

BIDEN FOR PRESIDENT

Interview #3

Thursday Morning, August 18, 2011

KAUFMAN: Is the Senate a much more civil place because we've had turnover? I remember Joe Biden and Dick Lugar on the European Affairs subcommittee. Lugar was chair from '80 to '86, then Biden was chair from '87 to '94, then Lugar took it back. The same thing happened on the Judiciary Committee criminal affairs subcommittee, where Joe Biden and Mac Mathias went back and forth as chairman. What it meant was, Okay, if I don't give them staff, when he or she is in charge they do not have to give me staff. So what we ought to do is come up with the best solution regardless of whether I'm the chair or the ranking member. What happened in the House was the Democrats were in control for 40 years. There was one committee over there, a big committee, where I think the Democrats controlled 85 percent of the staff and they gave the Republicans 15 percent. So one of the things that has made the Senate a more civil place in recent years, contrary to what everyone else says, is "There but for the grace of God go I." The idea that two years from now I may be in the majority or the minority, and I think that effects a more rational and thoughtful approach to Senate rules.

RITCHIE: From the outside, people look on rules questions as a Republican or Democratic position, but it seems to be really a majority party and a minority party position. And the world looks different depending on what that status is.

KAUFMAN: Yes, and we've also talked about how being in the majority can be a negative thing in terms of if you're in the majority and you have the presidency. Joe Biden always used to say, and I believe to the bottom of my being, I didn't work for the president of the United States when I was a senator. It's a separate and equal branch of government. But in fact, when you've got an administration, one of the responsibilities—which I think John Kerry did a wonderful job of parsing the differences, I'm incredibly impressed with the job he did as chairman of the Foreign Relations Committee, where all these foreign relations issues came up, where maybe he didn't agree with where the Obama administration was going, but he was always able to deal with being a senator and being independent, but at the same time realize that the 300-pound gorilla in the room on foreign policy is the executive branch.

RITCHIE: Well, today, I thought we might go back because I was looking at

where we left off yesterday in the '80s and we touched on a number of occasions relating to the presidential campaign in 1987-'88 but really didn't talk about it per se. I wondered what your role was in that campaign. It must have started well before '87.

KAUFMAN: In 1984. Basically after the '84 election we started preparing for a presidential election. Essentially what was done was there was a decision made. The first decision always was personal and family with Joe Biden, and by the way I think it's underrated in terms of all politicians, there's a number of misperceptions out there with the public, just like I'm sure it is in trying to understand baseball players or understand academics, but when you're inside you realize that what drives most politicians' decision is personal. How does it affect my family? If my family's not going to be onboard for this campaign, I'm not running. We just saw that with Mitch Daniels. Here's a guy who is incredibly qualified to run for president of the United States, positioned properly, governor of a good state, but in the end it was clear that his family didn't want him to do it. It's a practical and a personal problem. You will probably fail, if you run without having your family squared away—we can go back through history and look at people who had done that, or tried to do that. So the first decision was: was the family ready to do this.

I think after the '84 experience, I don't know if it's documented, there have been a number of books written about him, but the basic decision was we're going to go out there, we're going to do what needs to be done, but we know that in the end he can always pull the plug. They had not decided to run for president in 1984 (and when I say "they" I mean the family) but they decided to put themselves in the position that if we decide to run, we can run. Again, he was on the inside of the '76 campaign, we'd been through the '84 campaign, and I think we knew better than most people what was required. We knew that for this incredibly complex enterprise, getting started early was essential. You could run at the end, like Gore ran at the end in '88 and did very well, so you don't have to but it really was better to do it over the long pull. So we started in '84 in terms of national scheduling.

In '84 we decided that he was going to get off all his committees except two, Foreign Relations and Judiciary, which was a decision that started out partly because of running for president, but after we looked at it, it became a decision we made whether he was running for president or not, because one of the problems with the Senate is that senators are on too many committees. This was really on steroids when I went to the

Senate, because the senators are spread so thinly that they can't spend time drilling down into things. If you're on four major committees there's no way you can get in depth into these issues. So the decision moved forward on that, and the decision to start building a network and start thinking about fund raising people.

My title in the '88 campaign was chief of staff and treasurer. I had two functions, one was there was to be on a committee of people, family and others, who sat down on a regular basis and talked about what we should be doing, like an executive committee, and I was on that. It wasn't called an executive committee, but I was involved in all the meetings to figure out what we'd do next. The second thing was raising money. Essentially what I did was I spent a lot of time putting together the network to raise money. I'm very proud of the fact that in the first quarter of '87, when the other candidates were in, we raised more money than anyone else. We raised more money during that period than any presidential candidate had, except for Walter Mondale, a former vice president. And we raised more money outside of our state than all of the other presidential candidates combined. It was really incredible. So I was involved in the management of the campaign and raising money.

RITCHIE: His campaigns had been almost family operations until then—

KAUFMAN: Exactly.

RITCHIE: In a small state. So how do you go from that to running a national campaign?

KAUFMAN: Remember that the campaign chair was his sister Valerie. She continued to run things. Jim Biden was very involved in the fundraising. But, what happened was we had developed a number of relationships over the years. First off, we had Pat Caddell and John Martilla, who were involved in the '72 campaign. One thing you can say for Joe Biden is that he doesn't burn bridges and he wears very well. If you look around at most senators—now that I say that, I'm not sure, but it seems to me that most elected officials don't have one consultant for their entire career, and doesn't have good relationships with consultants through their entire career. But Joe Biden just had a very good relationship with a number of consultants. One of the problems they said our campaign had was that sometimes our campaign looked like this gigantic head on little spindly legs. John Martilla was involved in it, Pat Caddell was involved in it. Tom

Donilon who is national security adviser was involved in it. Bill Daley, who is now chief of staff to the president, was involved in it. David Doak, was involved in the beginning. The campaign manager was Tim Ridley. These were also seasoned, very successful, hot consultants. Bob Squier did the media . I'm just doing this from memory so it's not in order of who was the most important. In fact, Pat Caddell turned out to be probably the biggest problem in the campaign, brilliant, but it's been pretty well documented in a number of books that whole Pat Caddell thing, so there's no sense getting into that, but we had the best line-up of consultants and advisors. Valerie was the campaign chair, and she was still numero uno in the list. Jimmy Biden was involved, helping to raise money, so it was still a family affair. And Jill was fabulous. We had real fire power. And we did very well until we didn't do very well. [Laughs]

RITCHIE: The way that campaigns get started, they're retail politics. You have to be on the street in Iowa and New Hampshire, and Delaware would have been a great experience for doing that kind of early campaign. It's not great for running in California and New York, perhaps, but in Iowa and New Hampshire it fit.

KAUFMAN: See, we had an advantage there because Philadelphia is the nation's fourth largest media market, so we knew how to do media. We had good people helping us with the media. So we also had the advantage of understanding how big state media worked. But you're right, in Iowa and New Hampshire Joe Biden was a great candidate because, as it's been documented over and over again in the profiles that have been written since he became vice president, he's just the kind of person that people think is genuine and he gets their support. He understands retail politics, which is what Iowa and New Hampshire, which are key, were all about. If you look at where we were when the campaign ended, the campaign was very strong in both Iowa and New Hampshire.

RITCHIE: One of the handicaps that senators have when they run for president is that they have to vote on every controversial issue that comes down the pike. Was that a problem for Biden?

KAUFMAN: I'm sure it was. I had a whole discussion that I used to go through on why senators hadn't been selected, because the only two senators elected president, up until Obama, were [Warren] Harding and Kennedy. I'd ask people, "Do you know the two senators?" And practically no one got Harding. Then I'd say, one of the big reasons is that governors pretty much get to set their own agenda and their own schedule, and

people who aren't governors or senators really get to set their own agenda. When governors decide they're going to do something, they call a press conference. We'll have the press conference next Tuesday, and if Tuesday doesn't work we'll do it on Thursday. If that doesn't work we'll do it a week from Tuesday. Senators are much more controlled by what goes on in the Senate because you never know what's going to come up in the Senate. One of the great truisms about the Senate, which you learn very early as a chief of staff, is that the Senate is like a war. You have to be ready for a great opportunity or an enemy attack at any time.

