Cox. EMK publicly criticizes Nixon and calls for hearings in the Judiciary Committee. The House Judiciary Committee starts consideration of possible impeachment procedures. (Genovese, pp. xxv-xxvi)

1974

May

The Senate narrowly tables a Senator Edward Gurney (R-FL) sponsored amendment to the Elementary and Secondary Education Act (ESEA) extension bill banning all busing to promote school integration. Siding with traditional civil rights senators such as Hart, Claiborne Pell (D-RI), Jacob Javits (R-NY), Walter Mondale (D-MN), and Edward Brooke (R-MA), EMK repeatedly criticizes the amendment and votes to table it. Bayh successfully proposes a diluted amendment, which emphasizes court-ordered busing as a last resort and prohibits cross-district busing unless both districts involved have practiced segregation. The Bayh amendment is voted on twice, with EMK voting against it the first time and not voting the second. EMK later expresses his opposition to it. EMK manages to attach an amendment to the bill reinstating special “concentration” grants for urban and rural areas where poor students live in extremely high concentration. The ESEA extension passes the Senate 81-5 on the 20th, with EMK and Bayh voting for it, and following a conference, the bill is signed by President Gerald Ford on August 21st. (*1974 CQ Almanac*, pp. 462, 463, 30-S, 31-S, 32-S; *Washington Post*, 05/16/1974)

July

On the 16th, the Senate Judiciary Committee reports on S 821 to create a grant program and several new administrative bodies to fight juvenile crime. In committee, Bayh and EMK fail to stop Hruska’s amendment that shifts the programs from the Department of Health, Education, and Welfare to the Justice Department. The bill passes both chambers. (*1974 CQ Almanac*, pp. 280)

The Supreme Court rules 8-0 on the 24th that Nixon must hand over subpoenaed tapes of Watergate discussions to prosecutors. The House Judiciary Committee adopts three articles of impeachment against Nixon – obstruction of justice, contempt of Congress, and abuse of presidential powers. (Genovese, pp. xxvii; *Watergate: Chronology of a Crisis*, p. xxvi)

August

The White House releases tapes that show that Nixon personally ordered a cover up of the Watergate break-in only days after it had occurred. This revelation contradicts Nixon’s earlier denials of involvement. (Genovese, pp. xxviii-xxix)

On the 9th, Nixon resigns from office and Gerald Ford is sworn in as the 38th president. (Genovese, pp. xxviii-xxix)

On the 21st, Congress passes the Juvenile Justice and Delinquency Prevention Act that was introduced by Bayh and co-sponsored by EMK. It becomes law on September 7th. The Act establishes a National Advisory Board, and the creation of basic procedural rights for juveniles, and creates an office in the Law Enforcement Assistance Administration (LEAA) to administer juvenile delinquency programs with a three-year \$350 million matching grant program, and a \$10.5 million program for runaways. (*1974 CQ Almanac*, pp. 278-282)

1975

- January* Bayh joins EMK on the Anti-Trust and Monopoly Subcommittee.
- May* Bayh makes an announcement that he is considering another run for the Democratic nomination in 1976, but would drop out if EMK runs. Bayh goes ahead with his campaign as EMK decides not to run. (*Los Angeles Times*, 5/12/1975)
- On the 13th, Bayh meets with EMK, Senator Alan Cranston (D-CA), and other Senate Democrats to coordinate a debate on the 1976 defense budget. Their aim is to cut spending. The debate occurs in June, but they are unsuccessful in getting defense cuts. (Lippmann, p. 195)
- November* Federal Circuit judge John Paul Stevens is nominated by Ford for Associate Supreme Court Justice on the 28th to replace William O. Douglas. (*1975 CQ Almanac*, pp. 536; *New York Times*, 11/29/1975)
- December* On the 3rd, Senators Charles Mathias, Jr. (R-MD), Bayh, Burdick, Hart, Tunney, and EMK ask Eastland in writing for a full investigation into Stevens' health, tax returns and former law practice. (*New York Times*, 12/04/1975)
- Following three days of hearings, Stevens is unanimously recommended by the Judiciary Committee on the 11th. (*New York Times*, 12/12/1975)
- On the 17th, Stevens is confirmed 98-0 by the Senate with both EMK and Bayh voting for the nomination. (*New York Times*, 12/18/1975)

