Young: This is a Kennedy Project interview with Carolyn Osolinik. Before the interview, Ms. Osolinik and I went over the ground rules in some detail, particularly concerning her rights and the need for a release for this material to be used in a form approved by her. We’ve also discussed some of the main points that we’d like to cover in the interview. With that, we’ll begin with where you started with the Kennedy office.

Osolinik: Thank you. I was a young lawyer at the Justice Department at the time of the 1980 Presidential election. When President [Ronald] Reagan was elected, although I certainly could have stayed because I was a junior career attorney, I had no interest in staying. My boss at the Department of Justice happened to have worked at the Center for Law and Social Policy with a current staff member at that time for Senator Kennedy. She mentioned to me that there was an opening on the Hill, and asked if I would be interested in it. I said, “No, thank you. I want to be a real lawyer.” I was a litigator at the Justice Department.

I went home that night and thought, That’s a silly response. I ought to at least find out what it is. I talked to her the next morning and she said it was for Senator Kennedy on the Senate Judiciary Committee. Then I thought, Well, absolutely, I want to try to do that. I was interviewed—I had no previous connection with Massachusetts, or with Senator Kennedy, or his office—and I got the job as one of the staff attorneys for Senator Kennedy on the Judiciary Committee.

Initially I focused on criminal law for the committee and worked on some other issues outside the committee’s jurisdiction, including the environment, because I came from the Land and Natural Resources Division of the Justice Department. But, like perhaps in many staffs, but certainly in the Kennedy staff, positions are very fluid, and Kennedy calls on people to do what he thinks they can do well. At that time the Democrats had gone from the majority to the minority, and indeed Senator Kennedy had gone from being chairman of the committee to not even being the ranking member of the committee, because he chose to be the ranking member on what was then Labor and Human Resources. So the budget was cut way back, and he had a far smaller staff than he was accustomed to. There were many utility infielders, if you will. I began to work on a variety of issues that went beyond my strict portfolio.

Very early in the Reagan administration it was clear that the conservative ideology on civil rights was going to be a very high priority for the administration, a high priority for the Justice
Department. The Justice Department was populated with political appointees who were extremely conservative in their views on civil rights—conservative to the point of, in my view, being anti-civil rights.

**Young:** This was under William French Smith?

**Osolinik:** Yes.

**Young:** Who was later replaced by [Edwin] Meese?

**Osolinik:** Correct. The first Assistant Attorney General for Civil Rights, [William Bradford] Brad Reynolds, was a very smart ideologue. Early on we saw the beginnings of what we came to call the civil rights rollback, in policies, in positions in litigation, and in judicial appointments.

One of my earliest memories is the *Grove City* decision, which essentially so narrowed the scope of coverage of civil rights statutes that prohibited discrimination in federally funded programs, as to reach the finding that if Grove City College received student aid, the only part of Grove City College that was prohibited from discriminating was the financial aid office. This was a switch in position from previous administrations and was at odds, demonstrably at odds, with the interpretation of those laws over the period since they had been enacted.

It had a very broad sweep, because the same language that had been so narrowly interpreted was contained in Title IX, which prohibited gender discrimination; Title VI, racial discrimination; and Section 504 of the Rehab Act, which prohibited discrimination based on disability in federally funded programs, so there was quite a diverse coalition that tried to turn that back. It was a very complicated issue, which is why it took us so many years working with Senator Kennedy and working with very sophisticated and excellent advocates in the outside community. It took a very long time to reverse that because it was a very complicated process.

Throughout the period of the Reagan administration, and even into the [George H. W.] Bush Senior administration, the typical tactic of the administration and its allies was to think of the most ridiculous hypothetical one could imagine, and say that that was what could happen under this statute. With respect to the issue of Federal funding, there were trickle-up and trickle-down and trickle-over diagrams that the administration generated that were often portrayed as though if one dollar of Federal aid went anywhere in the state government, everyone from the Governor to all the Cabinet departments to everyone including the mayors was going to be covered by these Federal statutes.

**Young:** This was propaganda for legislative consumption? Party consumption? Or was it argued in court? Were these arguments in court?

**Osolinik:** Well, the *Grove City* decision was a decision of the Supreme Court, so there was no further litigation on the subject. These arguments had not been made before the Supreme Court decision, because the administration made the straight-out argument that the language of the laws, and the intent of Congress, could only be read very narrowly, so all of this was in the public arena.
As with any legislative effort, there are many audiences. There is the internal, Congressional audience, which is moved by the external, public audience. Both the key members, for example Senator Kennedy, of the Senate and the House of Representatives—I, of course, can focus most on the Senate—were trying to figure out how to move their agenda forward by convincing enough of their colleagues that what they wanted to do was right and was politically safe. That was where a lot of the external advocacy came in, because the Leadership Conference on Civil Rights—which is a group I worked with very closely for my entire tenure there, and which for all the time I worked with it was a very diverse group that represented women and Hispanics and African Americans and people with disabilities and gays and lesbians—was just knocked back by the Grove City decision, and indeed by the intensity with which the Reagan administration was going after civil rights and looking for every possible way to cut back.

Young: Nobody really expected this. You say they were in shock. It became apparent very quickly that it—

Osolinik: Yes, it did.

Young: Not only to you, of course, inside the Justice Department, but publicly. Nobody would think that—after all of this and the general public acceptance of most of it, leave busing out of it, but of the general principles of equality of rights—they could be against that.

Osolinik: Right. This was also the period where discrimination was moving from intentional discrimination, blatant discrimination, to the far more subtle disparate impact discrimination. The disparate impact discrimination, which was tied with affirmative action as a remedy, was in the crosshairs of the administration. That is what seemed to motivate the conservatives to take a stand and say, “Wait a minute, that’s not colorblindness. That’s preferential treatment to the extent of being reverse discrimination, because now you are taking race or gender into account.”

Of course it was necessary to have the ability to do that kind of remediation to ever get to the point of a level playing field, but that was not the administration’s agenda. That was the climate. The Federal funding in particular was extremely important, because one of the key ways that the Federal government prohibited discrimination was at the Federal level, and it affected so much.

Throughout that period, there was an evolving strategy. To succeed on any of these controversial issues there is a little trial and error. The advocacy community would come up with what were its best arguments, which were often completely understandably too far out, shall we say, because each of them felt very strongly about the broadest interpretation possible. Part of the role of the Senate and the House of Representatives, and the members and their staffs, was to be a reality check as to what was doable versus what was desirable.

Senator Kennedy emerged very quickly as a powerful force in this area. He had not taken the ranking position on the Senate Judiciary Committee. Senator Biden became the ranking member. The niche that Senator Kennedy carved for himself to a significant extent, at least in my experience, was civil rights.

I was a very new staff person when the Voting Rights Act was reauthorized, and I did not have primary responsibility, in fact I was on the periphery of that. Burt Wides was Senator Kennedy’s
counsel on that. Although that predates the *Grove City* decision, it is less prominent in my recollection by virtue of my being so junior that I was not extremely involved in that.