The best example I've found to explain this is the play by Tom Stoppard, *Rosencrantz and Guildenstern Are Dead*. In that play, as you know, Rosencrantz and Guildenstern are bit players in Hamlet, and what Stoppard did was say: Okay, let's do a play about Rosencrantz and Guildenstern. For most of the play they're playing cards or dice or something like that, and then every once in a while Hamlet comes onto the scene and the klieg lights go on, and they are on the air and they say their lines and move on to other things. That is basically the Senate. As I learned early on, you can be working on an issue for years and then something would happen and bang, the klieg lights would go on. For a one-week, two-week, one-month, two-day period, everybody in America is interested in this. The Senate is interested. This is what's going to happen [snaps fingers]. What you have to do at that point is you have to have a staff than can continue to do the basic operations. Just like the military you have to have people to protect the whole line, but the attack is coming over here and you have to move as many forces as you can to deal with that attack when it happens, because you don't control when the attack starts and when it ends. It just comes on and then it's gone, and when it's gone, nobody's interested in that.

The perfect example of that is the Biden crime bill, because he started that in 1984, and in fact crime increased in the late '80s and then peaked and started down in the early '90s, actual. But what happened was the public's perception was that crime was highest in the early 90s. There are a lot of different reasons for this but the one I give is that somehow it became the interest of local TV and people began seeing more and more television shows about crime. You can look at the data. The data shows that people's reactions to crime was much more driven by the perception of crime than it was by the actual crime. What happened was that in 1993 or '94 we came from a recess and Senator Biden came back from the first caucus and said, "Ted, you won't believe it. Everybody in the caucus is talking about what we are going to do about crime." By God, all of a sudden

it was the issue, the '94 crime bill. You've been working on it and working on it. Senator Byrd at the caucus said "Where are you going to get two billion dollars to fight crime?" All of a sudden it was, "Why is it only two billion? Why don't we do three billion?" So it hit us like that.

When you're running for president, the first thing you decide when you get way down the road (not 1984 but somewhere in 1986), you say, "I'm not a senator anymore," and you leave. What happened with John Kerry, "I was for it before I was against it," it happened to Hillary [Clinton] and Obama on appropriations bills coming up. You put your finger right on it, one of the problems for running as a senator as opposed to running as a governor is that all of a sudden you're in Iowa and they want to vote on ethanol. [Laughs] Or you're in Iowa and a gun vote comes up. Clearly, one of the big disadvantages of a senator is having to vote. I don't know what most senators' voting records are in terms of absenteeism, but those running for President are pretty much all absent for all of the election year. But they do have to come back and vote on certain things. That's a real problem with being a senator. Senator Biden, I don't think I'm saying anything out of school, but Senator Biden met with former president [Bill] Clinton before this last run and former president Clinton thought one problem senators have, which is a big deal, is that they have "Beltway speak." You've been a senior senator and you just start talking about programs. I think there's a lot of truth to that. Fortunately for Joe Biden, one of the advantages of coming home every night was that he couldn't get too far into "Beltway speak."

Now, what turns out to be the big issue, which I did not put high up on my chart in 1987, but which I would put at the top of the chart now, is very simple: it depends on whether the issues are domestic issues or foreign policy issues. Clearly, in 2008 the senators were all drawn to the race because of the foreign policy concerns, the war on terrorism and all that. I think the reason why governors weren't running in 2008 was because the electorate was very concerned about foreign policy. For instance, take Mark Warner, who is very attractive. I consider him a friend, and I hold him in the highest regard. He was governor of Virginia. In a normal year, like this year, in this campaign he'd be an ideal candidate for president. But he found that wherever he went he was getting very detailed questions on foreign policy. I think that—he even said at the time he dropped out that he felt that national security was an area that he did not have enough expertise on. So I think that's really what happened. But the other part of the problem is, and the best example I can give of this is about Bob Dole, if you want to understand why

it's difficult for senators to run for president. When Bob Dole ran against H. W. Bush in '88 he was the majority leader of the Senate. That's right, isn't it?

RITCHIE: In '88 he was the minority leader.

KAUFMAN: That's right. So in '88, this was after our campaign was over, there was a debate in Chicago with Vice President H. W. Bush, Pete DuPont was in it from Delaware, and Dole. I think Dole was the only senior senator. The days leading up to the debate, what you normally did in a presidential debate was spend all your time preparing—we had this problem, too. I can remember, just to put it in context and go back to the Biden campaign. Our first big debate was in Texas. We had set it up to spend two days in Chicago on debate prep, then fly to Texas, I think to spend a day and a half or two days there getting acclimated for the debate. So we started to have the debate prep in Chicago and after a day and a half Justice [Lewis] Powell stepped down, and the President of the United States, Reagan, wanted to talk to Joe Biden, who was the top Democrat on the Judiciary Committee, about who he should pick for a Supreme Court justice. We shortened the stay in Chicago, spent what time we had in Chicago not talking about debate prep but talking about Supreme Court justices (we had a kind of brain trust there). Then rather than fly to Texas, he flew to Washington, met with the president. I think [Ed] Meese was there, George Mitchell, [Strom] Thurmond. They talked about the whole [Robert] Bork nomination, which is in a number of books that have been written about, because it was some pretty complex discussion. Then he got on a plane and flew to Texas, arrives, and has a press conference with the entire national press corps, not about the debate but about Bork. Then he went in and was in the debate. The governors didn't have to worry about that, in fact the senators who weren't involved in it didn't have to worry about that.

To get back to the Dole story, because in my mind it's such a good example of that, Dole was in the Senate the entire day of the debate, working on the floor much of the time. I forget what bill was up, but he was working it. Then he jumps on a plane, flies to Chicago, and walks into the debate. The other candidates did what we had been planning to do. They were in Chicago three days in advance, totally thinking about the debate. I'm sure that Dole's debate prep was flying out in the plane, if in fact it was that, because I'm sure flying out in the plane there was some "What are we going to do tomorrow in the Senate, what's coming up?" talk, and all the rest of that. So Dole, who should have been a great candidate for president of the United States—didn't turn out to

be a great candidate for president but potentially was a great candidate—did not do well in the debate. Of course, H. W. Bush was vice president of the United States, so he was going to be tough. But Dole had a very bad performance.

As long as we're on Dole, I use Dole as an example when people would say to me in a presidential campaign—like they're saying about the Republican candidates, I don't agree with a lot of Republican candidates and I don't think this is an especially distinguished field of Republicans, but you have to put in context that whoever runs for president is going to be destroyed by the media. I can remember Bill Bradley calling Joe Biden when his name was being mentioned for president, this was while he was still in the Senate. He said to Joe Biden, "Joe, I don't know what's going on. No one has ever questioned my integrity before, and here I am, my name has been mentioned and they're questioning my integrity." Joe said, "Welcome to the club. This is it." The example I always use is Bob Dole, because Bob Dole had an incredible sense of humor, a very funny man, but more important, Bob Dole had more character in his little finger than most people have in their whole body. Bob Dole, if you read Richard Ben Cramer's book, *What It Takes*, he went through Dole's being wounded, almost dying in Italy, the incredible rehab he had to go through.¹ This is a guy who has demonstrated character. I put Joe Biden in this class, but Dole had so much character, and integrity, and humor, and the rest of it, but by the end of the campaign he was a laughing stock. People joked about Bob Dole as a presidential candidate (of course, afterwards he did the Viagra ads, and that didn't help). But I said if you can take someone like Bob Dole and turn him into someone who is a buffoon and a joke, it just shows you where presidential politics are. But that's what they're looking for in presidential politics. In terms of this long answer to your question about what it like being a senator running, it was very difficult being a senator running, but I'll tell you this: it wasn't half as bad as a senator running who is a majority or minority leader of the United States Senate.

RITCHIE: Yes, it seems to me that in '84, '85, and '86, Biden had the advantage of being in the minority, but after 1987 he was not only in the majority but chairman of a major committee, dealing with Supreme Court nominations. Did that throw a monkey wrench into his campaign?

¹Richard Ben Cramer, *What It Takes: The Way to the White House* (New York: Random House, 1992).

KAUFMAN: Yes, in the end it did. We thought the Bork nomination was going to be an incredible positive experience, which is one of the reasons why in my opinion what happened, happened. We were doing very well. There were surveys in Iowa that were showing that he was breaking out. That was the reason why this all happened. First of all, our basic game plan went like this: breaking out in Iowa, doing well in New Hampshire. The Bork nomination was going to be the opportunities for Americans to see Joe Biden for the first time really thinking about him as a president. It was a Supreme Court nomination and he was very experienced in Supreme Court nominations. He had done a number of them before. He was very comfortable on the Judiciary Committee, very comfortable being chairman, and very articulate. They had an picture in the *New York Times* of Biden and Bork nose-to-nose, and said, "This is the first primary."