1976

- March* On the 4th, Bayh drops out of the race for the Democratic nomination for president after poor showings in the New Hampshire and Massachusetts primaries. (*Washington Post*, 03/04/1976)
- June* On the 15th, the Senate Judiciary Committee votes 8-7 to pass Bayh's Petroleum Industry Competition Act (S 2387), which would break up major oil companies into separate production, refining, transport, and marketing entities, or what is called vertical divestiture. This bill passes the Anti-Trust and Monopoly Subcommittee with James Abourezk (D-SD), Bayh, and EMK who are now members of the subcommittee. However, the bill does not reach the Senate floor. Bayh would introduce the bill again in 1977 and 1979, but it never gets out of the committee. (Cruikshank, pp. 69; *1976 CQ Almanac*, pp. 160-162)

1977

- January* EMK leaves the Constitutional Rights, Administrative Practice and Procedure, and the Juvenile Delinquency Subcommittees.
- June* On the 29th, Bayh is the most vocal critic of amendments to ban or restrict federal funds for abortion for low-income women on Medicaid. Senator Robert Packwood (R-OR) fails to amend an appropriations bill to delete the Hyde Amendment ban on Medicaid funds for abortions. EMK and Bayh vote to permit exceptions to the ban in cases of rape, incest, “medical necessity” or when the mother’s life is endangered. (*1977 CQ Almanac*, pp. 308, 39-S, 40-S)
- August/Sept.* The Senate Judiciary Committee reports S 1651, which would restrict the ability of federal courts to order desegregation busing. Whereas previous congressional action had attempted to limit HEW’s authority to order busing, this is the first attempt to restrict courts’ authority. EMK opposes the measure, co-authoring a minority view with Bayh, Abourezk, and John Culver (D-IA). No further action is taken on S 1651 in 1977. (*1977 CQ Almanac*, pp. 510-511; *1978 CQ Almanac*, pp. 567)
- September* On the 26th, as the Senate debates President Jimmy Carter’s National Energy Plan, Howard Metzenbaum (D-OH) and Abourezk undertake a filibuster to block the proposed deregulation of natural gas. They are aided by EMK and Bayh. The Senate votes to cut off the filibuster and the deregulation provisions are adopted as part of S 2104. (*1977 CQ Almanac*, pp. 735-36.)
- A letter from EMK and Senator Frank Church (D-ID) to Bayh is made public recommending changes to the FBI charter to hold it to a criminal standard on wiretapping and investigating crimes. (*New York Times*, 09/20/1977)

1978

- March* On the 14th, the Senate Intelligence Committee, which Bayh chairs, approves S 1566, the Foreign Surveillance Intelligence Act (FISA), which requires the government to obtain a judicial warrant for electronic surveillance for foreign intelligence conducted within the U.S. The bill stipulates that wiretaps cannot be approved unless the target is violating the law. Bayh works with EMK to get this criminal standard in the bill; EMK’s 1977 version of the bill did not include it. (*1978 CQ Almanac*, pp. 189)

- April* The Senate passes FISA by a 95-1 vote. EMK successfully amends the bill to revise the language to include “in furtherance” to cover acts supporting serious violence such as kidnapping, assassination plots, and bringing in explosives. The House passes the bill and it becomes law. (*1978 CQ Almanac*, pp. 190)
- August* On the 23rd, EMK, Bayh, and 16 other senators announce their opposition to the latest compromise on the natural gas bill (S Rept 95-1126). The group threatens to return the bill to conference to work on utility rate reform and conversion portions of the bill. Their motion to recommit fails in a 39-59 vote. Both chambers pass the bill. (*1978 CQ Almanac*, pp. 656)
- September* Legislation is passed extending the Civil Rights Commission for five years with discrimination based on age and handicap added to its existing jurisdiction (race, color, religion, and national origin). The Senate bill is sponsored by Bayh, and EMK is one of 15 co-sponsors. (*1978 CQ Almanac*, pp. 789; THOMAS on S 3067)

