

REMARKS

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REMARKS BY PATRICK LEAHY*

I've served with almost 400 senators,¹ and there's a small handful of them that were truly really great. Birch Bayh goes on that list no matter how I write it.

I remember as a very new senator, there was a small group sitting around with Birch Bayh and Senator Ted Kennedy. Ted made a comment about how Birch had saved his life when he'd pulled him out of a burning airplane.² Birch said, "Well, anybody would have done that." I still remember Senator Kennedy turning to him and saying, "No. You are the only person brave enough to risk your life to save mine. I'll never forget it." I'll never forget that conversation either.

When I got a chance to sit on the Senate Committee on the Judiciary with Birch,³ I realized he was a senator's senator. He could work with Republicans and Democrats, and he followed the rules that all senators followed back then—not enough do today—he always kept his word. He could sit down with people from the far right to the far left and say, "How do we work something out?"

He became the first senator since the Founding Fathers of this country to put through two constitutional amendments.⁴ One that everybody takes for granted today, but was so revolutionary at the time, and that's to lower the voting age to eighteen.⁵ The other, which we didn't think we would probably ever need but ended up needing almost immediately, was to allow for the appointment of a vice president with congressional approval when there's a vacancy.⁶ He had seen what happened when President John F. Kennedy was

* U.S. Senator from Vermont, President Pro Tempore Emeritus of the U.S. Senate. This piece is a transcript of a video that was played during the Symposium entitled *Celebrating the Impact of Senator Birch Bayh: A Lasting Legacy on the Constitution and Beyond*, hosted by Fordham Law School's Feerick Center for Social Justice on October 16, 2019, at Fordham University School of Law. The text of these remarks has been lightly edited and footnoted. For an overview of the corresponding Tribute, see *Foreword: Celebrating the Impact of Senator Birch Bayh: A Lasting Legacy on the Constitution and Beyond*, 89 FORDHAM L. REV. 1 (2020).

1. See *Longest-Serving Senators*, U.S. SENATE, https://senate.gov/senators/longest_serving_senators.htm [<https://perma.cc/QK4YCWJB>] (last visited June 22, 2020).

2. See 155 CONG. REC. S9202 (daily ed. Sept. 10, 2009) (statement of Sen. Dick Durbin).

3. See Interview, *A Modern Father of Our Constitution: An Interview with Former Senator Birch Bayh*, 79 FORDHAM L. REV. 781, 781 (2011).

4. See *id.* at 782; see also Opinion, Jesse Wegman, *The Man Who Changed the Constitution, Twice*, N.Y. TIMES (Mar. 14, 2019), <https://www.nytimes.com/2019/03/14/opinion/birch-bayh-constitution.html?auth=link-dismiss-google1tap> [<https://perma.cc/YV2E-WADJ>].

5. U.S. CONST. amend. XXVI.

6. U.S. CONST. amend. XXV.

assassinated. Lyndon B. Johnson was there, but there was no ability to have a vice president.⁷ They had to rely on the Speaker of the House and President pro tempore of the Senate but not a vice president.⁸ Ironically, the first person to be named as a vice president was Gerald Ford, who then became president.⁹ Unelected as vice president, unelected as president.¹⁰ This would have created an enormous constitutional crisis in this country had it not been for Birch Bayh.

I think every day when I look at his picture, every day when I look at books mentioning him, every day when I think about him as I go into some of the committees: we should have more senators like him. Fortunately, we've had some very good men and women in the Senate. But only a tiny, tiny handful are as great of a senator as he was.

7. See Interview, *supra* note 3, at 788–89.

8. Presidential Succession Act of 1947, Pub. L. No. 80-199, 61 Stat. 380 (codified as amended at 3 U.S.C. § 19).

9. See *Gerald R. Ford, 40th Vice President (1973-1974)*, U.S. SENATE, https://www.senate.gov/about/officers-staff/vice-president/VP_Gerald_Ford.htm [https://perma.cc/8FCP-82YT] (last visited June 22, 2020).

10. See *id.*; see also Interview, *supra* note 3, at 799.