What we were thinking is, we're in great shape! We're doing great in Iowa. He's going to do the Supreme Court nomination, an area where he is comfortable. Our position on the Bork nomination was we felt that Bork was a flawed candidate for the Supreme Court. A wonderful person, smart, but the arguments that could be made against him were valid arguments. Our argument was that President Reagan in 1986 congressional campaigns said, "I'm going to put on the court people who can change things. I've been president for six years and I really haven't moved a social agenda. I'm going to appoint ideological judges who can move the social agenda." Our basic approach was: We don't want to be ideological, but if the president of the United States decides he's going to appoint somebody for political reasons, in order to advance an ideology, then clearly we have a responsibility and an opportunity to deal with this when that person is selected. Bork was clearly an ideological candidate. Our point was we could then deal with all these political and ideological issues because Bork was up to be a Supreme Court justice—not a circuit court judge, not a district judge, but when you're talking about a Supreme Court justice you're talking about somebody that can do exactly what Reagan said. If you fill the Supreme Court with nominees of a certain ideology, they can actually make decisions and change the social direction of the country. So we felt very comfortable on that part of the nomination fight.

Senator Biden had good relations with Strom Thurmond, who was ranking member. He had good relations with all the Judiciary members. In fact, if you read the accounts of what went on with all his colleagues while this was under attack, it really was very nice. Members of the committee, I remember Alan Simpson and Arlen Specter, while all this was going on, talking about Joe Biden's integrity. Ted Kennedy. So a lot of

people weren't buying what was being said out there.

But what happened was, and this is one of the things I learned from this in terms of politics, again it should be simple, and everybody should understand it. If you believe—I'm sure it's in Sun Tzu's *The Art of War*, and I'm sure it's in Von Clausewitz's discussions on war—is that when you think that you're in a position to make great gains, your opponent probably has figured out that you're in a position to make great gains, and your opponent is not going to let that happen. What essentially happened was the eyes on high in the [Michael] Dukakis campaign, the [Richard] Gephardt campaign, they could see what was happening. They could see exactly what we could see. That's why Dukakis did what he did. He would not have done this if he didn't think Joe Biden was about to break ahead, and the same with Gephardt. We had not thought about that. We didn't put this in context when these things started happening. Then the worst thing that happened was the White House looked at this and said, "Look, this is the first primary and it's between Biden and Bork. If we want to build Bork up, we sure as hell have to drive Biden down." The White House really did a lot of damage. They were the ones that got the Syracuse story started after the [Neil] Kinnock story. So we were kind of caught between two firing squads. Howard Baker was White House chief of staff, who liked Joe Biden, and Joe Biden liked him. I don't think any of them thought—I *know* none of them thought that this was the program to knock Joe Biden out of the race. But nobody else knew what the other person was doing. Gephardt didn't know what Dukakis was doing. Dukakis didn't know what the White House was doing. So all of a sudden you end up with all of these attacks.

When the story broke on Kinnock in the *New York Times*, *nothing* really happened. But then these other charges were fired out, that's when things got bad. In the end, as has been documented in a number of books, the decision, from my standpoint, the decision to leave the presidential race was an incredibly obvious decision. The reason was that here he was the chairman of the Judiciary Committee involved in an important nomination. He was faced with an avalanche of charges, the vast majority of them had no substance. But once this was started by the White House and the Democratic candidates, every investigative reporter in America was out there trying to find something. The stuff that was said was so ridiculous. But every charge had to be met, and they were all personal charges against him. So it wasn't like you could have a war room off to the side generating the data. If they alleged that something happened at his high school graduation, he was the only one who could say, "Well, these are the three people to talk

to." It began to submerge the Bork nomination. He was spending all his time in the campaign mode, and the press was all about him and his campaign. The answer in normal circumstances if you're under attack like this is to move to Iowa and spend 100 percent of your time dealing with the attack, which would have meant resigning from the Senate or walking away from the Bork nomination, go to Iowa and defend yourself, and fight this out. His was not like what happened to Gary Hart. This was not something that we could not deal with. With Gary Hart there were pictures, and history, and the rest of that stuff. But all these charges were something we could deal with if we had the time to do it, but meanwhile, he's dealing with the Bork nomination.

So the decision to get out was clear. What kind of a person would you be if you were running for president and you decided that the most important thing was to keep your political career going? Leaving the Bork nomination was never really an option. When you talked about it for a while it became clear that if you're going to keep working on the Bork nomination, this is going to keep up, and it's not only going to hinder your chance to be president, it's going to hinder the Bork nomination.

We had a meeting in Wilmington of the family and a few advisors. I compared his position to that of Winston Churchill who had to resign after the incredible losses in the Dardanelles, and then he came back to be Prime Minister, and suggested it was best to get out now and Biden was young enough to come back later.

In the end, the decision was unanimous to end the campaign. You can read about the books on the '88 campaign by Richard Ben Cramer, Jules Witcover, and others and Biden's book *Promises to Keep*. It was a horrible experience, but the truth did come out and he did return to have a great life and career.

I have said many times, if you ask me, who is the luckiest person I have ever known? I would say Joe Biden. If you ask me, who is the unluckiest I have known? I would say Joe Biden.

He was unlucky in the confluence of events that ended his campaign, but he was lucky that he was not in the campaign the following February when he went to the Doctor with a headache and through emergency surgery avoided dying from a brain aneurism.

He was lucky to have been elected senator at the almost unprecedented age of 29,

but then shortly afterwards had his wonderful wife and daughter killed in an auto accident and his two boys put in the hospital.

But, he was extraordinarily lucky to have convinced Jill Biden to marry him, and then have their daughter Ashley. And I mean lucky because of two things; one Jill was not a bit interested in marrying a senator and it was only through the intervention on Beau and Hunter that she was convinced. Second, Jill is one of the most extraordinary people I have ever met. She has an impressive education with two masters' degree and a doctorate in education, and an accomplished career as a teacher; and a wonderful wife, mother, daughter, daughter-in-law, mother and grandmother. She has been a great second lady. She has been a rock through all the ups and downs.

RITCHIE: You see this in a lot of campaigns, where the media struggles to figure out: Who is this person? They did this with Dan Quayle and to a degree with Sarah Palin.

KAUFMAN: They do it with everyone. There's a wonderful book, by someone I think is one of the best experts on media and politics, Kathleen Hall Jamieson of the Annenberg School at the University of Pennsylvania. She did a book on the 2000 campaign. If you ever want to read this, it's ten times better than I can explain, but she goes through the fact that now this is just standard procedure. One of the reasons for it is that it's a lot easier to write about presidential campaigns. First off, people are interested in it, just like they're interested in reality shows. It doesn't really have to do with whether you're qualified to be president, in my opinion. It has to do with what the media writes about—and, boy, writing about healthcare reform is just so incredibly boring and uninteresting. One of the great things that comes out of these studies is that the media does cover these issues, but they cover the issues early in the campaign. When it gets to the time when people are finally focused on the campaign, then they move to the scandal issues and the personality issues. The *New York Times* may have a fabulous series on healthcare reform, but by the time you get to the Iowa caucuses they're not talking about healthcare reform any more. And when they talk about healthcare early on, nobody's interested, only the people that study the issue year-round are following it. It's been pretty well documented, and Kathleen Hall Jamieson has done a great job of documenting that the vast majority of coverage of campaigns is about strategies, scandals, and personalities.

The best example of it is she did a wonderful study on the race when Ed Rendell was running for mayor. He ran against a fellow I knew, who was a really great guy.

RITCHIE: It wasn't Bill Green, was it?

KAUFMAN: No, Bill Green earlier. This guy used to head up the Philadelphia Industrial Development Corporation. It was Joe Egan. Polls had shown that 13 percent of the press coverage of the mayoralty race was about the issues and 67 percent was about appearances and scandal, and who's ahead and who's behind. She put together two different kinds of media histories. One was what was out there, which was only 13 percent about substance. The other was all about substance which they cobbled together TV, and print ads, and radio ads, where they took everything else out and just had substance. They went to somewhere in the Midwest, away from Philadelphia, and they gave group A the standard coverage of the campaign and they gave group B the special coverage just on substance. Then they ran the actual debates between the two, and asked people for their opinions. What came out was Group A who had seen the actual footage of who's ahead, who's behind, and who fired their campaign manager – when they talked about the debate they talked a lot about how the candidates looked, how the candidates dealt with each other, whether they were good people or not, a lot about the personality of the candidates, but they didn't know these candidates. The Group B people who got the special coverage that dwelled on substance, actually listened to what the candidates said. Rendell had a proposal to privatize the garbage workers, and they were interested in the substance of the debate.

