

THE FINANCIAL MELTDOWN

Interview #6

Tuesday Afternoon, August 23, 2011

RITCHIE: The Gallup Poll published a volume on the 2008 election [*Winning the White House*], tracking public opinion. It seems clear that the economic collapse in September was the deciding factor in the election. The candidates were relatively close up to that point, but from the last week in September Obama goes up, McCain goes down, and the trend never reversed. Their responses to the economic collapse, I think, influenced public opinion, that one seemed to be calm and cool about it, the other seemed to be more frenetic.

KAUFMAN: I don't know about that. See this goes back to what I talked about the other day, the Kathleen Hall Jamieson test. A lot of people start focusing on that. I don't think it's that. I think it's the substance. People identified Bush with the problem. Bush had done a lot of things that created the problem. To this day, they blame Bush for the whole meltdown. McCain could not run far enough away from Bush. It was kind of like [Hubert] Humphrey couldn't run that far from [Lyndon] Johnson. But I think there's too much emphasis on who's cool under fire and who isn't. That survey she did shows that the media covers that kind of stuff, and they cover it, and cover it and cover it, so that if you're not careful you fall into that trap.

I remember the Obama-McCain debates. After the debates were over, especially I think it was the third one, the pundits were talking about how great McCain had done, he looked more decisive, he had taken the economic issue and wrestled with it. When the poll numbers came out, the public thought he was awful! There was one threshold question that Obama addressed and McCain didn't, throughout all the debate. It was what he was going to do about the financial crisis. Obama mentioned the middle class over 20 times, McCain not at all. If you look at all the debates you will not find anywhere that McCain says what he's going to do about the crisis, and Obama keeps talking about what he's going to do about the crisis, and that was the key. We had this crisis, and people wanted to know: What are you going to do about it?

When you look at that Hedrick Smith show [about media and lobbyists], where he goes through and documents the numbers, once you see that, and then you watch different things, and you try to take into account what the polling data says and what the

pundits say, the pundits are just totally wrong about this, in my opinion. Now, you may be right, that may be the reason why they turned on McCain, but my very strong opinion is McCain was DOA. There wasn't anything he could have done. He was the Republican candidate. He couldn't trash Bush, Obama could. The people in the press were trashing Bush. Poor John, it was just like what happened to Carter with the hostage crisis. No Republican could have won in 2008. Now, I think in 2012 it's difficult for Obama to win. The only two presidents to lose in recent history were Carter and H W Bush. The only two presidents to run in a bad economy were Carter and H W Bush. If the unemployment rate was 5% Obama would be cruising to a lopsided reelection. He may win, but I'm just saying that it doesn't have a lot to do with style. In the end, most of these things come down to substance and especially the economy. Okay, let's talk about financial reform.

RITCHIE: So you arrived in the Senate in this moment of crisis. What was the reaction in the Senate to the financial meltdown?

KAUFMAN: It was really interesting. When I first came, the freshmen started meeting with different people, just about everybody we met with—not everybody but we met with most of the important players—the secretary of defense, the secretary of the treasury, [Ben] Bernanke, Rahm Emanuel, a whole bunch of important people. Then as the Senate went on the meetings petered out because everybody was so busy. We met with Bernanke and [Timothy] Geithner very shortly after I got there, and it was quite clear to me at that point that they were both very scared. This thing was unfolding and AIG has just announced it had lost—was it \$68 billion? I remember reading that and thinking, “How could AIG lose \$68 billion?” And they didn't know where the credit default swaps went. They didn't know who had bought them. There were problems in England, problems in Iceland, the Bank of Scotland. So I think they just didn't know where it was going. The way I explained it was it was kind of like this friend of mine who has this oak tree out in front of his house, it's a gigantic tree and it's surrounded by a driveway. The roots were coming up and knocking the driveway. But when they tried to put a new driveway in, they didn't know *where* the roots went. The roots went *all over*. I think that's the way they felt at that time.

You have to look back on the TARP and the stimulus bill in the context of what was going on at the time. One of the things I prided myself on—I was born with this, it's just kind of intrinsic to me—but one of the things I found that stood me in good stead was I'm pretty good about remembering, years later, what was going on at the time.

Maybe it's because my favorite quote is: "Never underestimate the ability of the human mind to rationalize." So I really try not to rationalize. Maybe it's my engineering education. Who knows what it is? But I find that I'll get into a discussion with someone about something that happened six months ago, a year ago, two or three years ago, and it's clear to me they aren't remembering what it was like. A lot of the discussion we're having now on what went on at the end of the Bush administration and the beginning of the Obama administration reflects the fact that people just don't remember what we were going through. It was really tough.

After I was appointed, I kind of took an management by objectives approach to this, and that is sit down and figure out what it is you want to accomplish over the next two years. There were a number of different people I spoke to, obviously the vice president, and all the people that had helped me over the years, former staff people, and tried to figure out what is it that I want to do. I decided to ask for assignment to the Judiciary and Foreign Relations committees. I decided that Jeff Connaughton, was my chief of staff, he is a good friend, I had worked with him and he has an MBA from Chicago, a Stanford law degree, he's been an investor over the years—I've been an investor for a number of years. I started investing back after graduate school. I was doing investing on my own, not a lot of it—excuse me, *a lot* of it for the first three or four or five years and then I kind of got off that. As my family grew I didn't have even time to do it and I kind of lost interest in it, frankly, doing micro investing, like buying individual stocks and following them and studying them. Jeff and I both decided that we were really upset by the fact that the folks that had been a big cause of the meltdown, that there should not just be civil but criminal penalties, and we should do something about that.

It turned out that Harry Reid agreed and assigned me to do Judiciary, and to do Foreign Relations. I wasn't even thinking about the engineering part of it then. And I did not ask to be on the Finance Committee, or Banking, or any of those. What happened was, when I arrived at Judiciary I was interested in the issue of what are we going to do about putting these people in jail. It turned out that Senator Leahy, the chair, and Chuck Grassley, the Republican from Iowa, were working on a bill called FERA [Fraud Enforcement and Recovery Act] to go after the folks that had been involved in this. I asked if I could be a major co-sponsor of that bill, and Chairman Leahy said, "Absolutely." This was one of the great things he did for me. I was brand new and they had been working on the bill, but they said, "Yes, you can do it." I said, "I'm going to do exactly what you want me to do, but you guys have so much on your plate, I'd like to go

out and start publicizing this bill. We're going to have a hearing, and I'd like to play a role in the hearing, and the rest of that." Senator Leahy and Senator Grassley both said, "Fine, go ahead and do it." So I wrote an op-ed and I went on some TV shows.

