



The Progressive

Former U.S. Senator Russ Feingold (D-Wis.) is perhaps best known as the cosponsor of the Bipartisan Campaign Reform Act of 2002 (a.k.a. McCain-Feingold). He also cast the only vote in the Senate against the USA Patriot Act, which he believed posed an unacceptable threat to civil liberties. A leading progressive, Feingold served 18 years in the Senate before losing his seat in 2010 to Republican Ron Johnson. Since then Feingold has been doing some teaching (most recently as a lecturer at Stanford Law School) and writing. His book, *While America Sleeps: A Wake-Up Call for the Post-9/11 Era*, was published last year. In May, UC Hastings law professor Evan Lee interviewed Feingold in San Francisco. Here are edited excerpts from that videotaped discussion.



Russ Feingold



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Legally Speaking is a series of in-depth interviews with prominent lawyers, judges, and academics, coproduced by *California Lawyer* and UC Hastings College of the Law.

Q: As we sit here today, the tragedy of the Boston Marathon is still fresh in our minds. What do you think is the takeaway lesson from that bombing?

To me, that incident has a lot to do with civil liberties and what the proper power of the government is, and how we treat immigrants. But at the very core, what this incident says is that we have not yet taken the steps we need to take since 9/11 to really have a firmer grasp on what's going on in the rest of the world, and I think that's very dangerous.

You have the distinction of being the only member of the United States Senate to vote against the USA Patriot Act. Even Paul Wellstone voted for it. Did anyone on your staff try to talk you out of casting that vote?

No they didn't. They were in fact quite proud that we were taking this step, although a few of us did get a little pale when we realized we might be the only ones. And we didn't know until the last minute that they were going to call the bill the USA Patriot Act. What was interesting, though, was that when I

returned to Milwaukee to do events, I received more praise for that vote than for anything else I've ever done. From conservatives, from liberals there was just this "thank you." Thank you for telling us we can still be Americans. Thank you for telling us that we can still disagree after 9/11. It was a fascinating thing.

True or false: Democrats have largely given the Obama Administration a pass when it comes to civil liberties and national security?

True. Not me, but it's true.

So if your old friend Barack Obama called you up and said, "You're killing me with this criticism. Tell me what you would do differently," what would you say?

Well, first of all I would say, "Mr. President, you know I'm not killing you. You're doing fine, and this isn't the kind of issue that's going to prevent you from having a successful second term." I would then remind him of the things we did together in the Senate, where he was one of my best allies on things like making sure the phone compa-

nies were held liable for giving away information that they shouldn't and warrantless wiretapping; on torture; on Guantanamo; and trying to stop the USA Patriot Act from being renewed until it was fixed. Barack Obama was a great help on all those things.

So in the final analysis, is the nature of the presidency more about the office than the man who occupies it; that there's just something about being in that Oval Office surrounded by the top brass, inside a bubble where the pressures are all pressing one way? Would President Feingold be able to better withstand all that?

Who knows? First of all, it would be arrogant of me to think of myself as president and to think I could resist those pressures. But you're absolutely right about the pressures. When Barack was in the Senate, he had his liberal constituents back home and he saw guys like me every day. His day looks a little different now.

This is mythical, but I believe that basically this is what happens: Eight o'clock in the morning the CIA comes and gives him a briefing. Then at nine

o'clock the military comes in and gives him a briefing. Then I'd like to say that at eleven o'clock the Chicago boys come in and tell him what the good politics are. Then just before lunch he sees the White House lawyer who says it's your job to preserve the maximum power of the presidency. A president, whoever he is, even my friend President Obama, needs to break through that. Although I'm sure it's very, very difficult.

You spent 18 years in the U.S. Senate. How much would you say the institution has changed during that time?

It's changed dramatically. When I first came to the Senate there was a real pride in people working together. Bills would come up and the majority leader, whether it was George Mitchell or Bob Dole, would say: Who has an amendment? You'd raise your hand and just go through the amendments, and when it was over you'd have a vote. Sure there were filibusters, but they were very rare.

Now these filibusters are used, in 70 percent of the cases, for partisan reasons. It's one of the reasons the Senate is now held in such disrepute.

Is there a fix for that?

For starters, you could get rid of the so-called silent or stealth filibuster, where the senator doesn't have to talk. What's wrong with making people talk? That was sort of the original idea. Now you can just sit in your office, have a sandwich, and tell the majority leader that you're filibustering. This could easily be changed.

Just let them get up there and actually talk. No bathroom breaks.

Believe me, if Senators had to actually talk, they would not be so interested in doing it. 🗨️

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