**Young:** The ’82 act, for the record, was a central issue, not the only issue. It was results versus intent.

**Osolinik:** Yes.

**Young:** So the conservatives were for the intent—

**Osolinik:** Yes.

**Young:** And against the results.

**Osolinik:** Correct. And for the shortest possible duration before reauthorization was necessary again. That was it: make it as narrow as possible, and keep it in effect for as little time as possible.

**Young:** But they won that one.

**Osolinik:** The pro–civil rights forces won that, yes.

**Young:** They won?

**Osolinik:** Yes, yes. That is a tribute to Senator Kennedy, Senator [Charles] Mathias [Jr.], and the others who formed that coalition. Senator [Robert] Dole and—

**Young:** Dole helped, didn’t he?

**Osolinik:** Senator Dole did help. One of the things that makes Senator Kennedy the competent and effective—probably the most effective—Senator he is, is that he is willing to do all the work and share the credit to the point of maybe even not getting very much credit. He always had the attitude, and said it to me a couple of times, “You can get a lot done if you’re willing to not take credit for it.” He always cared about getting things done.

**Young:** Do you have a story to tell about his not taking credit, what he said about that? Or an occasion?

**Osolinik:** Senator Kennedy was always very gracious in sharing credit with his colleagues.

**Young:** Just trying to get the real person in here.

**Osolinik:** One of the things I realized about Senator Kennedy very early on was that he’s very pragmatic. That really surprised me, because I thought of him as much more of an ideologue. But he was smart enough and experienced enough to realize that if the only thing that happened was a clash of ideologies, we would lose, and there would be no advancement. In the case of civil rights, there would be the rollback that the administration was trying to achieve.
Kennedy is and was tireless—absolutely tireless. He could work longer than any of us, who were considerably younger, and would. He was very demanding. Because he had the ability to have so many high-profile controversial issues going on at the same time, even though there were different staffs for them, he would run all of us ragged anyway. During the period that I was there, it seemed like he worked around the clock.

One of his tools was what he called “issue dinners.” Whenever there was something he was working on, he would have dinners at his home. He probably had dinners at his home on various issues several times a week. This was when staff would brainstorm with him. Carey Parker was, of course, always very involved in this, as to who were the right experts to bring together to brainstorm about something we were working on and how to accomplish it. In the civil rights area, it always included somebody from the Leadership Conference, so that we were always—

Young: Would that be Ralph Neas?

Osolinik: It was Ralph Neas sometimes. It was Althea Simmons back then. There were various people, but Ralph was certainly one of the key participants. Kennedy realized how important it was to keep the advocacy community on the same page. One of the ways he did that was to keep them involved, to bring them into much of what we were doing so that, in a sense, they could see for themselves what was doable and what was not doable. They would have at an issue dinner the opportunity to be seated at the table while experts were debating, and had the opportunity to make their best case. In that way, they were always with Senator Kennedy as we sometimes had to scale back what they wanted, what Senator Kennedy wanted, but what was not doable.

Young: This presumes that he was, in fact, the leader, and that there was nobody else they could turn to. Was there anyone else, in general, for that?

Osolinik: No. And frankly no one else they would have wanted to turn to, because he was so aligned with them and so effective and so energetic. I’m sure this is not unrelated to his life experience. He, more than any elected official I’ve ever observed, wanted to be elected in order to accomplish something, whereas I observed many others for whom the election was the accomplishment. I think he approached every single day with the attitude I’m going to get as much done as I possibly can today to move this forward. He had such an emotional investment in these issues, in particular the civil rights issues that I dealt with, that it was palpable. It was highly motivating. It was also part of why he was the natural leader for the constituencies on these issues.

Young: He had a lot of emotional investment in it. Wherever that came from, it was a distinguishing characteristic. I’ve seen it myself, and in anybody who’s ever worked for him. But it’s also wedded with, as you said earlier, pragmatism and a willingness to compromise to get something done. Even if it’s not the whole loaf, it’s a half a loaf or even a quarter of a loaf sometimes.

Osolinik: Yes.

Young: That’s a very unusual public figure. It’s not only unusual in your experience, it’s very unusual in the experience of the outside world, too.
Osolinik: I think that’s right.

Young: Another thing your comment reminds me of is the public image or images that he may have had, on the one hand, versus the considerable respect he’s—even by his adversaries—accorded in the Senate. Outside, he’s the spendthrift—he’s red meat for the conservatives—but this does not resonate except with a very few Senators. It’s not true in the Senate.

Another point that’s historically interesting is the emotional investment, the sticking with it, the persistence on issues of civil rights, wedded to the pragmatism, the willingness to compromise, the always looking for somebody on the other side of the aisle who would have some interest in joining them, and the willingness to give them all the credit, some of the credit. These are unusual.

Osolinik: Senator Kennedy was respectful to every one of his colleagues, and was able to have personal relationships with Senators with whom he was almost always on the opposite side, and eventually move together. I think of Senator Orrin Hatch, for example, with whom he has a very close relationship.

Senator Kennedy paid such attention to detail—detail in making arguments, detail in knowing what might turn a Senator, what another Senator might be interested in, and how to get that to him. It was very hard to work for Senator Kennedy because he was so good at what he did. Carey Parker was the most amazing teacher I could have ever had. Much of the reputation of the Kennedy staff comes from the training they get from Senator Kennedy and Carey Parker.

Senator Kennedy was always out on a limb on these issues in terms of taking a position where he knew he was going to get whatever the opposition could think of thrown at him. This put a lot of responsibility on the staff to make certain we had anticipated every argument, nailed down every piece of supporting evidence, and prepared him for what he needed to do. It was a very scary thing to sit on the Senate floor next to Senator Kennedy on one of those chairs with the sawed-off legs. He would be in the middle of a debate—I remember this on the Grove City bill and the Americans with Disabilities Act—and would be challenged by a colleague. He’d look over and you had to have the right answer, because as soon as you told him the answer, he said it to the world on the Senate floor. In that sense, it was very stressful, but I believed in these issues.

Young: Give us an example of some time when you were on the floor with him and he was engaged in debate and was really into it.

Osolinik: During the Americans with Disabilities Act debate, the opposition began to argue that this was going to give Federal protection to kleptomaniacs and transvestites and all other manner of people who didn’t sound like they were deserving of Federal protection.

Young: That was Jesse Helms?

Osolinik: It was not just Jesse Helms. It was others, too. At the end of that, Senator Kennedy looked at me and I said, “Those are not protected conditions under the Americans with Disabilities Act.” Senator Kennedy said words to that effect back in response, “Those are not protected conditions, and we will insert language to clarify that,” and we did. There was a lot of rough-and-tumble during these legislative initiatives, and some very difficult times as well, when
it was not possible to get what Senator Kennedy really wanted and what the civil rights advocates really wanted, but it was time to move on.

That was also part of Senator Kennedy’s emotional connection. He realized how important these things were, and that it was important to make an improvement, even if it was an incremental improvement, rather than to dig in one’s heels and say, “We’re not going anywhere unless we’re going all the way.” That was something that he was very good at. I became the official bearer of bad news, because I was regarded as the most liberal of the staff people up there, at least while I was up there, and therefore the one who—If I went back to the community and said, “We can’t do this,” they would believe we couldn’t do it, which ended up being a strange role, but . . .