We had a hearing, and the great thing about the Senate hearing process is that the hearing process really was good. [John] Pistole, who I think was deputy director of FBI and now is head of TSA, the travel security organization, he came and he gave really good testimony. He said, "We have a real problem. The problem is when 9/11 occurred, the government shifted a lot of FBI agents and prosecutors over to antiterrorism," which made sense, but then they never filled in behind them. I can remember there were some fights between Senator Biden and the Bush administration about more FBI agents back then, but Bush would not fund them. As a result, you had a situation where, I think the data showed, and his testimony, that with all the problems in 2008 we had more financial fraud cases brought in 2001 than we did in 2008. In fact, I think we only had something like 220 FBI agents investigating financial fraud for the whole country, and he pointed out that during the savings and loan crisis they had a thousand agents just working savings and loan. What our authorization bill did was provide \$170 million to have more prosecutors and more FBI agents, and train them better, so we could catch these guys. We put the bill in and the bill passed. We ended up with \$30 million in appropriations, and it became law. I actually sat on the stage at the White House for the bill signing – very, very, unusual for a freshman senator.

I had two oversight hearings, with [Robert] Khuzami, who is the head of the enforcement division of the SEC, and Lanny Breuer, who is the head of the criminal division at Justice, and Kevin [Perkins] from the FBI. Two sets of hearings, one right after the bill passed and another afterwards. We really went after this, and it turned out to be an incredible disappointment to me that nobody went to jail because of their actions. I mean, people went to jail, mortgage brokers, little people, but none of the big people on Wall Street who put together the mortgage backed securities and the credit default swaps and the rest of it who were the targets of FERA.

Later on, I participated in four days of hearings in the Permanent Subcommittee on Investigations, which came out with all kinds of, I think, fraud at Washington Mutual, and at Goldman Sachs, and at the rating agencies. But it's very discouraging. That was the main thrust of what I was doing. I was going to the Judiciary Committee, again classic Senate stuff, working the Judiciary Committee bill with a lot of help from the

chair, and bipartisan help. I played a role and we passed it.

I think I've said before, but it's worth saying again, that I did a lot of interviews when I was appointed and then a lot of interviews right before I left, which were helpful to put things in perspective. One of the questions people asked me, just about in every profile to start with, was: "What do you hope to accomplish in just two years?" I said, "I'm going to accomplish a lot, in terms of me. In terms of my accomplishments, I'm going to leave the Senate very happy about my accomplishments. I may not be happy with a lot of things, but I will be happy with the accomplishments, and the reason is because one of the great things about doing this when you're older and hopefully know yourself better is that most people my age I think understand that the important thing in life, about all of these things is to try as hard as you can. The vagaries of life—to think that you are in total control of your life are wrong. The idea that you can control what happens, or that any one person is responsible for anything in a complex environment like the Congress, is wrong. But that the one test for all of us is in your opinion, just your opinion, did you try with all of your being. It is not did I win but did I try? Do I go home at night and say, 'I tried as hard as I can'? I know for the next two years I'm going to try as hard as I can, therefore I'll be successful. Whether I get bills passed, all those kinds of things will depend on a lot of things. But I feel good about that."

I never once thought that in those two years I would be on the platform with the president of the United States at a bill signing. I don't know, I haven't gone back in history and looked at it, but clearly back in the 1970s that never happened. I don't know very many freshman senators who have ever been on the stage at a bill signing. Now, you can be in the audience. I was invited to the audience for a number of bills, including healthcare reform, including Dodd-Frank, but to actually be on the stage is only for the chief sponsors. If you look at the pictures of the bill signings it's always the chair and the senior members. But I was invited to be on the platform for the signing. Whoever would have thought that it would happen? It was a wonderful experience, but I really do regret that it doesn't look like as much came out as I would have liked.

RITCHIE: Why do think it didn't?

KAUFMAN: Oh, it's a very complex mix. One of the things that most upset me in my dealings with Wall Street was their kind of superiority. Actually reporters, people on television saying to me, "Well, how do you expect to prosecute them? Wall Street

lawyers make so much money, and they're so accomplished, and they know so much about what they're doing and you've got a bunch of government attorneys down there. How could they ever do anything?" I don't put any stock in that because during the savings and loan crisis those government attorneys turned up plenty, and during Enron, that was not the problem. I remember there was a reporter for a major news organization, who I won't identify because I don't want to embarrass him, but he was saying at a meeting, not on television, the same riff, "How do you expect to win any of these cases when we've got multimillion dollar attorneys up here and you've got attorneys down there making only \$400,000 a year?" Talk about the D.C. bubble, the Wall Street bubble I find even thicker than the D.C. bubble. There wasn't any attorney in the United States government making even half of \$400,000 a year. The idea that money measures it, I don't think that's the answer.

The biggest thing in my opinion was that by the time we actually got around to going after it, it was too late. I think to a certain extent what they say in detective books and novels—I know this to be a fact—if you don't catch somebody in the first 24 hours they're very difficult to catch them ever. As one of our principals said, "These guys are not like drug dealers." The drug dealers rarely clean up after themselves. Where on Wall Street, the lawyers and accountants come in, they really clean up after themselves. It's very difficult to go back and establish what happened. When you look at the fact that a lot of this stuff happened in 2008, by the time the Obama administration got in place, by the time we passed this bill, by the time Breuer and Khuzami and the rest of them were in place, everybody had a real opportunity to clean everything up. When you go up to Wall Street, they used to say, "We don't need any new regulations. The bad guys are all gone." Well, I don't know where they got "the bad guys are all gone," but that's their mantra.

First off, they were late, that's number one. Number two is, Jeff Connaughton had found out that during the saving and loan crisis, an incredible number of successful prosecutions were done from referrals from regulatory agencies to the Justice Department. Unfortunately, the Bush administration regulatory agencies were effete at this point. During the Permanent Subcommittee on Investigations' hearings, we had testimony from the head of the Office of Thrift Supervision. I'll never forget it. It was sad. This guy testified that at that time Washington Mutual was the largest thrift in the country. They were supervising them closely—or they should have been, but they weren't. It came out clearly that they weren't supervising them at all. In fact, the FDIC wanted to do something about Washington Mutual and the head of Thrift Supervision

stopped them. Not only had they not done the work themselves, they stopped the FDIC from doing it. And where that became incredibly clear was when he was testifying about Long Beach Savings, which was part of Washington Mutual.

We went in and looked at the data. There is a thing called “stated-income loans,” popularly known as “liar loans.” And that is: someone would come in for a mortgage at Long Beach Savings—it happened all over the mortgage brokerage business—and they could apply for a mortgage and never tell them what their salaries were. They never submitted any W-2 forms or anything. I was watching this broadcast on MSNBC where a woman said she belonged to a church in LA in a lower-income section of the city. She said some guy showed up and said, “Who wants a \$500,000 house?” and they all ended up with \$500,000 houses. They were called stated-income or liar loans. Carl Levin, at the beginning of the testimony of the person who was head of the Office of Thrift Supervision, I just don’t remember his name now, asked, “What do you think about stated-income or liar loans?” He said, “Stated-income loans are an anathema to the banking business,” so he completely condemned stated-income loans.