Sometimes observers of the media will say, "Well, it's really important to know about this because it has to do with their character and that's what it's all about." That's okay, let's do that, but it's like Gresham's Law, that the bad money drives out the good. If you're in a system where people print money that doesn't mean anything, you're not going to see any gold coins on the street. Gold coins are going into the bank or buried in your backyard. So with all this coverage on the personality of candidates, there's a price to be paid. It crowds out the discussion on the substantive part of the campaign. That's what Kathleen Hall Jamieson demonstrated. The problem with these presidential campaigns goes back to what it was like with President [Andrew] Jackson, where most of the campaign was about personality. But as these presidential campaigns become more and more about personality and background, it crowds out the ideas that candidates have about the issues. So, it is like Gresham's Law, the more the superficial bad money is out

there, the more the gold disappears. Who is the best person to deal with our major issues?

RITCHIE: It's a little like watching the Olympics, where they spend more time talking about the back stories of the athletes, some tragedy in their family, than they do about the events they're supposedly covering.

KAUFMAN: And the reality shows are a perfect example of the fact that this is what people are interested in. I can understand that. It's not complicated. If I was a reporter and just got out of college, I can write the story about whether the campaign manager is doing a good job, or what the polling data is. You can just walk right out of school and write that. Writing a story about what we should be doing about the deficit is a very difficult story to write. This used to be a real problem back in the '87 campaign, when people would ask "What does Biden think?" And "How does Biden compare with the rest?" We would send them our brochures so they would have our point of view. This is the big difference with the 2008 election. People would say, "What's Biden's position on the Middle East?" I'd say, "I'll tell you what, go to your home, go on Google and type in 'Biden Middle East,' and just read. What's great is you're going to get not just what we're telling you about Biden. You're going to get people who say 'Biden is the worst thing that's happened to the Middle East in history,' and other people who say, 'Biden is great on the Middle East.' Then you have an opportunity to sit and read this and you can come to an opinion about it." No one can complain, "Oh, the media doesn't give us any facts, we don't know what's going on!" If you want to find out the positions of candidates on issues, you can go on the Internet. Now, some of the stuff on the Internet is just flat-out lies, but I think most Americans are in a much better position to evaluate the substantive positions of candidates today than they were when Senator Biden ran for president in 1987.

RITCHIE: The information is there, if you want to look for it.

KAUFMAN: Exactly. But you've got to be interested in looking for it. I remember the '87 campaign, we had been in the campaign for a while and a reporter for the *Atlanta Constitution* was doing a profile on Joe Biden. At that point, the reports in the national press were not good. I said, "Are you going to be the last person to write the 'Joe Biden's Campaign is in Trouble' story or are you going to be the first one to write 'Joe Biden's Campaign is Great.'" The example I gave was this incredible experience we had when Joe Biden was in New Hampshire and the "boys in the bus," the men and women

who follow the presidential race in pack journalism—they absolutely do move in packs, so if David Broder writes a good story about you, then there's a good story in the *LA Times*, and a good story in the Dallas paper, and the whole pack goes one way. In fact, right before he got out they were writing great stories about him. But we were in a particular lull, and they were writing, "Joe Biden's irrelevant. He's not going to be a factor in this race. He's from a small state."

Biden took a trip to New Hampshire and we did a house party. The national press was covering it, but the *Boston Globe* was covering it not with a pack journalist, not with somebody who was on the bus, but with a political reporter from the *Globe* who went up to New Hampshire and watched the vote. And it was great, because you read the reporter in the *New York Times* who wrote, "Well, there weren't too many people there, he wasn't very good, and he spoke too much." It was another example of the fact that Biden's not going to be a factor. The *Boston Globe* ran a story that said, "The place was packed. He connected with the people and the people really liked him." I was there and that's what happened, but the *New York Times* reporter got off the bus with the attitude of, "Oh, my God, why do we have to sit through this? He's going to talk too much. He's dead in New Hampshire." So she wrote that kind of a story. I'm not picking on the *New York Times* reporter, it happens with all of them, and it happens with all of the campaigns and all the ups and downs.

You see that right now with the Republican campaigns. When [Rick] Perry announces, Perry's now way ahead of [Mitt] Romney. Two weeks ago it was [Michelle] Bachmann who was way ahead of Romney. Candidates come, shoot like a superstar, and after they die Romney is still rolling. He's 18 percent when Perry's 26 percent He'll be 18 percent when Perry's 14 percent. He was 18 percent when Bachmann was 23 percent. He's 18 percent now that Bachmann is 16 percent. So there are the ebbs and flows of the campaign and a lot of it is driven by conventional wisdom. I really do understand it. If you're working with your colleagues, if every day you're getting up and going to work with your colleagues, and your colleagues decide that ice cream is a bad thing today, you don't want to be the one person there at lunch eating an ice cream. If you're in a newsroom, and the newsroom is basically of the opinion that you are very good, or very bad, it's very difficult to be the contrarian.

My favorite example of that was when Dan Quayle was vice president and couldn't spell "potato." Dan Quayle, I can remember when we had a meeting of our

supporters here in Delaware with Chris Dodd and a bunch of Democrats, Quayle had been vice president for a while and somebody in the audience started denigrating Quayle. Dodd said, "Dan Quayle was a damn good senator. He's a quality person, and I'm not going to listen to people putting him down." It was classic Chris Dodd, saying what he thought. The conventional wisdom was: Quayle's nothing. Then I read in the *Post* that there's going to be a series by David Broder and Bob Woodward on Dan Quayle. I knew that story was going to be that Dan Quayle is a lot better than people think he is, because another story that says Dan Quayle's a bum is not news, and the secret to news is news is new. All the *Washington Post* had to do was say there was going to be this piece. Before I had even read the piece I knew it was going to say: "Everybody thinks Dan Quayle's no good, but the news is he's not been that bad, so let's go back and look at Dan Quayle." Remember, Dan Quayle beat one of my all-time favorite Senators, Birch Bayh to get to the United States Senate.

Birch Bayh was an incredibly difficult candidate to run against. He ran for president and I think was one of the truly quality people I've ever met. He knew Indiana, I remember he used to go down to southern Indiana, which is a lot like southern Delaware, and be in the turkey shoots. Beating Birch Bayh was not easy, even though 1980 was a big year for the Republicans. Dan Quayle was relatively new in the Senate, I think he was in his second term when he ran for vice president, but he had been there for eight years and did a lot of good things. But that was a good example of this kind of conventional wisdom. If you want to write the story that everybody will read, then it's not going to be a story that reinforces the conventional wisdom. It's got to be something that's new and has news. Therefore in a presidential race you're going to go through cycles. I'm not blaming the reporters on the bus, the pack journalism. I just think that's the way the human mind works and human experience works.

Again read Kathleen Hall Jamieson's book on the 2000 presidential campaign.

RITCHIE: It's very hard for a reporter sometimes to run stories by the editor, if it goes against conventional wisdom.

KAUFMAN: Let me make a point out of that. One of the things about teaching a course is you get to read a lot of interesting books, and Elaine Povich, who is with the

Chicago Tribune, wrote a wonderful book on the Senate.¹ I don't know if you ever read it.

RITCHIE: Yes.

KAUFMAN: It may be in her book, or in another book by [Doris] Graber, but they did a very simple study. They asked reporters who covered the Congress what they thought about members of Congress, and by and large it was pretty complimentary. Then they asked them what their editors thought, and the editors were very uncomplimentary. What came out of the survey information analysis was, and I found this to be the case, that the reporters covering Congress were constantly being badgered by the editors back home saying, "Why do you keep writing these stories about our member of Congress? He's a scallywag, or she's a scallywag, just like the rest of them. What's he doing on this or that?" I think that is the conventional wisdom around the country, and newspaper editors aren't any different. They have a very negative opinion of Washington. Right now it's very negative, but it was pretty negative during the impeachment trial of Clinton, and Gingrich really drove down the approval rating of the Congress in 1994, and the Congress hurt with the bank scandal. So it's interesting that the reporters thought highly of them and were ready to write favorable stories, but the editors were saying write a negative story because out here nobody thinks Congress is worth something.

Congress is not held in high regard now—Congress has not been held in high regard for a long, long time. I think we had a good upturn after September 11, but over the years people have been skeptical. As I've said before, people should be skeptical of the Congress. They should be skeptical of the president, skeptical of the Supreme Court, and skeptical of all the power brokers in the country. The problem is when skepticism turns to cynicism.

RITCHIE: Nicholas Longworth said it was the God-given right of every American to look down on his member of Congress.

KAUFMAN: Exactly.

RITCHIE: Well, when Senator Biden left the race he came back to face the Bork

¹Elaine S. Povich, *Partners & Adversaries: The Contentious Connection Between Congress & the Media* (Arlington, Virginia: Freedom Forum, 1996).

nomination. Could you tell me about the Bork nomination from your perspective?