Young: What was the biggest disappointment you think he had?

Osolinik: The amount of time it took to overturn the Grove City College decision was a very big disappointment. He was disappointed about some of the compromises that were made with respect to gender discrimination in the Civil Rights Act of 1990. It was something that had the potential to divide the civil rights community, because that was something of an omnibus bill. There was, of course, a concern that it was in some ways a zero-sum game, and if Senator Kennedy held fast on one issue, he was going to have to find somewhere else to compromise. It was those kinds of things. That’s the legislation in which I remember that the most.

Those were difficult times, and where Ralph Neas, although he was often on the hot seat in his own coalition, was very skillful at the end of the day in bringing people together. Senator Kennedy worked very closely with Ralph. It’s critical to have a person who can be a spokesperson, because otherwise you’re getting four different points of view that may—They may not be completely inconsistent, but they’re nuanced. Ralph had the unenviable task of keeping the coalition together in favor of a particular perspective even though it was, for some in the coalition, not what they really wanted, was less than what they really wanted. Senator Kennedy worked both on legislation and judicial nominations very closely with Ralph Neas.

Young: What did the coalition include? The ACLU [American Civil Liberties Union] was not—Was it represented in—

Osolinik: To be honest with you, I don’t remember, because I did not—The ACLU focused largely on civil liberties, which is somewhat different from civil rights.

Young: But when you consider what this—There were close to 200 organizations in there, at least at one point—

Osolinik: And a huge executive board.

Young: Yes, and you look at—it’s not possible, looking at this from the outside, to think their interests or objectives would coincide in all cases.

Osolinik: That’s right, and they didn’t. But the issues that were being dealt with in the Senate were such critical issues—they were core issues—that the groups were able to give at the margins for the core mission. That was critical, because there was significant opposition. As we know now, the power of the Presidency is very important. The combination of the Republican
President and the Republican Senate meant that it was very difficult to hold the line on things. Unlike many staff people, I had not experienced working for Senator Kennedy when the Democrats were in the majority, so in a sense I didn’t know what they had lost, which probably made my life easier.

Young: Can you get back and give us a picture of an issue dinner? You had mentioned earlier that he invited the civil rights coalition in, or representatives of it. But who else did he turn to? You referred to experts.

Osolinik: Sometimes.

Young: Who, for example? Give us an example of that. Was it Larry Tribe?

Osolinik: Certainly on Supreme Court nominations, it was constitutional scholars, but on civil rights issues, it was also labor leaders. In addition to Ralph Neas from the Leadership Conference, it was Judy Lichtman or Marcia Greenberger from the women’s community. As we moved through the Americans with Disabilities Act, it was representatives of the disability community. There were times when someone was there with a particular economic expertise to deal with the allegations that something was going to put small business out of business, that sort of thing. There was a wide range of expertise, depending on the issue.

Young: Not other members of Congress?

Osolinik: I was never at an issue dinner with another member of Congress. I know that Senator Kennedy did member dinners, where he would be there. In some sense he would take in everything, and then in an intimate setting, member to member, principals only, have those conversations, have the give-and-take with other members. Kennedy was very sensitive to the importance of member-to-member communications, that things would be said in those member-to-member conversations that wouldn’t be said with staff, and that it was also a matter of respect for a colleague that it be principal to principal. Senator Kennedy did not need to have some staff person in tow to make his point. He did a lot in that fashion.

Young: This would include some members of the House?

Osolinik: Yes, sure.

Young: He seems to have paid a good deal of attention—

Osolinik: Well, you have to get both houses on board if you’re going to get something done. Of course, during the period that I was there, the House was still Democratic, so we had the good fortune to at least have some sympathy in the leadership and committee chairs in the House.

Young: Right. When [Strom] Thurmond was chair of the—

Osolinik: Of the Senate Judiciary Committee—

Young: That was pretty rough going. The House Judiciary Committee was in whose hands? Was it—
Osolinik: [Peter] Rodino at the beginning, yes.

Young: Rodino, Peter Rodino.

Osolinik: Subsequently—I’m forgetting. Those were very important alliances.

Moving forward, legislatively, to the Americans with Disabilities Act—which was a very big civil rights accomplishment during my tenure—that was a situation where right out of the box we were in the position of lowering expectations for the disability community, because the legislation that had been introduced in the previous Congress was not only expansive, but it also had a very high threshold for demonstrating that an accommodation was not doable by a business entity.

Young: Could you place this in time? You said the earlier legislation.

Osolinik: Let me do this. It was introduced in August of 1988, I believe. That was the Lowell Weicker bill.

Young: Was that the first time that disabilities had been mentioned in a civil rights bill?

Osolinik: No, because Section 504 of the Rehabilitation Act has the program or activity discrimination prohibition for any federally funded program or activity. At that time, 504 was the only Federal disability antidiscrimination law. Senator Weicker introduced that bill in August of ’88, which meant there was not going to be time to consider it before the end of the Congress. He was then defeated by Senator [Joseph] Lieberman and Senator Kennedy was asked to help take the mantle on that bill.

Young: Who asked him, do you know?


Young: Pat, OK.

Osolinik: I was not very familiar with disability law, disability antidiscrimination, disability discrimination. I went through an intensive tutorial, because it is very complicated and the Americans with Disabilities Act covered such a broad range of activity: employment, public accommodations, transportation, telecommunications, state and local policies. The only thing it didn’t cover was fair housing, which had been covered previously, and was in many ways less complicated, because it was focused.

Young: Were disabled veterans a part of this at that time?

Osolinik: I don’t remember. I worked so closely with the Consortium for Citizens with Disabilities and the Disability Rights Education and Defense Fund. There you had Pat Wright and Chai Feldblum, who were sort of the Ralph Neas of the disability community. Although I would at times go and speak to a broader coalition, our points of contact were primarily Pat Wright and Chai Feldblum, who was a brilliant lawyer, and able to navigate us through those shoals.
Before the bill was introduced in ’89, we took a very hard look at it. I was concerned that it had an unreasonable threshold for denial of a reasonable accommodation by, for example, an employer or an owner of a public accommodation. One of the big differences between nondiscrimination on the basis of disability and nondiscrimination on any other basis is that an entity may actually have to do something to get to the starting line and level the playing field. That’s unlike any other kind of discrimination. That something that has to be done will very often involve money, because it will be removing some structural barrier or providing some assistive listening device or something. It’s a very different kind of discrimination and nondiscrimination. That was one of the challenges.

On the other hand, it is probably the most broad-based of discrimination issues in terms of support, because it affects everyone across the spectrum, including veterans and elderly middle-class people. There was hardly a Senator who didn’t have a family member or a friend who was coping with some sort of disabling condition that could be helped, could be made easier, with some type of reasonable accommodation. In addition to that, there was a striking amount of outright discrimination that had nothing to do with reasonable accommodation. It had to do with things like a restaurant’s concern that if someone looked out of the ordinary it would be bad for business. It was almost a throwback to race discrimination, when it was actually OK to say, “You are excluded because of your condition.” We had those two things.