So it came my time to question him, and I said to him, “What percentage of the regular conventional loans are liar loans?” He said, “I have no idea.” I said, “Take a guess.” “I have no idea.” I said, “Would you believe 92 percent?” I said, “What percentage of the ARMs” —the Adjusted Rate Mortgages which are a little more risky—“are stated-income loans?” “I don’t know.” “You don’t know? What do you think?” “I don’t have any idea.” “Sixty-three percent. Okay, how about sub-prime loans, the most risky of all, what percentage would you say were stated-income loans?” He said, “I don’t know.” I said, “Fifty-two percent.” It was clear there was fraud. You can’t give out 50, 60, 70 percent of your loans, especially 50 percent of the high-risk loans and not ask anybody for their income statement, and say that you don’t know what was going on if you’re managing the company.

My sister was out there. My niece was at Cal Tech and my sister was out there. She and her husband thought about maybe buying a condo near Cal Tech. She called a mortgage broker and said she was interested. Two days later the broker called her back and she said, “No, we’ve decided not to do it.” “I can get you a great mortgage.” She said, “How can know you can get me a great mortgage. You don’t know anything about me.” He said, “I guarantee, if you come in, I’ll get you a mortgage.” So it’s clear there was fraud. The inspector general for the treasury department at the time, who was

testifying, when he heard about the high percentage of stated-income loans, said, "That is a target-rich environment for fraud."

So I think we showed up late. They had cleaned up what it was they were doing. They were complex cases. People sometimes think that laws almost came from God. Like insider trading, "this person is engaged in an illegal activity." Every time you try to make the insider trading law tougher, the Chamber of Commerce and everybody on Wall Street are in there stopping you from doing it. So the laws are not written to actually define bad behavior. They are written to get enough votes to pass it. That's why most of these successful cases in white-collar crime are "obstruction of justice." In insider trading, very few go to jail for that. Like Martha Stewart, she didn't go to jail for insider trading, she went to jail for obstruction of justice on insider trading. It's very difficult to prove these cases. It isn't just that these lawyers in New York are smart, and they are—by the way, many of those lawyers worked in Washington before they went up there—but it's because the law is very difficult to apply.

But the biggest problem is that it wasn't contemporaneous. Where this really became clear to me was with the Department of Justice and SEC's recent successful cases on insider trading. Because I talked to a lot of people and they said, "If you want to get the case, you need a whistle blower." The best way to bring these cases is to have someone inside who says, "I was there and this is what happened." Whistle blowers are usually driven by the fact that their concern is personal. They may be driven in some areas where they can get a reward, but also because "If I get there first I'm not going to be the one who goes down for the charge." But what you really want, and the reason why the insider trading case worked, is because they had wires. They had wiretaps, and while everything was going on, contemporaneously, they were on the job. Those insider trading cases without the wiretaps would have been very difficult to bring. So the fact that you're going back six months, eight months, or a year later, there's no chance for wiretaps. No one feels that they are under pressure to throw somebody else under the bus. You don't start, like we usually do, with the little fish and work the way up.

Those are all the reasons why we didn't do it. I do not believe—a number of press people asked me, "Do you believe the secretary of the treasury and the White House were bringing pressure on the Department of Justice not to bring cases?" I totally do not believe that. And it has nothing to do with what I think about any of the people involved. It has to do with the idea that anybody who calls up the Justice Department and tries to

bring pressure on them on whether to prosecute or not is just nuts. They are opening themselves up for real problems and potentially even getting prosecuted themselves. The Justice Department has gotten very independent. That's good. They weren't independent enough, in my opinion, under the Bush administration. I think it really was late to the scene, and very efficient and organized Wall Street accountants and lawyers. What's really scary is they do not bring cases because if those on Wall Street they want to prosecute have reasonable belief in what their lawyer or accountant told them to be the situation, it is very difficult to win the case. Which when you think about it means that law is what lawyers and accountants say the law is. But I've talked to enough people in the Justice Department and in the SEC to realize that it's very difficult to bring a case if the target of the case can say, "All I was doing was what my lawyer said."

The second thing is, disclosure. Many of these cases on these absolutely terrible packages of residential mortgage-backed securities and credit default swaps and credit default organizations, that were awful, if you go down and read the fine print in the page after page after page of disclosures, they disclose what the situation is. But so many people just don't read that going in. I think that's really why it's been so difficult to bring cases.

But what happened after that was, I was still upset, obviously, and I was talking to a friend of mine who is very interested in investing. He "runs a lot of money." He told me that the SEC in 2007 and 2008 really was a very laissez-faire, no regulation operation. Bernie Madoff is the poster child for that. There's been a lot of demagoguery about Bernie Madoff, but clearly the enforcement division of the SEC did not feel they could bring a case against him because they had to get the approval of all five commissioners and the commissioners just were not in favor of bringing cases. They were looking at many people on Wall Street, like Bernie Madoff, as their client, not the investing public. It was a laissez-faire attitude; there felt there shouldn't be any regulation of these things.

During that period they had removed the up-tick rule in short selling. Short selling is a process by which an investor can literally make money with a stock that is going down in price. Essentially, what you do is sell the stock in the company with the idea that you are going to buy it back later at a lower price. You sell the stock at 20, without having to deliver that particular stock, and then a week later buying it for 10, and you made the difference. What you have to do during that process, it used to be, you had to borrow a stock to cover what you had to make sure you weren't doing what's called

“naked short selling,” which is wrong because you should have some investment anyway. You talk about leverage, if you don’t have to have any stock and you just sell it, the leverage is infinite. That’s called “naked short selling.” Predatory bears and short sellers have been around ever since there were markets. I’m sure if we sat with the cave men, practically, we would find people betting that prices for things were going to go down. There’s nothing wrong with short selling. I’ve done short selling, but every time I’ve done it I’ve had to borrow stock to cover it. That was during the time of the up-tick rule.

What the up-tick rule said essentially was, in order to stop someone from just beating a stock down by all kinds of techniques, including spreading bad rumors about the company and the rest of it, you couldn’t sell short unless there was an up-tick in the stock price. So if a stock was selling for 20 and then went to 19.9 then to 19.8 then to 19.7 you couldn’t sell, but when it went from 19.7 to 19.8 then you could sell short. We had had the up-tick rule around for years and it really was very, very helpful. The SEC did away with it. And the reason that’s scary is they did away with it based on research they did in 2005, during an up-market. Short selling is not a problem during an up-market. It’s very difficult to make money selling short in an up-market. That happens in a down-market.

Then what I learned happened in the case the failures of Lehman Brothers and Bear Stearns, there was lots of circumstantial evidence that the predatory bears had really driven them down. I don’t remember the numbers anymore, but I think Bear Stearns had an incredible drop in just three days. Then the other thing to indicate they were selling short was the float, which is the amount of shares out in the market that actually sold. It was up 150 percent. People were selling stock they didn’t own, was what it looks like. And then I was collecting anecdotal evidence from a number of people I know on Wall Street that a number of well-known predatory bears were bragging about it and had parties to celebrate the fact that they had done these things.