1979

- January* On the 15th, EMK becomes Chairman of the Judiciary Committee.
- On the 25th, Bayh attends a dinner at EMK’s house in McLean, Virginia. The guest of honor is the new Chinese ambassador, Chai Tse-min, and a delegation from mainland China. (Burton Hersh, *The Shadow President*, South Royalton VT: Steerforth Press, 1997, pp. 29)
- April* On the 23rd, Bayh’s wife dies of cancer at the age of 46. (*New York Times*, 04/25/1979)
- May* Bayh successfully amends and votes for EMK’s bill (S 241) to reorganize the Law Enforcement Assistance Administration (LEAA). Bayh’s amendment provides \$28 million for the National Institute of Justice and \$22 million for the Bureau of Justice Statistics rather than \$25 million for each agency. The bill passes both chambers and is signed into law by Carter. (*1979 CQ Almanac*, pp. 371)
- July* EMK supports Bayh as he tries to reform the Electoral College. S J Res 28 eliminates the Electoral College and replaces it with a direct popular vote. If no candidate receives 40 percent of the vote, a run-off is held for the two top candidates. Bayh places the bill directly on the Senate calendar, but it fails to get the two thirds vote necessary for passage. EMK votes with Bayh. (*1979 CQ Almanac*, pp. 553, 29-S)

October On the 10th, the Senate Judiciary Committee reports on S 1873, a judicial discipline bill. It is an amalgamation of earlier bills including EMK's S 678 Federal Courts Improvement Act of 1979. The committee adopts a Bayh amendment to delete a vague provision to allow discipline for conduct that brings "the judicial office into disrepute." (1979 *CQ Almanac*, pp. 399) S 1873 passes the Senate, but the House fails to act on it. (1979 *CQ Almanac*, pp. 399-400)

November EMK announces he will challenge Carter for the Democratic presidential nomination.

December Bayh successfully amends EMK's criminal code bill (S 1722) during the Judiciary Committee mark-up to limit the offense of "solicitation" to 33 specified crimes. Bayh votes for the bill in committee. (1979 *CQ Almanac*, pp. 364)

On the 4th, in a 9-8 party-line vote, the Judiciary Committee reports on EMK's Energy Antimonopoly Act (S 1246) to block 18 major U.S. oil companies from acquiring or merging with other large corporations worth more than \$100 million in the energy industry. Bayh is one of the co-sponsors of the bill. However, it never reaches the Senate floor. (1979 *CQ Almanac*, pp. 405-407)

On the 18th, the Judiciary Committee passes by a 14-2 vote S 598, which protects certain exclusive soft drink bottling franchises from antitrust challenges. Bayh is the chief sponsor of the bill, and EMK and Metzenbaum vote against the bill. A legal case is pending on the legality of exclusive franchises and anti-trust at the time the bill goes through Congress. Bayh wins passage of the bill in May 1980, but EMK's vote is unknown. Carter signs it into law on July 9, 1980. (1980 *CQ Almanac*, pp. 381, 22-S, 23-S)

Taking a break from early campaigning, EMK visits Indiana for a dinner honoring Bayh. Robert Shrum, a Kennedy campaign staffer, states after a Bayh speech that is reportedly more pro-Carter, "Kennedy was disappointed in Bayh but he didn't want to hear anyone bitching about him. Bayh, he said, had a pass, and always would." (Robert Shrum, *No Excuses: Concessions of a Serial Campaigner*, New York: Simon & Schuster, 2007, pp. 89)

1980

February On the 26th, the Senate passes (55-36) a bill designed to protect the rights of institutionalized individuals. The bill allows the federal government to file suit against states to protect the rights of people in jails, mental hospitals, etc. The bill had long been delayed by opponents in the Senate Judiciary Committee. Although EMK favors and co-sponsors the Senate version, he does not vote on the legislation, which is primarily the effort of Bayh and Rep. Robert Kastenmeier

(D-WI). The legislation is signed by Carter on May 23rd. (*1980 CQ Almanac*, pp. 383-384, 9-S; THOMAS on S 10)

April On the 17th, Bayh introduces a bill (S 2578) to establish a procedure for periodical sunset review of Federal programs. It is later incorporated into S 2, but the bill is later watered down in the Senate Rules Committee. S 2 never gets to the Senate floor, nor does the House report on a similar bill. EMK cosponsored sunset legislation with Edmund Muskie (D-ME) in 1977 with no results. (*1980 CQ Almanac*, pp. 530-531)

May EMK loses the Indiana primary in his race to unseat Jimmy Carter. Bayh does not openly support EMK's candidacy and remains neutral in the state primary. (*Washington Post*, 05/07/1980)

July On the 23rd, EMK steps aside as Bayh and three other Judiciary Committee members set up a panel to investigate Billy Carter's dealings with Libya. The Senate would later clear Carter of any wrongdoing. (*1980 CQ Almanac*, pp. 392; *Wall Street Journal*, 07/24/1980)

November On the 4th, Republican Dan Quayle beats Bayh in the Senate election.