KAUFMAN: I talked earlier about Bob Dole and his character, and a number of people who have put themselves in the public eye—but I was there, and Joe Biden had thought about being president for a long time. But for Joe Biden the most important thing for him was his integrity. It showed real character for him to come down to Washington, hold a press conference and say that he's leaving the presidential race, with a lot of feeling that it was over for him, he'd never be president. I did not agree that it was over for him. I told him this was like Churchill and the Dardanelles. This was a bad experience but you can come back, which was another reason why it was an easy decision to get out. And I'm telling you, if this had been me, I would have been curled up in the fetal position crying. If I had undergone a barrage like that on myself and my personal integrity, and all the things I believe about myself, and unfairly attacked, and then come down and announce I was leaving and take questions and answers, if I wasn't in a fetal position crying before, after it was over I would have gone someplace—I'm not a drinking person, but I would have seriously considered drinking.

You know what he did? After that press conference was over, he went down to the Judiciary Committee and he questioned Warren Burger, the former chief justice of the United States, on the Constitution. Do you know what character that takes to do that? Obviously, I'm biased about him. He's my friend and I hold him in very high regard. I jokingly say I gave him the best years of my life. But it was incredible. He and Jill just held up. I don't know personally, and I wasn't there when other major political figures faced crises. I don't know what Andrew Jackson was going through, or Nixon was going through, others who had these incredibly bad things happen to them in politics, and personally even worse. What happened to Joe Biden was overkill. But the ability to be able to do your job under incredible pressure and incredible adversity, it was really extraordinary.

Now, the one good thing for him was that people in Delaware didn't question his integrity. This was Joe Biden. What happened was not some character flaw. They had all these psychologists on television, I didn't like it at the time and I still don't, they did this to Mike Dukakis: "I don't know Mike Dukakis and I've never met him, but I'm a trained psychologist and clearly he's—" Or "Bill Clinton, I don't know him and I haven't talked to him, but I'm a trained psychologist and clearly his father was such and such, and his mother was so and so," this kind of psychobabble, instant analysis that went on. It was

very offensive. But the people in Delaware never doubted him.

There was a great story, and also a funny story. We did a survey afterwards and our pollster, Mike Donilon, called and said to him—I was in the room at the time—and said, “The good news is that 74 percent of the people of Delaware think you ought to run for president again.” That was extraordinary. He said, “The bad news is that 43 percent of the people in Delaware think you’re too arrogant.” He said [shouts], “Find those people!” He started laughing, it was a joke. “Find those people! Who are those people? I’m not too arrogant!” And I can remember, there’s a restaurant called Atillio’s here in Wilmington. I rode back with Jill and him on the train to Wilmington and that night they went to dinner at Atillio’s. He walked into the restaurant and people gave him a standing ovation. The good thing is he came home.

I really believe that a lot of the early criticism of him, about gaffes and the rest of it, it isn’t that he stopped having gaffes. I think people when they get to know who he is and what he is, they put in perspective what it is that he’s saying. And they listen a little more carefully to what he’s saying, as opposed to just hitting the top line. I think that’s what’s happened to him nationally, and it’s why people have a favorable opinion of him.

He came back to the Senate, and after that, the following February he had the aneurism. I think many people got it right. If he had been in the presidential campaign he would never have acted on the headaches—if you understand what an aneurism is, most aneurisms are diagnosed on the autopsy table. Most people who have an aneurism don’t live to tell about it. But the people who really don’t live to tell about it are the ones who don’t go to a doctor as soon as they start having headaches. If he had been in a presidential campaign there was no way he would have gone to a doctor because he was having these terrible headaches. But he did here, and they were able to save his life.

Dr. [Eugene] George who did the operation, was telling us what the operation was going to be like. He said, “It’s essential to move as quickly as possible, because it can go like that [snaps fingers], and once it goes there’s nothing you can do.” So he went to Walter Reed and had the operation, and then it turned out that aneurisms are such that it’s like your left hand and your right hand. If you have something in your right hand, you might have something in the same place on your left hand. It turned out that on one side of his brain he had a congenital fault that caused the aneurism, and he had the same thing on the other side. So they took the top off his head and put a clip on the first one, that was

in February, and then I think that was in May they had to go back and do the same thing on the other side.

RITCHIE: Did a serious illness like that and an enforced period of rest have any impact on him? Did it change him in any way, or was he just itching to go?

KAUFMAN: I'm laughing, because first of all we totally followed the doctor's orders. I've talked about this already, but he just didn't contact anybody and did nothing in the Senate until the day he came back. We have this wonderful event every August in Sussex County, the southern county, it's called Beach Jamboree, and all the Democrats in Delaware are there. He came back for that. I'm laughing because there were all these pieces written afterwards, and it was very much in our interest to have all these pieces written about how he had changed and the rest of that, but you know what? I didn't really see any change at all in Joe Biden after he came back. What's so remarkable is when Dr. George before the operation said what the results could be, I don't remember the percentages, but it was pretty scary. But without the operation there was zero chance, because they knew he had the aneurism, and the aneurism had actually broken. Just by pure happenstance it had been forced up against the inside of his head, so it didn't bust wide open. But the doctor said it could bust open at any second.

But the thing that was one of life's ironies—I'm half Irish, he's half Irish, kind of the black Irish comes out every once in a while. Here he was, his integrity was his single greatest asset and he was knocked out of the presidential race because of integrity. The most probable bad result of the operation, if he didn't die, was that it would affect the section of the brain that would have affected his speaking ability. The irony of something hitting his speaking ability, if you're anybody if you're Irish, oh, my God. But you know what? I never saw a single physical change in him or a change that affected any of his abilities. My father had always said that most of all the advances in medicine were because of pharmacology, and it was, but I'll tell you what, this microsurgery they were able to do, it was just miraculous. It was miraculous that they could go in and do this twice and not affect his brain or his faculties and abilities at all. I've never seen anything that indicated a change in his abilities.

RITCHIE: Could we go back to the Bork nomination again? Tom Korologos was the White House handler who walked Bork through the nomination, and he always said that he told Bork, "If you're doing the talking, you're losing. If the senators are

doing the talking, you're okay." But he could never get Bork to see that. Is there truth to that?

KAUFMAN: First of all, I'm prejudiced in favor of Tom Korologos. I served on the Broadcasting Board of Governors with him and he's really extraordinarily competent. It became Korologos' rule. He told nominees, "If you're speaking 20 percent of the time and the Senators are speaking 80 percent of the time, you're doing fine. If you're speaking 50 percent of the time and they're speaking 50 percent of the time, you're in trouble. If you're speaking 80 percent of the time and they're speaking 20 percent of the time, you're dead." Korologos was absolutely right, Bork was speaking too much. But Bork's problem wasn't that he was speaking too much. The problem was what he was saying. Just go back and read what he said, about the whole privacy issues. I can remember that Kennedy went to the floor and talked about "Bork's America" and all these issues, and it really hurt our effort. Because what we were trying to do was convince moderates like Howell Heflin to come over. Our basic problem with Bork was not that he was too conservative in general, we thought that he was, but he had such an unusual point of view. We just wanted to talk about privacy, and that's eventually how we won, we beat Bork on the privacy issue. So it was really what he said.

When I became a senator and was placed on the Judiciary Committee and I was questioning these nominees, I learned that everybody had been indoctrinated with the Korologos Rule. If you go back and look at my questioning, I then decided, "Okay, this is what I am going to do. I am going to put together many more questions than anybody has asked a Supreme Court justice in recent times. I'm just going to ask short questions and if I don't speak, they'll have to." Because the vast majority of time—Joe Biden was criticized for the [John] Roberts and [Samuel] Alito nominations because he spoke too much—but he is no different from all the senators. It isn't because the nominees are so smart and they understand Korologos' Rule. It's just because the senators talk too much, in my opinion, because that's what every senator does.

So what I did, for both the [Sonia] Sotomayor and [Elena] Kagan nominations, I sat down and said, "Okay, these are the things I'd like to know. I'm going to ask questions and let them speak." By the way, I did this on *all* my nominations and all my issues. The staff would come back to me with these long questions, and I would say to them, "I don't want to demonstrate at all that I'm a genius on this issue. I just want to ask questions that get to the facts." One of my favorite quotes in politics is from Lawton

Chiles, a former senator from Florida. He said, "It's a truly beautiful thing in politics when conscience and convenience cross paths." If I was running for office next week, I would do exactly the same thing. People are so tired of senators getting up and talking about how much they know. So politically it's a good idea to have short questions, but practically it's good because you actually get some good answers. It was very difficult for my staff—and I had a great staff—because everybody does it. I would say, "If your question is more than a sentence, just strike it. I'm not going to do it." So that is what I did when it came to Supreme Court nominations. I asked Sotomayor, I think I set the record of anybody who was sitting on the Judiciary Committee at the time, I asked 19 questions in my half hour. And when we got to Kagan I asked 21 or 22 questions. And they spent 80 percent of the time talking.