Mary Shapiro, who had been appointed to the SEC, in her nomination hearings said she was in favor of reinstating the up-tick rule. I wrote her a letter on March 17—a day that will live in infamy—2009, saying that I really supported that, but then nothing happened. I got Johnny Isakson, a Republican senator from Georgia, and Jon Tester, a Democrat from Montana, and Arlen Specter, I got a bipartisan group of senators. We wrote to Mary Shapiro about the up-tick rule and naked short selling. Nothing. We actually put a bill on the floor. Still nothing. The SEC had a panel to talk about it, and the

vast majority of people on the panel were either in short selling or academics that were writing about short selling. It was really an incredible experience for me to see that the SEC still was not willing to do what needed to be done.

Then on the naked short selling here's what happened. The SEC had changed the rules on having to borrowing stock when you sold short to a "reasonable belief" that you could borrow the stock. Whereas, when I do it, my broker had to go out and identify the stock, and I had to borrow the stock. But now you just had to have a "reasonable belief" that you had it. There was an outfit called DTTC—they do the vast majority of backroom work for Wall Street, in terms of people who handle all the trades. It used to be, when I was involved in the '70s and '80s, each firm had its own backroom operation, but then they consolidated into this DTTC. They came in and said, "We know how to deal with this naked short selling. Right now, if someone comes to us and says 'I want to sell 200 shares of AT&T short. Do you have 200 shares of AT&T?' Say we have just 200 shares. We say, 'Yes, we have 200 shares.' So they go off and sell it short. Five minutes later, or five hours later, someone comes in and says, 'Do you have 200 shares of AT&T?' They say, 'Yes, we have 200 shares.'" What they suggested to us—and I've got the PowerPoint presentation they made to us—they talked to the SEC and they suggested to us that there be a flag. So if you had 200 shares of AT&T, someone came in and said they wanted to use it, there would be a flag on that so no one else could use that 200 shares. A very simple thing that would have dealt with a large portion of the naked short selling. They could never get the Securities and Exchange Commission interested in it.

What happened was, the DTTC is run by Wall Street firms. So they had a roundtable to talk about the naked short selling, and by the time that happened they had the entire hearing and DTTC never once mentioned this proposal, because by that time they had gotten so much blowback from the predatory bears and the short sellers, they were afraid to say anything. But I have the PowerPoint where they recommended it. So they never did anything about it. What all that did was let me understand what was going on. What I began to focus on was just how much the markets' regulations had changed and that the cause of this great meltdown was a number of changes that had been made in the last 10 years in the way Wall Street functioned.

The other thing I found out, which goes back to what we were saying earlier, was that it didn't matter if I was on the Banking Committee. It didn't matter if I was on the Finance Committee. I just started going down on the floor and giving speeches. The

media was picking it up and I was going on TV shows to talk about it. All of a sudden I was a player without being on any of the relevant committees. They were bringing up the Wall Street reform bill, which became Dodd-Frank, and I started looking at that, now having been educated about the Wall Street of today. *The Big Short* by Michael Lewis has a wonderful section that I recommend to everyone who is trying to understand this. Michael Lewis starts out in the book by mentioning a book called *Liar's Poker*, which he wrote in the 1980s, to talk about the absolutely incredible practices on Wall Street, a combination of incompetency, abuse, greed, all the things in the mid-1980s, and he wrote this book *Liar's Poker*, which became a best-seller. Then he writes *The Big Short* 20 years later. He says, "When I wrote *Liar's Poker*, I thought it would be an interesting book historically, that people would look back and say that was a pretty crazy time on Wall Street, and 'Wow, I can't believe that ever happened.' When I wrote *The Big Short* I found out not only was it happening, it had never changed."¹ This thing that should have been an aberration in our behavior, of incompetence, greed, and everything else, had become standard practice on Wall Street, and that's really one of the big causes of the meltdown.

What I quickly learned was that it wasn't just chance. We had deregulated, which I had not focused on to the extent that I did after I began to see what was going on, we had just deregulated the whole Wall Street. We just said to Wall Street, "Go off and do whatever you want. You don't need any regulation." I found myself, and I find myself to this day, having to argue about whether we should have regulators or not on Wall Street. The best argument I came up with was: Regulators do what referees do in a football game. You can't go to a football game and say, "You know, the referees blow their whistles at the most inopportune times and they stop the play. Let's just get rid of all the referees and go out there and let the kids play." Well, I'll tell you what, I wouldn't want to be at the bottom of the second or third pile-up if there are no referees. The other analogy is the police. Some people say, "It just doesn't work. You can't regulate Wall Street. We've demonstrated you can't do it, so you shouldn't do any regulation." That's sort of like saying there are sections of a city where a lot of crime goes on, so therefore we don't need any police down there because the police aren't going to be able to stop crime. People are still going to be committing crime. Why would we send police into that area when we know there's still going to be crime? Really and truly, these are the

¹Michael Lewis, *Liar's Poker: Rising Through the Wreckage on Wall Street* (New York: Norton, 1989), and *The Big Short: Inside the Doomsday Machine* (New York: Norton, 2010).

arguments. I've been on panels, I've given talks, I've spoken to all kinds of Wall Street groups, and these are the arguments you get: there should be no regulation.

In fact, there's a very smart man named Lawrence Kudlow,² you can see him every night on television. He's still arguing we don't need any regulation on anything we're doing. Well, my basic argument is, five or six years ago you could make that argument, but not after what happened here with no regulation. Even Senator [Tom] Coburn from Oklahoma talks about the fact that the lack of congressional oversight caused the meltdown. I totally agree with that. What happened was we did a number of things, it was like we just drifted into it, to cause it to happen. My argument on the Dodd-Frank Wall Street Reform Act was we should do what happened after the Great Depression, after the great financial meltdown of 1929. After 1933 they set up the Pecora Commission, and Pecora went in and looked at everything that went on and then they wrote a law that created the FDIC. It was Glass-Steagall, which said that the crash of 1929 was just the final episode in a number of bank panics during the 19th century and before. People would be afraid a bank was going to go under so they rushed to the bank to take out their money. Banks lend long (mortgages etc) and borrow short (certificates of deposit etc), and therefore if there's a run on them, their money is tied up and they can't give it back. You have a run on the bank, and anybody who has seen *Mary Poppins*, the movie or the play, has seen what can happen. Pecora commission wanted to stop that, but they also wanted Americans to put their money in the banks instead of in their mattress or a tin can in the backyard, because they thought the banks weren't safe.