On the 17th, Congress passes the Bayh-Dole Act (HR 6933) with EMK as a co-sponsor. It revises the patent system where it permits a university, small business, or non-profit institution to elect to pursue ownership of an invention in preference to the government. Carter signs it into law on December 12. (*1980 CQ Almanac*, pp. 405)

1982 Bayh becomes a lobbyist for the National Cancer Society and goes on to practice law with Venable, LLP. (*The Washington Post*, 12/24/1981; <http://www.venable.com>)

1998

November Bayh's son, Evan, is elected to the U.S. Senate as a Democrat from Indiana. (*The Washington Post*, 11/04/1998)

2006

May Bayh attends a book-launch party for EMK's book, *America Back on Track*. (*The Boston Globe*, 05/07/2006)

2008

B. Bayh, 09/10/2009

January EMK announces his support for Democratic presidential candidate Barack Obama.

May EMK is diagnosed with a brain tumor.

August EMK makes a surprise appearance and speech at the Democratic National Convention.

2009

March Senator Evan Bayh attends EMK's 77th birthday party at the Kennedy Center. EMK tells him the story of his father saving his life after the 1964 plane crash. (*The Boston Globe*, 03/09/2009)

August On the 12th, EMK receives the Presidential Medal of Freedom.

On the 26th, EMK dies at his home in Hyannis Port. Bayh attends the funeral service at the Mission Church in Boston. (*The Associated Press*, 08/27/2009)

BIRCH BAYH FACT SHEET

Prepared by Bryan Craig

Miller Center, University of Virginia, 09/03/2009

Birch Bayh (1963-1981), D-IN

Committees with EMK:

- Judiciary: Anti-Trust and Monopoly (1975-1980), Juvenile Delinquency (1967-1977, Chairman, 1972-1977), Constitutional Rights (1963-1977), Administrative Practice and Procedure (1963-1977)

Other Senate Committees:

- Environment and Public Works (1963-1972)
- Appropriations (1973-1981)
- Select Committee on Intelligence (1977-1981; Chairman, 1977-1981)

Issues that Bayh worked on with EMK:

- 1969 Haynsworth nomination.
- 1970 Carswell nomination.
- 1971 Rehnquist nomination.
- 1972 Kleindienst nomination for U.S. Attorney General.
- Gun control. EMK and Bayh helped develop gun control law in 1968.
- 1970 VRA extension.
- 1974 Juvenile Justice and Delinquency Prevention Act. Bayh and EMK co-sponsored a law to reform the juvenile justice system.
- 1978 FISA. EMK worked with Bayh to include the criminal standard in Bayh's FISA bill.
- 1980 Energy Monopoly Act. Bayh was a co-sponsor on EMK's bill to prevent oil companies from merging or purchasing another energy company.
- 1980 rights of institutionalized individuals. Bayh helped write legislation with EMK as a co-sponsor to allow the federal government to file suit against states who violated patient rights.

Issues that came up during this time with EMK:

- 25th Amendment on presidential inability and succession. Bayh wrote this legislation.
- EMK's failed 1971 bid for majority whip. Bayh voted for EMK over Byrd.
- Title IX of 1972 Education Amendments.
- 1972 ERA. Bayh helped write this legislation.
- 1979 EMK chairmanship of Judiciary Committee.
- 1980 Stephen Breyer Circuit Court nomination.
- 1980 EMK criminal code bill.
- 1976 presidential race. EMK remained neutral during Bayh's 1976 run.
- 1980 presidential race. Bayh remained neutral during EMK's 1980 run.

Personal History:

- 1964 plane crash. Bayh pulled EMK out of the plane.