Then there was the paternalistic approach: These are needy people. These people can’t fend for themselves. The role of the Federal Government should be to give them money and help them along, because surely they can’t operate in mainstream society.

Young: Welfare, welfare.

Osolinik: Yes. And the disability rights movement was gathering steam at this point. Justin Dart [Jr.], who is now deceased, and was a Republican wheelchair user, was enormously helpful and outspoken on these issues. There was a confluence of the disability rights community coming into its own way behind the race groups and the women’s groups and a recognition that there are 43 million people with disabilities in the United States and this is the next frontier, if you will, in antidiscrimination.

I reviewed the Weicker bill and gave Senator Kennedy a memo. I told him there were a couple of things in it that were problematic, and that I didn’t think we should include them. I was heeding Senator Kennedy’s advice, given to me long before, that you can’t start a legislative effort with something that’s unreasonable, because that’s all that will ever be remembered. When you go back and change it to make it reasonable, that will not get anywhere close to the attention that the original vehicle did. You can be aggressive, but you have to be reasonable. The Weicker bill had a standard of bankruptcy as the line beyond which a business did not have to go in order to accommodate someone with a disability.

I got a lot of resistance from within the disability community when I vetted that with Senator Kennedy, but he agreed. We were in a situation where I didn’t—and Senator Kennedy didn’t—have a track record with these people. Senator Weicker was a skilled legislator and he put the bill in that way, so...
It was a rocky start in that respect, but the idea that that bill got done in essentially two years is astounding, just astounding. Senator Kennedy was so invested in it, as were others: Senator [Thomas] Harkin, Congressman [Anthony] Coelho, and later Congressman [Steny] Hoyer. Also Attorney General [Richard] Thornburgh was very invested in it—from a personal side, as a parent of a child with a disability—so he was able to be very instrumental in moving the administration. President [George H. W.] Bush was also invested in it, although a little sketchy about the details. That was largely the result of Justin Dart and Boyden Gray, his counsel, who was very supportive.

But there was considerable opposition in the business community—the Chamber of Commerce and NFIB [National Federation of Independent Business]—the people who were going to have to be making these accommodations. There was a lot of early and intense negotiation about what was going to be in the bill to try to get the administration on board initially. And—

Young: Let’s see, there were questions about who is disabled?

Osolinik: Yes, the definition of disability.

Young: And you have the crazies out there.

Osolinik: You have people using illegal drugs, that was an issue early on that was taken out—It was again clarified that it was out.

Young: The other issue was what you have to do, at what cost, and what’s the tipping point.

Osolinik: Yes.

Young: You can’t bankrupt a business, but then there are heavy costs involved, and what’s the line there. [John] Danforth was in this picture, too, was he not?

Osolinik: Yes.

Young: We’ve interviewed him on it; he had a few things to say about it. Kennedy didn’t start out with a track record—and you didn’t either—with the disability community. At what point—

Osolinik: Certainly not to the extent that he had on other issues, although of course he had a leadership role in the Fair Housing Amendments Act of 1988, which included disability as well as families with children.

Young: But at what point did he get to the point of being their main person?

Osolinik: By the time the new Congress started. Very quickly.

Young: How did he work that? Did he have issue dinners? Did he go out and give talks? Did he—

Osolinik: Remember, he was recruited by the disability community to become part of the leadership of this. The reason he was recruited was because he was so effective—so effective in
the arena of civil rights. Although this was a very different subject, and a very complicated subject, he had an outstanding, proven track record, he had the seniority, and he had the passion. The disability community was not—and I think Pat Wright would agree with this—nearly as sophisticated as the other civil rights communities at that point. There was an education process going on within that community about what was doable and what made sense and was why Kennedy’s judgment was so valuable. You could take it to the bank. If he thought he could do it, he’d do it. The decisions he was making were strategic and tactical decisions to get this done.

[BREAK]

Young: Kennedy did have a track record in healthcare of concern to people with handicaps and mental problems.

Osolinik: Yes. That was a very dicey issue, because the disability community did not see their concerns as healthcare concerns.

Young: That’s right.

Osolinik: One had to be very careful about that, because this was not about healthcare. This was about civil rights.

Young: I understand that. But Kennedy had almost a social justice concern.

Osolinik: Yes, absolutely.

Young: A concern for the people who got the raw deal.

Osolinik: Absolutely.

Young: That was, I think, the link.

Osolinik: Absolutely. That was certainly a link, but it was—

Young: In his own mind, not politically, right?

Osolinik: Right. For the advocates, it was his ability to deliver, and his willingness to work as hard as it needed and as long as it took to deliver.

Young: OK. Danforth was in it; Dole got in it at some point.

Osolinik: Yes, and Harkin, of course, was prominent.

Young: Yes, but there was this famous meeting in Dole’s office.

Osolinik: Oh, yes. That was way down the track when we were—
Young: OK, you’ll get us there?

Osolinik: Yes. The hope was to be able to move legislation very quickly. The initial idea was to introduce a bill that the administration would support at introduction. We began a series of negotiations, the key Senate members and staffs and the key administration officials. Bill Roper was the point person for the administration, and I was, in terms of policy, the point person for the Senate. Bobby Silverstein is an expert and was an expert at that time. He was the substantive expert.

Young: He was whose—?

Osolinik: Senator Harkin.

Young: He was Senator Harkin’s, OK.

Osolinik: Senator Hatch was the key Republican in those negotiations. We met sometimes five times a week through grueling days-long meetings, because this was a very long bill. The administration’s approach was to go through it line by line to decide whether they would support it or not.

Young: Bill Roper?

Osolinik: Bill Roper.

Young: He was with whom?

Osolinik: He was in the White House. He’s a doctor, a medical doctor.

Young: With Boyden Gray or—

Osolinik: I think he had a policy position. He later went on to be head of the CDC [Centers for Disease Control and Prevention], but he was perhaps their top health policy person, which also gives you a window into how the administration saw things.

By April it was clear that we were not going to be able to reach agreement with the administration. In addition to that, the House would not agree to support the bill as introduced in the Senate. In fact, the House would not participate in the negotiations, particularly the Republicans in the House, because they wanted to have a second chance at this, because, frankly, it was moving very fast. This was a new President, a new administration, and we were a lot farther along than they were. In the early months, a lot of what was going on from the White House was trying to postpone meetings, I think genuinely because they were still putting together their administration and recognized what a significant piece of legislation this was. They were just not ready to move.

Then the bill did go in, in the Senate. We quickly had hearings, and quickly narrowed issues. There were some tense moments—there were so many issues to resolve, because if you even had two issues in each title of the bill, you had 12 issues—and a lot of back and forth. I remember going with Senator Kennedy to the White House at one point and meeting with Senator
Sununu—excuse me, Chief of Staff John Sununu, the senior. He was doing one of these ridiculous hypotheticals: Does this mean that Mount Whatever in New Hampshire is going to have to have a wheelchair-accessible ski lift? He was not, I would say, on the team exactly, but we worked through many issues. Senator Hatch was helpful. We made modifications with very complicated language, so one could tweak it in a number of ways.