So Congress passed Glass-Steagall, which essentially said we will have an organization called FDIC, which will guarantee a certain amount of money for deposits. Those banks that decide to take that, be part of FDIC, they have to be in commercial banking, a business that would have not the greatest return but would have very low risk. You could make good money out of it, a lot of commercial banks could, but if you wanted to be in the investment bank business, which is much more borrowing, mergers and acquisitions, investment of all kinds in stocks and bonds, you couldn't be in both. You had to decide whether you would be in commercial banking, low risk, low return, or investment banking, higher return but higher risk. Well, in 1999, in what I think was one of the dumbest things we ever did, we repealed Glass-Steagall. Admittedly Alan Greenspan and the Federal Reserve had weakened Glass-Steagall with their rulings on

²An economist and host of CNBC's *The Kudlow Report*.

the CitiGroup mergers, but the results as could be predicted were awful. Now we had commercial banks who were also in investment banking, which I think was one of the big causes of the meltdown.

The other thing was that derivatives were just starting to be used. They were growing. The idea that you could buy synthetic investments. Warren Buffet called them “weapons of financial destruction.” I would never invest in derivatives because my basic rule of investing had always been don’t invest in something you don’t understand. I had an MBA from the Wharton School. I was interested in it, but I could not understand what a lot of these things were at the time. I now know what they were, because I got involved in this thing, but there is clear evidence that many, many, many, many people were buying derivatives that had no idea what they were or how they worked. And the Congress, in this anti-regulation phase they went through, actually passed a bill The Commodity Futures Modernization Act in 2000, that said the government can’t regulate derivatives. So you had this incredible growth of derivatives, no regulation, an amazing amount of changes, trillions of dollars went into derivatives, credit-default swaps, credit-default organizations, basically turning Wall Street into a casino—that’s not an overstatement. And no government regulation.

When we considered the Dodd-Frank Financial Reform Act there were a number of things I wanted to do. I wanted to write a law that defined and dealt with the major problems that caused the meltdown, and not push the solutions back on the regulators. The lack of oversight by Congress and the regulators was one of the main causes for the meltdown. No regulation allowed for some very bad behavior. Now, that being said, because there are no cops on the beat does not mean that you have the right to break the window of the jewelry store and grab the jewels and run. There is way too much of, “This is all the fault of Washington.” A lot of people were opposed to Wall Street reform, a lot of Wall Street people. “This wasn’t Wall Street’s fault. There wasn’t congressional oversight and there wasn’t regulation.” No, no, no, guys, that’s not the way the world works. Again, using my policeman analogy, just because the policeman is sitting down at the local lunch counter having a cup of coffee doesn’t mean you have the right to break into a store and steal, and that’s what went on. My approach was, first, don’t give it back to the regulators. We have to do what Pecora did—we need to pass a law. The first thing is to reinstate Glass-Steagall. Maria Cantwell and John McCain had an amendment, I signed on to it, to reinstate Glass-Steagall.

The main reason not to give it back to the regulators is that they change. Let's just say we have great regulators now. Some presidents believe in regulation, some presidents don't. We now have a president who believes in regulation. We're putting in regulators, therefore the regulators do okay. But what happens when you've got a new president, two, four, eight or sixteen years from now and they don't believe in regulations. Now you've lost your regulators again and you don't have any laws to support it. So the first place where I clashed with the administration and the committees in both houses' approach to this thing was I think we should have put in place laws. We should have replaced Glass-Steagall. We should have passed laws on derivatives. We should have gone back. There was an article in one of the papers that compared me with Senator Richard Shelby. Shelby was the ranking member on Banking. They said it was a battle between conservatives and liberals, and Shelby is a conservative and Kaufman is a liberal. Jeff Connaughton called up the reporter and said, "Wait a minute, why don't you talk to Senator Kaufman?" So I talked to him and said, "Look, I am the conservative. I want to go back to what's worked in the past. That's the only test for me." As an engineer, I look at it as we tried something and it did not work. At least the first test has to be: Why shouldn't we go back to what we were doing when everything was okay? We went for years with no major financial problems. We had minor financial problems but no major crises like this. Then we did the derivatives thing and the repeal of Glass-Steagall, and the whole thing went to pieces.

So my first argument was we should go back in order to go forward. We should make that part of the law. The other thing is the regulators have a lot of new problems they are facing, like the high-frequency trading, and they're going to be hit by 400 new regulations that they have to write. That's way too much for them. And then the regulators change and we're back to the same problem. Then I got to the other big part of my concern, which was "too big to fail." That was, I became convinced that we had a number of financial institutions in the country that were too big to fail. The example I always used to use is that 15 years ago the six largest banks' assets were 17 percent of the gross domestic product of the United States. When we were considering Dodd-Frank, the top six banks' assets were 63 percent of the gross domestic product of the United States. The banks had just exploded and a lot of the explosion had occurred not naturally but when we had the meltdown and because we were worried about things going over we took Bear Stearns and Washington Mutual and put them into J.P. Morgan Chase. We took Wachovia and put it into Wells Fargo. We put Merrill Lynch and Countrywide into Bank of America. These weren't natural evolving mergers, they were artificial. The

minimum we should have done was spun them off after the crisis was over. But no, these banks were getting bigger and bigger and they were too big to fail.

There was a lot of discussion during the debate on Dodd-Frank that “we’re going to deal with too big to fail, we’re going to have a resolution authority”, which means the banks were going to have to write a will. Resolution authority was somehow going to resolve any big bank problem like a bankruptcy. We would identify a bank that’s in trouble and then we would be able to spin it off much like FDIC does with smaller banks all the time. But these banks are *massive*. We found out during Lehman Brothers that it was very difficult even to do bankruptcy on an institution that size, because so many of the creditors were in the U.K., and the U.K. had different laws. There is no agreement, even the slightest agreement, on resolution authority across country lines. So when you have these massive banks with investments around the world, the idea that you can resolve them—no, no, we’re going to be faced with the federal government having to come in and bail them out again.

I didn’t see anything in the legislation that would stop that, except Sherrod Brown, the senator from Ohio, and I introduced Safe Banking Act to slim down the banks. We put a 2% limit on non-deposit liabilities, a 10% limit on deposits as a % of national deposits, and a 6% leverage limit. I think if you read the coverage of Dodd-Frank it definitely was the key amendment on too big to fail. There were other amendments on too big to fail. Susan Collins had an amendment requiring they had more capital, because that was one of the problems. Then the former chairman of the Fed, [Paul] Volker, had a proposal saying banks couldn’t be involved in proprietary trading. I had met with Volker before he introduced the proposal and talked it through with him. His basic feeling was we would never manage to reinstate Glass-Steagall and this was close to that. I was for it. Senators Jeff Merkley and Carl Levin had an amendment that institutionalized this. I thought it was good what we were doing. I thought it was the best result if we could not get Glass-Steagall reimposed. But it’s just too hard to identify what proprietary trading is. I had learned through all my trips to Wall Street, the television shows, the radio shows, the press people, the people I talked to in the banks, and the rest of it, that if there’s the least little loophole, the smallest crevice, they will shoot through it like they did on derivatives, and the next thing you know they’ll get an opinion from a lawyer or an accountant, if it isn’t laid out in cold blood, and they’ll be off doing something equally terrible.