The other thing I learned, and it wasn't just Supreme Court justices but everybody when they come up for hearings. I remember asking a deputy attorney general: "What are the main objectives that you would be fulfilling if you got to be deputy attorney general." In the old days they would think, "Well, Kaufman's only got ten minutes to ask questions, this is one I can filibuster on." Senators are always worried about witnesses filibustering, but they don't filibuster anymore. He said, "It's this, this, and this," and then he shut up. So you asked another question, and another question, and another question. So Korologos' Rule became such a powerful part of the process. Anybody who is ever helping on nominations quotes Korologos' Rule. Now, if you're a questioner, in my opinion, you should use that rule to find out what's going on with a candidate instead of filibustering yourself. The main thing you want to do is get the candidates to make commitments in the hearing as to what they're going to do. So anyway, that's a long answer that covers a lot of ground, but I think Korologos's Rule is essential for most candidates because the senators will talk 80 percent of the time if they just shut up and give them a chance.

RITCHIE: Do you think the Bork nomination changed things or were things already moving in that direction?

KAUFMAN: Oh, I think there is pre-Bork nomination and post-Bork nomination. No, it really changed things. The Republicans blame it on the committee and the way it treated Bork. I put the blame on the midterm elections in 1986, when Ronald Reagan decided as a point of strategy of: Give me senators so I can reach my social agenda by appointing very conservative and socially ideological judges. If you follow the

discussion since then, the “Hammer” in the House, from Texas—

RITCHIE: Oh, Tom DeLay.

KAUFMAN: Yeah, Tom DeLay, recently just came out and said: “We’re going to change things by the judges.” That philosophy was key to the Bork nomination. “We are going to put younger judges on who will serve longer.” It just changed it. Then it didn’t take long for us to go from having these contentious fights for the Supreme Court nominees to have it break down to the circuit court. Well, it’s not nearly as applicable on the circuit court because they have to follow the positions of the Supreme Court. One of the things that happened, and this happened before the Bork nomination, I’ve said many times, we didn’t keep our eye on the ball. We got so involved in this ideological thing, appointing judges for ideological backgrounds, we now have a Supreme Court that about has no diversity in terms of life experience. I think five of them now went to the Harvard Law School, and four of them had taken administrative law from the same professor. Out of the whole country, out of nine Supreme Court justices, we can’t find one justice that didn’t go to Yale or Harvard Law School? It’s just not diverse. And the idea that to be a Supreme Court justice you need all this technical knowledge is just not true. The circuit court judge needs all this technical knowledge, but Supreme Court justices have to have a grasp of life. You need somebody like Sandra Day O’Connor, that brings life to the court. Like [William] Douglas. Now we have these nine technocrats.

Even some of the Democratic appointees, when it comes to campaign finance reform, have had strange discussions. If you read [Stephen] Breyer, who worked in the Senate and was chief counsel of the Judiciary Committee for Kennedy, who I knew, his discussion of the Republicans versus Colorado [*FEC v. Colorado Republican Campaign Committee*], where you could have a party making independent expenditures. The argument was “Well, labor unions make independent expenditures, why can’t parties?” I found that totally impossible to explain to a group of students. No one believes that parties can have independent expenditures from candidates. Parties pick the candidates. Parties meet with candidates. The last eight weeks of the campaign, in every precinct and district in this country, the Democratic party and the Republican party are sitting down and working with their candidates to coordinate what’s going on in their campaign. The idea that in any way they could be independent is absurd. But the fact is, these guys have never been involved in a campaign. They don’t know what a campaign is all about. Again, you have the *Citizens United* decision where they say corporations are people!

The idea that you are going to allow corporations to just pour money into campaigns!

So we lost the Supreme Court, not just Democratic-Republican division, we lost it when we peopled it with circuit court judges. When Clinton asked then Senator Biden about potential supreme court nominees, Biden pushed hard for going back to appointing elected officials and people who stood for office, and get on the Supreme Court some people in there who could deal with what we should be doing—campaign finance reform is just one, but what we should be doing about the Constitution, and all the different decisions. Whether Democratic elected officials or Republican elected officials, get some people in there who better reflected society and had some life experiences that would give them a better position to decide what the law of the land should be on these cases. That is what I said to President Obama when he asked my advice on what turned out to be the Sotomayor and Kagan nominations. Neither of us were successful.

RITCHIE: There used to be governors and senators who served on the Court.

KAUFMAN: And by the way, we've had some great justices who came up from being judges. And you should have judges. But when you have a court where mostly everyone has gone to two law schools and all have been judges, and have spent their whole lives being judges, it's like the criticism of career politicians, career senators and career congressmen. I think it's much more relevant, because politicians actually live out in the community, and they are involved in and have to deal with policy issues. When you get to the circuit court of appeals you're locked up in an office.

One of the most interesting experiences I had in the Senate, and in my life, was when [William] Rehnquist was nominated for chief justice up from being a justice. Joe Biden at that point was ranking on Judiciary. Rehnquist was scheduled to come by for his courtesy meeting, which was a lot different back then. Now, when Kagan came by to see me, it was like a circus, loads of people and press. But back then, Rehnquist came with someone from the Justice Department who was the person shepherding his nomination, much like what happens now if a district court judge comes to see you for a nomination, or an ambassador. If it's an ambassador they'll show up with a staff person from the State Department; if it's a nominee for judge or a U.S. attorney, they come with a congressional liaison person from Justice.

Rehnquist and someone from the Justice Department showed up, and Marianne

Baker, our scheduler, had been told by the senator that he was over meeting with Thurmond and the majority and minority leaders of the Senate. They were trying to figure out when to have the hearings. So Marianne said to Rehnquist, "The senator is over there. He doesn't know how long he's going to be, so we can reschedule." Rehnquist said, "Well, I'd really like to find out when the hearing is going to be, so if you don't mind can I just sit here? When he comes back, he can tell me when the hearing will be on." She said fine, and then she called me. She said, "Ted, we've got a problem." I said, "What's up?" She said, "Rehnquist is here and he's sitting in the senator's office." I said okay, and I went in and I sat with Rehnquist for an hour and a half. It was fascinating. The two really big things that I learned, that have stood me in good stead—one of them stood me in good stead for everything, the other one helped for judicial nominations.

The first one was we got to talking about what it's like to be on the Supreme Court. He said, "You know, it's very lonely." He said, "When you get to be like me, most of your friends are lawyers and judges." There had been a number of articles about people meeting with Supreme Court Justices, I don't remember what year it was. But he said, "They're kind of worried about going to lunch with me or anything like that." I used to notice at the federal court building in Wilmington, the circuit court and district court judges usually went to lunch with their law clerks. So it's just an incredibly lonely job. I hadn't thought about it that way, but it really gave me insight. But then the thing that gave me bigger insight—and by the way, he was a very nice man. Obviously, I didn't agree with him on a lot of things, but a very nice man. I don't know how we got on it, maybe he was just feeling contemplative, but I was asking what it's like to be a Supreme Court justice and he said, "You really wonder whether you're making a difference or not." I was like what? He said, "No, really, I'm just one of nine votes, and you just wonder if you're going to make a difference." Boy, I'll tell you what, it completely turned around for me for the rest of my life, when someone who was making a difference, someone who was doing something that they couldn't determine what was going on, all kinds of people that I ran into in the intervening years who said to me, "Am I going to make a difference?" If I believed they were making a difference, I would tell them the Rehnquist story. You know, if you said to me, "Who has the best potential to make a difference, outside of the president of the United States or the majority leader?" Supreme Court justice would be right up there at the top of the list. And he didn't think he was making a difference. So it kind of puts it into perspective when you say you don't make a difference, because a lot of people do get discouraged. It really does affect their

view of themselves. I'm sure some of the senators we talked about, I think part of the reason why Bill Bradley left the Senate was, "Am I really making that much of a difference?" I think if you asked him now—I don't know because I never asked him—but I think he would say, "Yeah, I didn't understand how much of a difference you can make as a United States senator".

RITCHIE: There's a difference between one out of nine and one out of a hundred.