It finally came down to, I think, four issues. I’m going to confess that I don’t remember them now, but I hope I will by the time the transcript comes in. I remember being in the cloakroom with Senator Kennedy and him saying, “Well, we’re going to have to give them two, and we’re going to get two. Which two do we need?” He picked up the phone and talked to Thornburgh and they did it. That was it, which didn’t necessarily mean that all the other Republicans were on board. When it was debated on the Senate floor, the Chamber and NFIB had whipped up quite a bit of opposition. It was such a complicated piece of legislation that there were many, many places to go with it. We had numerous briefing books with questions and answers in different subject areas: employment and public accommodations and transportation. There was a very lively debate.

Much like the administration a few months before, Senators hadn’t had much time to focus on this, and it was very complicated. There was such support, particularly with the administration being supportive, that we were able to get it scheduled and begin debate, because we figured we had enough votes to push it through. After a couple of days of debate, when one of the issues we were getting rid of was the transvestites and the kleptomaniacs, I remember Senator Kennedy saying to me, “We have to resolve whatever other issues there are tonight, because if this thing kicks over, we’re going to lose it. People are paying more and more attention to it and finding more and more to pick at.” We pushed and we got it done.

Young: How did you do it? By that night?

Osolinik: I think we closed it down to the point of having a consent agreement on what amendments would be, in order, the next day. I believe that was the way that ended up.

Young: Did you work that out with the leadership?

Osolinik: Yes, so that we were able to cabin what was going to happen in order to get it done. The House moves a lot more slowly on such things, with more committees to refer to. Even Democratic supporters felt that they wanted to have more time to look more closely at things. For example, Chairman [John] Dingell had a great interest in the transportation pieces of the bill. Senator Kennedy met with him personally at one point. I remember being in Congressman Dingell’s office, which is filled with his hunting trophies on the wall, and it was in itself very intimidating. As I recall, the main thing that came out of that meeting was that Congressman Dingell said, “I’m going to work with you to get this done.” That was key.

The leadership person over in the House was Tony Coelho, who has epilepsy, and has a very moving life experience that he would often share in talking about this, when he was denied entry into the Catholic seminary because of his epilepsy. He was a very effective leader who unfortunately was sidelined by financial issues. Congressman Hoyer stepped in. He was amazing, just as he still is, and had a wonderful staff, devoting the resources necessary to get it
done. It was done in one Congress, so that was pretty amazing and wonderful. That is easily the most gratifying bill that I worked on while I was there.

**Young:** Yes. And that meeting in Dole’s hideaway?

**Osolinik:** Oh, I know I just blocked that out, it was so ugly. One of the things that was problematic for the Republicans in the Senate and for John Sununu in the White House was that we were being very aggressive.

Before we get to the meeting in Dole’s office, over the Fourth of July weekend of 1989 we were trying to narrow the issues and close the gap. Kennedy called me at the end of that weekend to say he’d received a call from John Sununu over the weekend saying that the obstacle to resolution of the issues was his staff person, Carolyn Osolinik, and that if he took her off, he knew they could get this done. I could barely understand Kennedy, he was laughing so hard. Anyone who knew anything about Senator Kennedy knew that there was no surer way to have me on there until the bitter end than to say something like that. Maybe he really felt like he needed to get this done, but tactically it showed what I perceived as their weakness, that they felt they needed to get a different team up there in the Senate if they were going to get what the business community needed. That was one of the searing moments. Another was—

**Young:** He said you must be doing a really good job.

**Osolinik:** Yes. There could be no higher compliment in Kennedy’s mind than to have John Sununu, particularly on this issue, asking him to change his staff person.

**Young:** Sununu pulled the same thing on Silverstein, didn’t he, in the meeting up there?

**Osolinik:** Well, no. He was the one who went after Bob Silverstein in that meeting, yes, but that was in a very public way. As I recall, it came very close to questioning Bobby Silverstein’s integrity. It was a very ugly moment and you could hear a pin drop. As I look back on it, Senator Kennedy waited a respectable time for someone else sitting in the room, some other Democratic Senator, to come to Bobby’s defense. When it didn’t happen, he did it. He exploded and pounded the table. That was the end of that. It was a very jarring moment.

I never stopped being very emotionally affected by the times where there was, shall we say, intense debate, because the emotions could get pretty high. But what I think about Kennedy in that situation was that he was not only protective of his staff, he was protective of staff in general. He was very angry at the idea that Sununu would go after a staff person, who obviously could not say anything back to him. That was the substance of what Kennedy was saying when he pounded the table. He said, “If you have a problem with this, you tell me what the problem is. Don’t go after some staff person.” So that was—

**Young:** Did Sununu walk out?

**Osolinik:** I don’t remember. Perhaps others do. I was paralyzed by Kennedy pounding the table and yelling. After that, it’s all a blur.
Unless you have other questions, those are the things that I remember most on the legislative side.

**Young:** That’s fine. Let’s go on then.

**Osolinik:** The other big theme, at least on civil rights, was what the administration was doing to the Federal courts. I have to admire the Reagan administration for its understanding of the importance of the judiciary to civil rights and to other things. A lot of the court packing was driven by an ideological anti-civil rights agenda. From the very beginning, the administration nominated to fill seats, particularly appellate court seats, with the youngest, most ideological person they could find who they could get through the ABA [American Bar Association] Judicial Committee.

**Young:** You said “from the beginning.” When is this beginning?

**Osolinik:** Well, I got there in middle to late 1981, and—

**Young:** Had it started under [Richard] Nixon? Or not really?

**Osolinik:** I don’t think so. I think that ideology was something that President Reagan started. Prior to that, there was the idea of an independent judiciary, where candidates were judged by their intellect, temperament, and experience rather than politics. But Reagan also had the Republican Senate, so he could—It was very difficult to stop his nominees.

**Young:** Like now.

**Osolinik:** Yes, although now there’s a Democratic Senate, so—

**Young:** Well, up until—

**Osolinik:** Right. You’re so right; in this first six years, it has been very difficult. One of the things that happened during the period when I was there was something of an evolution in the way Democrats handled judicial nominations, which I think was very unfortunate, but we’ll get there shortly.

Senator Kennedy again pretty much took the lead, from the civil rights perspective, on dealing with nominees. The nominee I first remember, and I may have my chronological order mixed up, was J. Harvie Wilkinson [III], nominated to the Fourth Circuit. He was known to be very conservative. The Leadership Conference and its members were very concerned about him. Kennedy made a very serious effort to stop Wilkinson.

There was a strong suggestion of perhaps some impropriety with respect to Justice Department officials contacting Justice [Lewis Franklin] Powell [Jr.]. That became one of the issues that reopened the hearings on Wilkinson. Kennedy, in trying to continue to build enough of a case to get enough votes to stop him, succeeded in getting another hearing scheduled, where two of the Justice Department officials had to attend. They were the only two witnesses. The hearing was scheduled, and right before that, some elder and highly respected Congressman died, and his
funeral was the morning of the hearing. Senator Kennedy asked Senator Thurmond to reschedule it, and he said, “No, we scheduled it. It’s going forward.”