I suggested during one of the hearings on the FERA—one of my real concerns was . . . Let me start out by saying, I know a lot of people on Wall Street. I went to school with a lot of people on Wall Street at Wharton, and I think the vast majority of them are good people, but there is a sizeable minority to whom what I am about to say applies. That is, it was clear to me that a number of different organizations on Wall Street, that people had to know long in advance that the housing market was going to come to pieces. They continued to sell securities. I think the case with Goldman Sachs, which came out during the hearings of the Permanent Subcommittee on Investigations, demonstrated they knew a long time but they were still selling residential-mortgage-backed securities. In fact, they were still selling credit default swaps to bet on the fact that the housing market was going south, at the same time that they were selling residential-mortgaged-securities to their customers. But they said under the law—this is another example—as a market-maker they could do that. Now, nobody else in the world can do that. An automobile agency cannot be selling cars at the same time it's selling insurance that pays off if, in fact, the car crashes. But that's really what went on and it was legal. It should not have been legal.

Merrill Lynch is my broker and they sent me an analysis of the housing market in 2005 that was so stark about the fact that there was a bubble in the housing market that I sent it out to each one of my children and said, "Please, don't invest in anything in the housing market, just in case you're thinking about it. Here's the charts, you look at them, but there's no way this bubble is going to last." It was like the dot-com boom, when people were saying, "There are so many people with their 401(k)s, they are going to be buying so much more stock that the stock market is going to go up forever." Then we had the dot-com crash and stock prices went down. They were saying the same thing with the housing market: "There's so many new people coming into the housing market, there are so many people buying houses, that's the reason that housing prices are going up. It's not a bubble." But Merrill Lynch did this analysis that showed that if, in fact, there was increasing demand, and that's the reason why prices were going up, then there wouldn't have been a whole lot of difference in the slope of the curve in the housing price market and rentals. Rentals during this period stayed level. At some point, you make a decision that it's cheaper to rent than it is to go in the housing market, and clearly there was a bubble in the housing market, based on the old theory about bubbles, which is the reason why people invest in bubbles, whether it's tulips or real estate or dot-coms, is what we call the "greater fool" theory. That is, no matter what I pay for this, even though I'm paying this outrageous price, there's a greater fool going to come along after me who will

buy this, and that's basically what happened in the housing market.

So if I knew in 2005, it isn't 20/20 hindsight that they didn't know it. I asked Lloyd Blankfein [chairman of Goldman Sachs] at what point there was a meeting at Goldman Sachs where they said the market was going to go down. He said there never was. I just don't believe that. Goldman Sachs was so big in this market, I don't believe you could have meetings, not one but loads of meetings, where people said, "How do you think it's going?" These are really, really smart guys. They had to realize early on that the housing market was going south. But the basic approach they had was: We're making so much money on this we're going to sell right up to the end. The example I used in the Judiciary Committee was: It's a little like people in a burning house. They know the house is burning, but they're not going to call the fire department. All they're doing is grabbing money and running out the door. As long as they're standing out on the road with their arms full of money, and the house burns down, and the house is Wall Street, the house is the financial markets of the United States, they really don't care because they got their money and ran.

There are so many examples of that. People at AIG, all of the terrible things they did selling credit-default swaps that never could work out, but they were making the bonuses. The truth of the matter is they were still getting bonuses for what they did in 2007 and 2008 in 2009 and 2010! For reprehensible behavior—whether it's illegal or not it was reprehensible behavior, and they were still getting their bonuses. So you build a culture of people, which is clear from Andrew Ross Sorkin's book, *Too Big to Fail*, and Simon Johnson's book, *13 Bankers*, there's a bunch of them out there.³ That there's an attitude: "Keep making money. Keep making the bonuses. Keep making the executive comp, and if we destroy the financial markets, so be it."

One of the points I've made throughout all this is two of the things that have made this country great are the institutions of democracy and our capital markets. They are the two crown jewels for the United States: the fact that we protect minorities and all the things we've built up really makes us great, but it's been our financial markets. People come from all over the world to trade because they know they're fair and on the

³Andrew Ross Sorkin, *Too Big to Fail: The Inside Story of How Wall Street and Washington Fought to Save the Financial System from Crisis—and Themselves* (New York: Viking, 2009); and Simon Johnson, *13 bankers: The Wall Street Takeover and the Next Financial Meltdown* (New York: Pantheon, 2010).

level. After this dot-com meltdown, and housing bubble, and the lack of proper regulation or passing the proper laws, if we lose their confidence, there's plenty of other places for them to go. If they stop coming to the United States, it will really hurt us, so I'm arguing for the future and the health of our financial markets.

ITCHIE: Back in the 1980s, when deregulation of banks was started, those in favor of deregulation were always saying, "Well, other countries are doing it, Japan and Brazil, and banking money will shift to London," and that "these New Deal laws are obsolete and you've got to lift them, otherwise you're artificially depressing American banks." Was there any validity to that argument?

KAUFMAN: Well, there's always some validity to it. But it's very selective when they make the argument, and it's complicated and you've got to figure it out. Like, for instance, they talk about how we have the highest tax rates in the world so people go elsewhere to avoid taxes. But we have one of the greatest deductions, and in fact when you look at the bottom line our corporations don't pay the highest taxes. GE didn't pay taxes last year. I don't think Toyota has ever paid U S taxes. I don't know. But it goes on because we have all these deductions and deals and credits and all the rest of it.

The one that is striking is capital requirements. The argument made by the Secretary of the Treasury Tim Geitner when he met with me was that we should not have capital requirements in the bill, and the reason is it would hinder us in international negotiations. Well, what happened in effect was at Basil III, this is the international bankers, the other countries wanted stronger capital requirements than the United States. So I think like everything else you have to look at the details of what we're talking about. But I would say over the forty-some years I've been here, the arguments that have been made that we have to be careful or we'll lose to overseas have turned out to be not credible much more than they are credible. All the discussions about anti-trust, if we institute anti-trust laws it's going to hurt our ability to compete. Clearly, the arguments that we need bigger banks to compete internationally, which have been made for the last 25 years, there have been a number of studies and one from Andrew Haldane of the bank of England that show that the maximum size for international competition is \$100 billion. Let's just say if we put in capital requirements it would make us competitive overseas. Competitive for what? So to be sure that when our banks are too big to fail, then their banks are too big to fail?

And by the way, on too big to fail, my ultimate indicator that banks are too big to fail is the interest rates that banks pay on their CDs. The major banks in the United States pay less interest than the smaller banks, which is a clear indication that the market believes they are too big to fail, so it's not just me. The administration and others make the argument that things we're not going to do are being done in other countries. But look to England and what they did the Royal Bank of Scotland which was bigger than any of our banks when it failed. A big bank, and they fired their CEO and let it fail. I think you're on a slippery slope when you get into this argument that we should not pass a law because it will hurt us overseas. You have to check it out. That's a very important part of legislation. It's complicated.