KAUFMAN: Exactly, one out of a hundred. All the conflicts we talked about as a senator, you want to make a difference but you've got all these conflicts. You've got to be with the party. You've got to be with the president. You've got to be with your district back home. You've got the national interest. You've got all of these things that may lead you to do things that are not in your interest, not what you want to do. But as a Supreme Court justice you can do whatever you want to do.

RITCHIE: You've talked about the different level of justices. Could you tell that story that you mentioned earlier about Senator [Jeff] Sessions and the district court judges, because we didn't get that in the record.

KAUFMAN: Well, we were talking about the problems that started with Supreme Court justices after Bork. Every nomination became a battle, and just about every battle was like World War III. The two battles I was in as a senator were Kagan and Sotomayor and both were big deals. But Senator Sessions, who I have a great deal of respect for—I think he's a very smart man although I don't agree with him on a lot of things. Whether it was Democrats when H. W. Bush was president, or Republicans when Clinton was president, we started the tong wars over the judges. Sessions was especially upset about a Hispanic American judge [Miguel Estrada] who was nominated for the circuit court, who everyone acknowledged had super qualifications. Sessions and a lot of Republicans felt he had been treated badly, and he eventually withdrew. When I was there we had a wonderful young man named [Goodwin] Liu from California who had an incredible record and would have made a great circuit court judge, and Republicans just said "We're not accepting him." Anyway, we were in a hearing and historically what has happened was that district court judges were usually picked by the senators. The senator of the party of the president says, "I want Joe Smith or Mary Brown," and they are nominated. What happened in the Judiciary Committee for years was they have a "blue

slip.” Whenever a district court judge is nominated by the president, they send a blue slip to both of the senators from that state and say, “Do you sign off on this person?” They will not move that district court [nominee] until they get the signed blue slip back, and that’s the way it’s been for years and years. We had some problems. There were individual senators that held up district court judges for ideological reasons, but by and large the vast majority of senators just sent the blue slips back and the hearings were perfunctory. They go on and get to be district judges.

Sessions had raised in the committee the issue that there were some district court judges that he just thought were ideologically wrong, and wouldn’t agree with them. He wanted to start holding those judges and making it more difficult for them to get confirmed. After the hearing, I went up to him. He and I had a number of discussions on these kinds of issues. Earlier in the meeting that he raised this, he had been talking about how Estrada had been mistreated, and he was very emotional about. Every time he talked about the battles for the circuit court judges and the Supreme Court justices, he was emotional about it. He really believed that Republican judges had been mistreated by the Democrats, and on every case he got emotional. After talking about that he said, “Now we ought to talk about district judges.” After it was over, I pulled him aside and I said, “Jeff, you are very articulate and very emotional about the circuit court judges and what’s gone on. I wasn’t here then, but clearly what’s going on, starting with Bork”—Sessions himself had been defeated. Sessions had been nominated to be a judge and had to withdraw. I said, “But Jeff, don’t do this to the district court judges. They’ve got to be competent and all that, but let’s not start the same tong wars for the district court judges as we have for the circuit court judges. Because I’ll tell you, Jeff, and you know, because you’re upset about what the Democrats did to Bush nominations on the circuit court judges, I will guarantee you that if you start in on the district court judges, when a Republican becomes president—and unfortunately a Republican will become president again—the Democrats will do it back to you. We can’t break the logjam, we can’t get beyond this, even though everybody knows it’s bad.” You didn’t want this contagion to grow.

RITCHIE: It’s somewhat ironic that when George W. Bush was president, Republicans in the Senate were really upset about the logjam on his nominations. They kept demanding an “up or down vote,” and talked about the “nuclear option.” But when Obama became president they adopted exactly the same practices they had objected to. It’s a majority perspective versus a minority perspective.

KAUFMAN: Yes, although there have been some senators—all generalizations are false including this one—like Lindsay Graham who said “Elections have consequences.” And then even though it was very unpopular in his state, he voted to confirm Sotomayor and Kagan. Orrin Hatch kind of went back and forth. But one of the great joys of spending so many years in Washington is the irony, watching people have to twist their position around to deal with changing circumstances. That’s one thing about Joe Biden, and what I tried to do, and that is to be process senator. To be a senator who is consistent and tries to deal with the process. I just believe it’s the right thing to do, to not use the process one way if you’re in the majority if you’re not willing to live with it when you’re in the minority. On the filibuster, my basic approach was that the filibuster should only be used in extraordinary circumstances, and if I had served when the Republicans were in the majority I would have had the same position. That doesn’t mean you forego the use of the filibuster. But on motions to proceed and things like that, that’s not the place to filibuster.

Another thing that we caucused about when I was in the Senate was the question of what is the responsibility of members to support a cloture vote. There were a number of members who used the fact that their votes were needed to achieve cloture—Ben Nelson, Joe Lieberman, Evan Bayh, the moderates would not go along with cloture. I argued in the caucus all the time, and a number of other people did too—someone in the caucus stood up and said this was a rule of the House Democrats when Tip O’Neill was the Speaker that the caucus should vote together on procedural issues. If the caucus decides something, it isn’t up to each member to make up his mind. This was a responsibility of being in the caucus. When you’re in the caucus you get to be chairman of a committee. You get all kinds of things for being in the caucus. Therefore I wanted to institute—Harry [Reid] never bought into it, but I know any number of people who will be leaders in the future—again, we may be in the minority the next time—but I think a majority of members of the caucus would have voted to require members as a price of membership in the caucus to vote with the caucus on procedural motions. But unfortunately, we never did that.

RITCHIE: There was one time in Senate history when the Democrats had a “binding caucus” rule, from 1913 to 1920. It was very effective—Woodrow Wilson used it effectively.

KAUFMAN: That was on everything, right?

RITCHIE: On everything, but they especially invoked it on the tariff, which could have been a very divisive issue. We have the records from that caucus and it's quite remarkable. But in 1933 Joe Robinson tried to reinstate it and it was rejected.

KAUFMAN: Even today. You couldn't go home to your state and say, "I voted on this bill because I was required by my caucus." The independence of members is paramount. You could never go home and explain, "I voted this way. I really believe the opposite would be good for my state, but the caucus said we should vote that way, so I voted with the caucus." No, what I'm talking about would be procedural motions. If there was a vote on cloture and a majority of the caucus wanted to vote for cloture, then everybody would vote for cloture.

RITCHIE: After the Bork nomination, the next big, controversial nomination was the Clarence Thomas nomination. How different was that?

KAUFMAN: Oh, my God! As the kids say, that was a real "OH My God". We had some fussing back and forth after Bork, but we ended up getting [Anthony] Kennedy and there wasn't too much of a fight about that. So this was kind of new and I don't think that any of us appreciated the fact that Bork had changed things so much. It's very difficult to—I do a lot of investing and it's very difficult to figure out when a stock has turned. It's very difficult right now to figure out whether the housing market is going to turn up or down until after it's turned up or down. This is a classic example. So when Thomas was nominated, I don't think that right off the bat the senators who had been around for Scalia and other nominations that went right through expected anything else. I remember a press secretary came in at some point early in the process and said there had just been an announcement on NBC that they were moving to "Desert Storm Footing." I had this mental picture of these correspondents down in the bowels of the press gallery putting on camouflage and boots. That was an indication right out of the box that this was going to be a fight.

A lot of big things happened with Bork. The biggest was that people had learned that the klieg lights were on, so if you were interested in an issue, and it was involved in a Supreme Court nomination, you would get a lot of attention if you talked about that issue. You would have a welcome audience. You could build memberships. You could raise money. So what happened was the extremes of the far left and right on the spectrum had raised a lot of money off the Bork nomination. In fact, cottage industries began to

grow up. We didn't know it at the time, but it was clear after Thomas that people had said, "Ah, Supreme Court nomination coming up? Get the printing press out, set everything out, we're going to war!"

A venial story that came out of the Bork nomination was Ralph Nader's testimony. We wanted to have a discussion about privacy. We asked a lot of the more liberal groups not to come and testify against Bork, but Nader *demand*ed to get to testify. I don't know whether we ever let him testify or not, but he was just totally: "I've got to testify. I've got to testify." It looked clear to me—I never said it publicly, but I think in the interim, watching Nader's behavior, it rings true—is that the main reason he wanted to testify was so he could do direct mailing and increase his base. So you had these cottage industries that grew up, and people who really cared on the left and right.