In a move that was highly unusual in the Judiciary Committee, although it’s commonplace in other committees, I was the questioner for the Justice Department officials. Thurmond said, “We’re going to go forward with the hearing, but you can have your staff person act in your stead to question the witness.” That was a pretty amazing experience. One of the things I really felt good about was how obviously disgusted the Justice Department officials were that they had to answer questions from this staff person. Senator Thurmond let it go on for quite a while, but in the end there was not enough to get enough votes against Wilkinson, and he was confirmed.

Young: Were your questions in the nature of his judicial philosophy?

Osolinik: No, my questions were focused on allegations about the improprieties in contacts between the Justice Department and the court, and the Supreme Court, in connection with the Wilkinson nomination.

Young: So you were questioning Wilkinson or—

Osolinik: No, I was questioning the Justice Department officials, the Assistant Attorney General—his name was [Jonathan] Rose—in charge of judicial nominations, but—

Young: Wilkinson was Federalist Society?

Osolinik: Yes. Through the period of the ’80s, as it became more and more apparent that there were so many judges who were being selected based on ideology and were going to outlive some of the staff people, who were pretty young, it became more and more of a focus of the Leadership Conference. A couple of groups were formed around judicial nominations. The Alliance for Justice was formed—Nan Aron’s group—to focus on nominations, because once the nominee got through the ABA, it was pretty hard to stop the nominee. The outside groups did a lot of work with the members of the ABA committee, which was the first line of defense. If you could stop a nominee from being sent to the Senate, that was the best of all worlds, because once the nominee was there, it became a lot more difficult.

It was a big job to review the records of nominees, some of whom had been in academia and had written a lot, and some of whom were being elevated from district court. That was a very labor-intensive job, and it was very important to have the advocacy community willing to put in the time to do that. The big challenge, and the big danger, was when the Supreme Court vacancies opened up. Senator Kennedy decided to challenge the elevation of [William] Rehnquist to be Chief Justice.

Rehnquist had had a lot of unresolved issues when he was made an Associate Justice of the Supreme Court, and had distinguished himself while on the Court in being a minority of one on many cases. There was a real concern that even though if he wasn’t Chief Justice, he would still have a vote, that the position of Chief Justice is a powerful enough position that it would make a real difference to have Rehnquist move from Associate Justice to Chief Justice. A case was developed on Justice Rehnquist being out of the mainstream in his judicial interpretations. Then
on the investigative side, there was additional investigation. Senator [Howard] Metzenbaum took
the lead on that.

Young: Is that Arizona?

Osolinik: The Arizona voting intimidation allegations. We were not able to defeat the elevation
of Rehnquist to be Chief Justice.

Young: Wasn’t there something else about the Brown or Plessy case?

Osolinik: Oh, of course. The Plessy case. And the infamous memo that argued—

Young: Rehnquist at that time was clerking.

Osolinik: He was clerking for Justice—I want to say [Hugo] Black.

Young: Black.

Osolinik: He was clerking for Justice Black. Those archives had become available, and there
was an infamous memo that played very prominently in terms of where Rehnquist had been on a
defining issue in civil rights. You are so right, that did become very important, as did also
Rehnquist’s role as an official in the Justice Department during the Saturday Night Massacre and
in assembling dossiers on war protesters. But the administration kept a very tight rein on
documents related to all of that, and that ended up not being a very fruitful avenue, for the reason
that there were these restrictions, so he was elevated.

At the same time, Justice Antonin Scalia was nominated. He was what one could call the
“sleeper” Justice, the stealth Justice. There was a lot of discussion within the advocacy
community, many meetings that I participated in, about where to focus, as between Rehnquist,
Scalia, or both, because there was no doubt that Justice Scalia was going to be as difficult for
civil rights as he has been. He did not have the public record on civil rights that gave one much
to work with. That was a big problem. The fact that he was Italian American figured very heavily
into calculations as to how realistic it would be to be able to defeat him.

Young: He’d be the first on the Court.

Osolinik: Yes, so he was confirmed.

Young: Kennedy voted for him, I think?

Osolinik: I would be surprised if Kennedy voted for him, but let me—I don’t remember that. I
confess that what memory I have sometimes is more about the battle than exactly where Senator
Kennedy landed at the end of it. [laughter] I guess the next nominee was Justice [David] Souter,
who was strongly supported by Warren Rudman, which was to his benefit.


Osolinik: Oh, so Bork was the next one?
**Young:** Yes, Bork. Then Souter came with that.

**Osolinik:** And then Souter, OK.

**Lindskog:** Souter is after. I am getting it mixed up; Bork was first.

**Young:** Well, I’m just waiting for the big one. [*laughter*]

**Osolinik:** When Robert Bork was nominated to the Court, he *did* have an extensive paper trail. He was someone who, as Senator Kennedy said within an hour after his nomination, would be an absolute danger to the America that existed at that time. However, defeating any Supreme Court nominee is a very difficult thing. There is so much deference given to the President in the selection of a nominee for *any* court, but in particular for the Supreme Court, while on the other hand the stakes are very high because it’s a lifelong appointment and it’s the court of last resort.

Robert Bork was probably the biggest contributor to Robert Bork’s defeat because of his utter lack of compassion about the role of the Supreme Court and the importance of the cases that come before the Supreme Court. His having been caught on tape in his speech at Canisius College saying that he thought he would sweep away precedent, because reliance on precedent was one of his supporters’ strongest arguments for him, that on so many of these issues there was such precedent that he essentially had little room to maneuver. . . .

There were some dramatic moments there. Kennedy playing the tape of the Canisius College speech was a very dramatic moment. It was the nominee in his own words, in his own voice. One could see the concern beginning to build, the concern among southern conservatives, the most important of whom by far was Hal Heflin, Judge Heflin. It grew and grew to a point where, as a matter of public impression, Bork did not seem like the right person for the job. That was an important defeat.

One of the most interesting things about Senator Kennedy during judicial nominations was that—When we prevailed on legislation, he would have a party that afternoon. He would break out the champagne and we would all celebrate. When a nominee he had opposed was defeated, there could be absolutely no rejoicing on the part of the staff, because in Kennedy’s mind these were all decent people. They were people who were unsuited to be Federal judges or Federal justices, but this was for these people a very personal thing, and it was not something to be rejoiced over. That was a very touching aspect of him. It was not about winning the game and scoring against the nominee. He said once that the hardest thing for him when he was doing—particularly in a Supreme Court nomination—very harsh questioning, was looking at the wife, because he said the wife would never forget this. He was very decent about that.

**Young:** Can I ask something further about the Bork nomination? I’ve seen some of the memos. Kennedy came out slugging right from the very beginning on that one.

**Osolinik:** Yes.

**Young:** The organization of effort that was made seems to me a tour de force.

**Osolinik:** Yes.
Young: It really is. I’ve never—it’s like a well-run campaign.

Osolinik: A well-oiled machine, yes.

Young: Yes and it included everything. I’ve seen your memos to him, the public strategy, the this strategy, the that strategy that was issued—

Osolinik: The law professor strategy.