But I found in *so* many cases these arguments are made when in fact *we're* the problem. We're the ones, capital requirements is an example, we're the rush to the bottom. We're the ones who are allowing our banks to grow to the size that they have and not do anything about it as a country. As I said, Andrew Haldane from the Bank of England put the maximum size at \$100 billion, and there's just no reason why these banks have to have \$2 trillion in assets. Even if it hurts us competitively, which I do not believe it will do—now they're coming with arguments that regulation is too expensive, it's going to cost us money—nothing we have done in the history of the republic has cost us more than not having regulation of our financial institutions and the trillions of dollars that we have lost, Americans out of work and losing their homes all because we didn't have proper regulation.

I must admit that corporate America, and I consider myself part of corporate America (not this part) has done an incredible job, through Frank Luntz, the wordsmith, of just demonizing regulation. So that most Americans say we shouldn't have regulations. But again, if you look at regulators being the cop on the beat, the referee on the field, the person that should have been making sure that Bernie Madoff was caught early on, most Americans believe in that. They believe that our food supply should be protected, that the Food and Drug Administration is a good idea, and the rest of those things. Can I take a break?

RITCHIE: Oh, sure.

[break in the interview]

RITCHIE: I was going to ask you, I've always found it odd that after they

deregulated the savings and loans, and the savings and loans collapsed—in the '80s an enormous amount of federal money went into that—and then before the decade was over they started looking into deregulating the banks. Why was it that no one learned anything from the first collapse?

KAUFMAN: Well, there's a number of issues. First, there are some bad regulations and there is government bureaucracy that plays to people's views. It's easy to do anecdotal. One of the things that happened in the '80s was local television programs, but also the national networks, the half-hour of the evening news is 10 minutes of news and 20 minutes of these other stories. They started these "government waste," "fleecing the consumer" stories, and government scandal. As I said before, scandal is always a lot easier to cover and a lot more fun to cover. So there's a combination of playing to the crowd, plus corporate America really pulled their act together on this.

If you look back during the Reagan administration, I can't think of very many other think tanks that were of the size of Brookings, which is generally perceived to be left of center. But when Reagan came in, the Heritage Foundation started, the Cato Institute, a whole series of intellectual think tanks that were to the right, who were against regulation, against government control. Cato is libertarian, Heritage is more classic conservative, but both were started with a major financing by corporate America. Then it started working for them. You had the tax cuts under Reagan and under Bush II. I remember the first tax cuts in many parts of the country were called Kemp-Roth. In Delaware they were called Roth-Kemp, because Roth was our senator. Even though it benefitted mostly the more wealthy people in our society, the Roth people told me that one of the things that made it go politically was that middle-class people were in favor of it. So it began to pay off. I always used to say the easiest thing to do would be to raise money for a Republican candidate because you can go to someone and say, "I'm for cutting your taxes and it's going to put \$50,000 in your checking account, now would you give \$1,000 to my candidate?"

Now, I am not—one of the popular misconceptions about campaign financing in my opinion is that there is some kind of quid pro quo. I don't think—I don't know, because I've just been involved with a few candidates, one main senator, and there were no quid pro quos in our office. I don't think there were quid pro quos in most offices. But I think the single most important thing we can do is change the way we finance our campaigns. We need to have public financing of campaigns, which has been incredibly

complicated by the Supreme Court's number of very bad decisions. I've said earlier that the big mistake we made with the Supreme Court was we didn't get people who actually had life experience, who had run for something, like so many of the great Supreme Court justices in the past. We have just totally and completely picked people who have spent their whole careers as judges, and their campaign financing decisions make no sense. So I favored public financing of campaigns and the reason was not that I thought people were being bought, quid pro quo. I think that if two people get up, Tom and Mary, and Tom wants to run for the Senate to help the poor and disadvantaged, he thinks we ought to do something about controlling emissions, he wants more government regulations, and Mary believes we have to lower the capital gains tax, we have to have more tax cuts for wealthy Americans, we ought to do away with the estate tax. The two of them genuinely believe that. Mary has a much better chance of raising the money she needs to run for the Senate than Tom does.

When you have that kind of environment, you're going to have situations where candidates for office, when they raise money, are going to begin to move more and more to the place where the money is. Again, never underestimate the ability of the human mind to rationalize: Well, I'm running for office and I'm going to do a lot of great things, I believe that, so I think maybe that lowering the capital gains tax is a good idea, or doing away with the estate tax. The estate tax is one where you see it all the time, where people who you normally think would be opposed to decreasing the estate tax, people who really believe that government services are important and the money has to come from somewhere, not that they want to soak anybody but they just believe you've got to have a tax base to pay for education and all those other things. That's a long way of saying that when it comes to benefitting moneyed interests, there's been more and more interest in doing that and I think that wall street and corporations want and have become much more adroit at doing it, and the campaign finance rulings have made it tough.

The other thing was there has been a demonization of unions. In 1973, the reality in the United States, no matter how you felt about unions or corporations, was there were two countervailing pressures: unions and corporations. Unions now, except for the public employees unions, are essentially gone, only 6.9% of private sector workers belong to a union. So there is no countervailing pressure. No one to defend what benefits the middle class. If you look at a chart on the decline in real middle-class income, which has been a steady decline since the 1970s—depending on who you talked to, either it peaked in 1972 or it peaked in 1980, real take-home income. Now it's been off-set by the fact that two

people in the family work. But even so, the middle class has gone down. If you count the fall of union membership, and you look at the decline in pension benefits—there are no more defined pension programs—at the decline in income, straight-up salary, the correlation is almost perfect. So the unions, whatever you thought about the unions, used to be the base that protected the middle class. When you look at the incredible gains in wealth during the '90s and 2000s, practically none of it went to the middle class at all, it went to the top one percent. You have a situation now where the top 400 families have as much wealth as 150 million Americans.

Then you have the argument I saw on television the other day where Warren Buffet came out and said wealthy people should pay their fair share. He came to talk to the senators one time. He carries this piece of paper in his pocket and he pulled it out and said, “Here are the salaries and the taxes for me and for some of my employees.” And then he would read off, “I made x millions of dollars and I paid 15 percent” or something like that, and “Mary Smith, my secretary made \$57,000 and she paid 25 percent.” So Buffet came out and said we have to do something about taxes, and they had a piece on *The Daily Show*, just to be funny, and they had all the Fox News anchors calling it class warfare. And Marco Rubio, the senator from Florida, calling it class warfare. And one anchor called Warren Buffet a socialist. Well, there’s been a class warfare in this country. I am opposed to class warfare, but there’s been a redistribution of wealth in this country, starting in 1980 when they cut taxes. Real wealth has been more and more concentrated in fewer and fewer people. It’s been a transfer from the poor and middle class to the very wealthy. So I think that all has been part of a mix that has poured money not just into campaigns, it’s poured money into public relations.