One of the things I had learned from the Bork nomination, but was really driven home on the Thomas nomination, is that when you get to the edge of the political spectrum, the ends really do justify the means. People will make outrageous arguments, even people I agree with. I'm to the left of the spectrum on a lot of issues. I'm pretty liberal on non-social issues, some of them I'm not. But it's incredible the kind of process arguments that came up, and obviously a more sensitive one this year. But I can remember during the Thomas nomination when it got down to he said/she said, a number of very liberal groups, people who were involved in the process, whose membership had been totally committed to outlawing lie detectors in the courtroom, came in and argued with the chairman that Thomas should take a lie detector test, but it wasn't a problem because this wasn't a court of law. This was going to be the greatest vindication of lie detector tests since the beginning of time, and it was going to advance everybody who wants to do lie detector tests in the courts, but you should do it because it's very important who gets on the Supreme Court. Watching this thing unfold, the behavior of people on both sides was just outrageous.

It got incredibly venial and small. I can talk at length about what went on with the supporters of Thomas and the things they said about the chairman, and the committee, and the process, including Thomas. That was just, "I can say anything I want because that's going to help me get through the process." But it was also some friends, or good acquaintances, who were opposed to Thomas. I can remember the staff director on the Judiciary Committee was a wonderful guy named Jeff Peck. When Anita Hill came to testify, the other side—and I'm certain they did this on purpose—but when Jeff asked

them how many chairs they would need, they said six or eight. When they showed up they had fourteen or eighteen people, and made a big deal about the fact that they had been disrespected because the committee had not had chairs for them and they had to stand around. Clearly, it was a ploy to make the committee look bad, and make the chairman look bad. And Peck worked with these people all the time. It was just a example of what went on.

It was one of those things of where you stand is where you sit in terms of viewing what happened, just to go through the high points of what happened, and you can read the books, but from where I stood, I was contacted by people on [Pat] Leahy's staff. Leahy was on the committee. They wanted to sit down and talk about something really unusual that had happened. Several people from Judiciary and I sat down with Leahy's staff, and they said that there were two people who were alleging that—one person was alleging that they had been sexually harassed by Clarence Thomas, but they would not come forward. I said to them, "This is pretty simple. This is not a star chamber proceeding. People write letters and allege all kinds of things. We can't move forward with this. Just tell the person that we will protect them." All the things you go through in an abuse case. It was really a standard case of domestic abuse or sexual harassment. "We will protect you. We will not say who you are at this point. But the first step has to be an affidavit where you say 'This is what happened and I'm willing to talk to committee staff and members or somebody about what went on.'" They wouldn't do it. It was right when Thomas was being reported out. Senator Biden and the committee met, and he told them about this. It was simple, what can you do? Of course, there were books written afterwards that said they should have done this or they should have done that. They should put pressure on her to come forward. Wait a minute, pressure her to come forward? I said, "If you're in a police station and somebody who comes in who's been raped, you put pressure on them to bring a case? That's sexist and that's not going to happen." So we met and we said, "Can we have an affidavit or something? Will she do that?" They said no. So right when they were ready to report Thomas out, what's her name who covers the Supreme Court [for National Public Radio]—

RITCHIE: Nina Totenberg.

KAUFMAN: Nina Totenberg and someone at *Newsday* [Timothy Phelps] broke the story. Then we got affidavits and we went through the process of asking the questions and holding the hearings and the rest of it. But it was really extraordinarily interesting

that in my experience, this he said/she said, I never talked to a single person whose opinion on who lied was different from their opinion on who should be on the Supreme Court. Every single person I knew who thought that Clarence Thomas should be on the Supreme Court said that she was lying. Every single person I talked to who said that Thomas shouldn't be a Supreme Court justice said he lied. This was 100 percent sample. So we went through all this and nobody really changed what their position was. Afterwards, people wrote these incredible books, again people who came forward but wouldn't say who they were, people who had information and then talked about it afterwards and said they would come forward, but at the time would not come forward and would not testify. Then we had the whole leak issue.

The special prosecutor they hired was a guy named [Peter] Fleming. When I heard about him, I said, "He's going to do a leak investigation? He's going to not just talk about the leak but everything that went on?" I mean, just think if Kenneth Starr had the leak investigation. (By the way, Kenneth Starr graduated from Duke Law School. As I say the two most famous graduates of Duke Law School, where I teach, are Kenneth Starr and Richard Nixon.) Funny, when he asked all the questions and did the whole study, he came out and said there was really no way to determine what happened. I think that guy is one of my heroes, because there aren't many people who wouldn't have done some grandstanding on this thing. It was a very difficult experience.

RITCHIE: It got incredible media attention. I was at a history conference. I can remember coming back to my hotel room and finding a half dozen people sitting on the edge of the bed watching the Clarence Thomas hearings.

KAUFMAN: It was like Watergate. It may even have been bigger than Watergate because it goes back to what we said earlier about campaigns. Watergate was incredibly complex, but everybody can understand he said/she said. It was just, listen to the people and see what you believe.

We had a real bad experience, to add to that, in terms of the people to the left of the spectrum. We had these groups that were opposed to Bork—let's go back to Bork—who met with Senator Biden. After the meeting, they went public and talked about what went on in the meeting, how they were putting pressure on Biden. Biden made a rule after that, that once someone was nominated he would not sit down with any group to talk to them about the nomination. He would not go on television. He was asked

to be on all the shows. He wouldn't do the take-outs after the hearings. He wouldn't do anything. He just said, "This is what I'm not doing." I can remember one group came to the staff, with stories that Bork had rented pornography. There were books written afterwards that just excoriated Senator Biden for not bringing the whole pornography thing into public. Wait a minute, you're the civil liberties groups. Because the guy takes out pornography, somehow we should tell that, that he legally rented pornography, we should tell that as part of the public hearing? No.

RITCHIE: Senator Biden came out of both of those hearings with his reputation as chairman intact. I can't remember any complaints from the minority party that the hearings weren't run fairly.

KAUFMAN: Oh, no, his colleagues in the Senate always said nice things about him. It was really one of those many examples we can get into, where Washington interest groups had an opinion. Both the far right and far left interest groups were furious. Many of them wrote books and excoriated the chairman, especially on Anita Hill. These books fell into the old [Daniel Patrick] Moynihan saying that "you have a right to your own opinion but not to your own facts." But there was a survey done after that by Gallup. The one thing that Senator Biden said before those hearings that he wanted people to think that he was fair. Some incredible percentage of the American people felt that he had been fair as chairman.

So I think there were two different views, the insiders and the public—which brings me to this point, this is something that has shaped my opinion of the Senate, and that I've used in my course, and that is there was a series done by Hedrick Smith, it was done on PBS in the early '90s about media and lobbyists and their impact on the government. The one piece that had to do with the difference between what the Washington insiders thought about Senator Biden's performance and what the public thought about Senator Biden's performance. They had this piece that Smith put together about Clinton's first State of the Union speech, which went about 80 minutes. They showed on the film the different Washington commentators on each one of the networks saying, "Oh, he spoke way too long. It was a washout as a speech. It was just awful." But one of the networks had focus groups, and the focus groups all said it was a great speech. One of the cable companies had gathered 30 people, who said, "I thought it was very interesting what he said about jobs." "I thought it was good that he talked about that." "He's talking about things I really care about." It was about issues, which the pundits

didn't talk about. After that, the networks started putting on more of these shows afterwards and cutting the pundits out. When you look at what goes on with the punditocracy, especially now, they have a totally different view on many things than from the public, which is one of the things that builds this public hate of Washington.

One of the best examples of that is I was teaching down at Duke when the Monica Lewinsky story broke. They went on and on and on and the local paper, the *Durham Morning Herald*, went for a whole week, late in the process, when the Washington media was totally focused on this thing (and really what it was about was the media and the Washington insiders said, "He didn't resign! He should resign! By God, we know what's going on here and he should resign!"). That was ludicrous and builds this kind of antipathy about Washington. But the Durham Morning herald went for a whole week when the Lewinsky story was not covered on its front pages. To the extent that it was covered, it was covered in the back. For a whole week. And then Sunday, on all the Sunday morning shows they had somebody talking about Monica Lewinsky. Somebody made a good point then, which I think turned out to be true. They said, what they did was they were getting a lot of listeners to Monica Lewinsky on these Sunday shows, but they were also driving away a lot of people who didn't come back. I think that's what happened. The Sunday shows suffered despite a short-term rating boost. Also, most of the anchors for those shows really were upset with the fact that the president hadn't resigned as they said he should. Want to take a break?

RITCHIE: Yes, great.

KAUFMAN: What time is it?

RITCHIE: Just about noon.

End of the Third Interview

Photos from top to bottom:

Vice President Dick Cheney reenacting the swearing in ceremony.

The Kaufman family in the Old Senate Chamber with Vice President Cheney and Vice President-elect Biden.

The signed drawer from Senator Kaufman's Senate desk.