Young: The law professor strategy, the constitutional scholar, and so forth. You had to get time to do it, didn’t you? And [Joseph] Biden was in there.

Osolinik: Yes, that was always an issue.

Young: He was chair.

Osolinik: Yes.

Young: You had to get him to wait until September to get this thing very well organized. I’d like you to talk about that, because that’s a phenomenal type of organization. Then I put on my other hat, as a historian, and I look at the efforts the Reagan folks were making on Bork’s behalf, and I don’t see—it seems they didn’t have a campaign, or certainly not one that was well thought out. Their signals would change. He’s a moderate and then he’s this and then he’s—Did they not anticipate? Were they just—

Osolinik: Robert Bork was such a brilliant intellectual that there was some complacency on the part of the administration that certainly there could be no basis to reject a person of this intellect from the Supreme Court. With respect to the effort to oppose him, there had been some practice runs on these other nominees, so we on the Hill were refining our approach and the outside groups, the Leadership Conference and others, were refining their approach. It had gotten to the point where there were research papers on a number of individuals who could potentially be the nominee, which is why it was possible for Senator Kennedy to go to the floor within an hour of the nomination with his opinion fully formed. The entire effort became more sophisticated. In the minds of the civil rights community, Bork was probably by far the worst thing that had come down the pike.

It was an all-hands-on-deck effort with many meetings, all the time. During that period Senator Kennedy would—the hearings were in the Russell Caucus Room, which was right near Senator Kennedy’s office in the Russell Building. Many times he would tell me to get Ralph Neas and go into the conference room. Kennedy had excellent antennae for what was beginning to work. He could observe his colleagues and see who was troubled by what, because there were different issues for different people. In real time Kennedy would give the instructions to get more on this issue because he wanted to give it to this Senator over the weekend. That was one of Senator Kennedy’s tactics in all of these nominations, to—

Young: Do briefing materials for the Senators.
Osolinik: To make it as easy as possible for these Senators to understand what the problem was. He tailored those packets. They always went out on a Friday; he tailored them to individual Senators’ interests and had a handwritten note on every one of them. He would send more than one to the same Senator over the period if something else came along that he thought would be helpful.

He’s a master strategist, and is able to move in real time. As soon as the question and answer came, he was out, either telling me to tell Ralph thus and such or saying to get Ralph out here, so that there was never any time lag before getting moving. That’s what’s known in political campaigns as the rapid-response approach. That was very important. That was an enormous amount of effort on the part of so many people.

Young: I don’t see how you got any sleep, when I read the—By tomorrow night, we’ll be here; by 11:00 tomorrow, we’ll be doing that.

Osolinik: It was an enormous effort, and it was successful.

Young: Who masterminded it? Was he the mastermind of this effort?

Osolinik: A small group of Senators was very much involved. Certainly Senator Biden was very much involved. Senator [Patrick] Leahy was very much involved. Senator Metzenbaum was very much involved. They would have member-only meetings, so who said what to whom I can’t tell you. The meetings were almost always in Senator Kennedy’s office, because the hearings were just across the hall.

Young: Lloyd Cutler wrote an op-ed piece or a letter to the Washington Post praising Bork?

Osolinik: Yes.

Young: That caused a bit of a stir in your camp.

Osolinik: Yes. I don’t remember much focus around that, other than that I remember that it did happen, and that it was a problem.

Young: I’ve seen some of Kennedy’s notes. [laughing] He gets so—“establishment journalism,” “jurists,” and “professors.” For some people, Kennedy gets a very bad rap in academia for “getting Borked,” as it’s called. The rap is—you’ve heard this in any number of forums—that Kennedy politicized the process, that it never used to be this way and so forth, and that Kennedy is the one who started all of what we’re now seeing the fruits of. What do you say, for history, to that?

Osolinik: It’s very ironic that the allegation has been made and endures that the Bork campaign was politicizing the Court and became a personal campaign where that had not been the case in the previous decades. I find it ironic and frustrating because the entire focus of the campaign against Robert Bork was a campaign on the merits, not about who he was and whether he intimidated voters or whether he wrote some memo that was obviously ant–civil rights. It was, “This man is going to be a Justice of the Supreme Court. He is going to play a key role in defining justice for everyone for a very long time. Do we want the kind of justice—the view of
justice—that we can expect from him?” It seems to me that there is no more straight-up approach to evaluating a Supreme Court nominee than that. Perhaps it is just because it was successful, and it was more intense, more sophisticated—

**Young:** Intense and sophisticated and it was organized, I think that’s what it is.

**Osolinik:** The notion of being “Borked” was essentially being the victim of a highly organized campaign that managed to get you defeated. But the aura of the notion of being Borked is that there was somehow an unfairness to it, which is patently untrue. It was on the merits: These are the issues that are important to the nation; these are the things he’s written that show us where he is on this; these are the things he’s said that show us he will have no problem overturning precedent to suit his view of reality. What more appropriate, what more important, issues are there in evaluating a Supreme Court nominee? I can’t think of any. I can’t see how that was unfair.

**Young:** He also came across as a dilettante in some ways, with the “intellectual feast.”

**Osolinik:** I said earlier that he contributed significantly to his own demise, because it was jarring; his “intellectual feast” answer was absolutely jarring.

**Young:** And a Republican asked the question.

**Osolinik:** It was a softball question.

**Young:** Softball question: “Why do you want to be on the Court?” [laughter]

**Osolinik:** But it spoke volumes and reenergized people to the coldness and the intellectual distance with which he was going to approach this, and the self-centeredness, if you will—that this was going to be entertainment for him, and that made it well worthwhile.

**Young:** Now fast-forward to [Clarence] Thomas.

**Osolinik:** Clarence Thomas was the last Supreme Court nominee for which I was on Kennedy’s staff. The Clarence Thomas nomination was a factor, a significant factor, in the timing of my leaving. It was a completely horrible experience. You’ll remember that there was an appointment of an independent counsel to investigate staff after the Thomas nomination. Those of us who were senior staff had to get lawyers and had the risk of being sanctioned. Not only did one have to go through the actual horror of the Clarence Thomas nomination, then one got to be investigated.

The Thomas nomination was very difficult, understandably so for the African American community, because this was a President who was not going to nominate someone who was going to be a champion for civil rights. At the time that he was nominated, Thomas did not have much of a track record. I know from speaking to people like Elaine Jones with the Legal Defense Fund that it was a wrenching decision for the NAACP [National Association for the Advancement of Colored People], for example, to come out against him. Just as Senator Kennedy’s staking out the opposition to Robert Bork on the day he was nominated contributed to
Robert Bork’s defeat, I think having a campaign against Thomas on hold for the first critical few weeks contributed significantly to his being approved.

The administration had learned some lessons from Robert Bork, so they had all their ducks in a row before he was nominated: everything from the humble roots to issues overcome and the cadre of supporters from every which way and busing the people in from his hometown and—

Young: And he had Danforth.

Osolinik: And he had a godfather.

Young: There was no godfather for Bork in the Senate, was there?

Osolinik: No. That was part of his problem, yes. Well, not having a godfather is one thing, but having Danforth as your godfather is a whole other thing. There may be no other Senator more liked and respected than Senator Danforth by members of both parties. His imprimatur on Clarence Thomas was impossible to overcome.

There was no doubt that Justice Thomas was going to be very bad for civil rights and civil liberties, but it sent a signal to Senators that the civil rights community did not come out as soon as he was nominated, with guns blazing, saying that he was trouble. That’s not unfair, because in the experience of Senators during this period, if someone was a problem, the advocacy community and the pro–civil rights Senators had gotten to the point where they were ready to go immediately. A fair point to take from the delay is that there must be—on the merits—some debate as to whether there should be support or opposition. Of course, it really had little to do with the merits and a lot to do with the very real concern that if Clarence Thomas were defeated, the next nominee would be ideologically as bad or worse and would not be a minority.

Young: The word was that the next nominee would not be a black if you defeat him?

Osolinik: Yes.

Young: That’s the word from the White—Well, from sources out—

Osolinik: Yes, from the ether.

Young: Was Boyden Gray masterminding this from the White House?

Osolinik: I don’t remember.

Young: I know John Sununu was involved.

Osolinik: Yes. I don’t remember how involved Boyden was, but Danforth was in his way as effective as Senator Kennedy is, and a minister to boot. It was very difficult to overcome that. With your troops in disarray at the outset, it was very hard to make up for that lost time.

Somewhere during the consideration of the Thomas nomination, allegations began to come in over the transom of inappropriate language, inappropriate behavior with female subordinates.
That became an issue that in any nomination would have been investigated. It did not initially come to us, but came to us pretty quickly on the Kennedy staff.

One of the things that was the most important with respect to a nominee was to be absolutely aboveboard with anything having to do with personal allegations, so when the alleged conduct involving Anita Hill was described to me, my first reaction was that we didn’t know if it happened, and if it happened, we didn’t know whether it would rise to the level of being a Title VII employment harassment. My good friend Susan Ross, a professor at Georgetown, specializes in women’s issues and, in particular, employment issues, so I called her and asked her to get involved in trying to sort this out. She ended up being one of the principal advocates for Anita Hill, along with Charles Ogletree.

This probably was the start of a very big rollback in terms of the extent to which investigations were done concerning personal allegations. I think because the Justice Thomas confirmation process became so incredibly ugly, the reaction was to ensure that they were never going to find themselves in this position again. This was Senator Biden at the time. My personal view is that it has been a big mistake to so restrict the investigative process with respect to judicial nominations. My understanding is that Senator Leahy has even further restricted it. Certainly allegations are made that are absolutely baseless, and that is why it is so important to handle them confidentially, because as we all know, once there’s an accusation made public, it doesn’t matter whether it’s true or not, there’s damage. But there also is a value to exploring the character of someone who is going to get a life appointment to the Supreme Court, and that has been very much restricted. It is a limitation that should not be imposed on the committee as it does its due diligence about nominees.

To get back to the Thomas confirmation process, it was so highly charged, because the racial issue was everywhere. And—

**Young:** To begin with, and then—

**Osolinik:** Yes, and then even more so.

**Young:** Then you had an African American woman accusing—

**Osolinik:** Yes, and accusations involving some of the ugliest stereotypes. There was among some of the Democrats on the committee an ardent desire to get this over with as quickly as possible. Senator Danforth had the ability to make a huge difference in the timing of things. Timing was everything with respect to running down allegations that came in late in the process. Ultimately, after the hearing with Anita Hill, there were additional allegations that came in, and there was not an opportunity to pursue them. Who knows whether there was anything to them or not? But there was a somewhat incomplete record. I’m not opining as to who was telling a story that was closer to the truth, Anita Hill or Clarence Thomas, but it also very badly affected Anita Hill after those hearings. That was as emotional and ugly an episode as any—

**Young:** Why couldn’t it be kept quiet? At the beginning, she wasn’t saying she wanted to testify in public.

**Osolinik:** That’s right.
Young: But it all somehow—

Osolinik: My recollection is that at some point Anita Hill did talk to a reporter. She talked to Nina Totenberg, and gave Nina the OK to do a story. We did nothing, to my knowledge, to pressure Anita Hill to go public. The fat was in the fire, so to speak, when she was willing to go public. It was a serious allegation if true against someone being evaluated to be a Justice of the Supreme Court. It was, in a sense, the perfect storm, this confluence of race being a factor in the nomination, race being a factor in the organization of the advocacy community, race being a factor in this very ugly personal allegation, and race being the ultimate trump card in the way that the hearing on the Anita Hill allegations was conducted.

Young: Where was the race in two African Americans, one accusing the other of harassment?
Osolinik: Well, many made that point, but I think it did resonate, particularly—

Young: This wasn’t a white doing the lynching.

Osolinik: Right. It did resonate, particularly with Senator Danforth, that the nature of the allegation and the discussion of various interests in movie rentals and whatever was the embodiment of the ugliest stereotype of African American males, so it didn’t matter that the accuser, if you will, was also African American.

Young: I see. He orchestrated quite a campaign.

Osolinik: Yes, he did, and he orchestrated that final hearing brilliantly.

Young: The Republicans have now learned from Bork, have they?

Osolinik: Certainly.

Young: Except that now everybody’s a stealth nominee. [laughter]

Osolinik: That’s true. It’s very troubling to me that Reagan and Bush Senior were able to pack the courts the way they did. They, so much better than the Democrats, understand how important that is. It can decide a Presidential election. But we, perhaps because there are not the lightning-rod issues like abortion for the religious right—For Democrats, it’s not the kind of electoral issue that it’s always been for Republicans. My sense, and this is now wandering, of President Clinton is that he did not comprehend how important the Federal judiciary was. He went back to a time where you looked for highly intelligent, skilled, experienced people with a judicial temperament. But to do that in the face of what had gone on for the previous 12 years is—Well, it is an enduring—

Young: He had other issues with Congress, so he didn’t want to make an issue with the Senate over this. Maybe that’s it. I don’t know. Certainly when you add [George W.] Bush Two into this mix, then this is the Court that is hearing torture cases, detentions—all of this was coming up.

Osolinik: The intersection, perhaps, and a good way to close, is we’ve talked so much about how the way to move forward on legislation is compromise. Compromise necessitates some level of vagueness in language, so that members of Congress know, when they’re legislating, that
these issues are going to be resolved in the courts. They can’t—in many cases on significant issues—nail it down, because otherwise it won’t become enacted. This makes the courts incredibly important by the very nature of the legislative process. The right has captured the courts from the top down, and we see it in every Supreme Court decision.

**Young:** Do you think they’ll ever—now that they’re life-secure—moderate?

**Osolinik:** It’s difficult to know whether it’s moderation or whether it just is who they are and they had never been faced with whatever the facts were. Justice [Sandra Day] O’Connor certainly is someone who—with the notable exception of *Bush v. Gore*—took the role of Justice very seriously, and had balanced—on many important issues very balanced—judgments. That role now falls to Justice Kennedy. And that’s a pretty slender thread.

**Young:** We’ve now completed the interview.