RITCHIE: The whole building is shaking. Do you have earthquakes in Delaware?

KAUFMAN: Once every—it’s gone. God, that *was* an earthquake. The last time something like this happened, I was in the ninth floor of the DuPont Building, right over there, downtown, and the building shook. You know, DuPont started in the black powder business, with explosives. I went over and looked out the window across the Delaware and the Carney’s Point plant of DuPont had blown up and you saw a black cloud coming up from it. That was the last time I sat in a building that shook. No, this reminds me of California.

RITCHIE: I've been to California a lot and never been in an earthquake, but now I've been in one in Delaware!

KAUFMAN: I lived in California for a year and we had them. So where were we?

RITCHIE: We were talking about financial reform. One thing that was odd was the repeal of Glass-Steagall was signed by Bill Clinton.

KAUFMAN: Aided by Bob Rubin and Larry Summers, they were out there, the same thing with derivatives, they drove it. No, in terms of the money and everything, it isn't 100 percent Republicans and 100 percent Democrats. But, to be honest, the Republicans voted for none of this stuff on Dodd-Frank. Five Republicans wound up voting for Brown-Kaufman, three Republicans and 30 Democrats. So sure, there are some Democrats—we were talking about how with the left and right there isn't much overlap. But there is some overlap. In fact, there are some members of the Democratic caucus who are opposed to regulation under any circumstances, and you just watch and see what happens. But you had to have some Democrats, because we had 60 Democrats so they had to have some Democrats vote against it in order for it not to pass. So the Clinton administration had help. But if we leave the Clinton administration and go to the Obama administration, the Obama administration opposed Brown-Kaufman. There was a quote from an anonymous treasury department official saying, "If we wanted Brown-Kaufman to pass, it would have passed." They fought Brown-Kaufman. They fought passing the law. They were in favor of paring regulation back. Practically everything I've talked about, the treasury department and the Obama administration joined with Republicans to defeat. And I think in most of these discussions—it would be interesting to go back and see—I don't think I've used a lot of "Democrat" and "Republican." But it's clear that the Democrats are much more—like I said, 30 Democrats voted for Brown-Kaufman, three Republicans, that's about right. There were twenty-some Democrats, more than that, who voted against it.

RITCHIE: Well, do you think the main thrust was Dodd-Frank, and that so much energy was put into that that it took the steam out of other reforms?

KAUFMAN: No, what happened here was Democrats supported the bill, but it's the amendments that I'm talking about. The amendments like Brown-Kaufman and

Merkley Levin, the amendments on doing something about short selling. No, no, it was the amendments where the problems were. Dodd-Frank, the idea about having Wall Street reform was very popular in the country. And I'll tell you, in the Democratic caucus—the message suggested by the administration was that “We’re on your side.” Many of us in the caucus said, “Yes, but where in the bill are you on our side?” When the bill was passed, there was a lot of discussion in the administration that “We’re on your side,” and a lot of us were just kind of looking at it. Now it’s a year later and it’s hard to figure out where Dodd-Frank was on “our side” in terms of doing something about too big to fail, on doing something about real Wall Street reform, on doing something about derivatives and the big banks. The bill requires 400 rules and only something like 40 of them have actually been written. The regulators are jammed. Now you’ve got a Republican House and you’ve got the head the securities subcommittee over there writing to the Securities and Exchange Commission, “We don’t want any of this.” We’ve got the Consumer Financial Protection Bureau, which is an important piece of the bill, the Republicans in the Senate have said they were not going to confirm *anyone* for that position. They started out saying Elizabeth Warren, and now they’re saying they won’t confirm anybody unless they change the rules.

I think the strategy, of passing it on to the regulators and not doing exactly what we did after the Great Depression with Glass-Steagall, following up on the Pecora Commission, was a mistake. I wrote an op-ed the other day, and one of the people who responded said it was a great op-ed, “but Kaufman sure is smug.” I try not to be smug, but I do think it’s important to point out that this is not something that I just woke up today and was unhappy about. You go back, and I’m perfectly comfortable with anyone going back and reading—if they could put together a committee and go back and go through all of my speeches on Dodd-Frank and check them for what’s true and what’s not true, and then check them on where I was right and where I was wrong, I would feel very comfortable with the outcome. Because during that whole process, I had a process that we developed in Senator Biden’s office, which was like Sergeant Friday from *Dagnet*, the old TV show, “The facts, ma’am, nothing but the facts.” Go out there and give them the facts as you see them. What I did on all legislation I dealt with, healthcare reform, credit cards, the stimulus bill, I would give a speech and usually had an op-ed that I submitted where I would lay out exactly what I expected to get out of this, in stark terms. And then at the end of the bill, I would talk about how the bill did based on where I was right at the beginning, and where I was wrong at the beginning, but basically how it turned out.

One of the things that came out at the end of the 111th Congress, I don't know who put it together, but someone put together how many speeches each senator had given on the floor, or days when a senator had given a speech. I was, I think, tenth in the Senate, which is impressive when you think that I gave that many speeches—not that they were good—but I gave a lot of them, because clearly the top four are the majority leader, the majority whip, the minority leader and the minority whip. So the first four spots are gone. Of the other 96 senators, I was sixth.

RITCHIE: Did you write most of your speeches or did you use your staff?

KAUFMAN: Totally collaborative process. I guess maybe now is the time to talk about the staff. One of the great things that I had going for me was a great staff. I had worked for Senator Biden for a long time. Most of the time we had good staff, sometimes we didn't, but by the time I was appointed, Senator Biden had been fortunate enough to recruit a number of people who stayed with him for many years. Some of them I had hired before—Senator Biden hired everybody, but basically I handled the hiring process—people who had been with him for a long time, starting with the legislative director, Jane Woodfin, who had been there for 15 years, in the Washington office. In the Wilmington office was Bert DiClemente, long time State Director, Norma Long who did scheduling, Tonya Baker, who headed the project work and Kevin Smith who worked Kent and Sussex Counties for years. Three of the longest and best serving staffers were Dennis Toner, Tom Lewis, and Terry Wright. Then good people had been attracted to good people, so the existing Biden staff was extraordinary. Part of hiring, you learned—I spoke a lot to congressional chiefs of staff and I was on the Congressional Management Foundation advisory board, and I would say, “If you are right 70 percent of the time you are in the personnel hall of fame.”

I was very fortunate, it was a great staff when I got there, and then the new people I hired, especially Jeff Connaughton, whom I had known for years, that was easy, he was just fabulous. Kathy Chung, who was my scheduling secretary, I said in the *Washington Post* that the single most important thing a senator can have is a good scheduler, and Kathy Chung is one of the truly great schedulers there. Someone who had been the First Assistant United States Attorney for the Eastern District of Pennsylvania, Geoff Moulton, who teaches out in Widener law school, came, and he was great. There was a whole bunch of people, so I really had the advantage of a great staff. It just made all the difference in the world. You get a great staff and the advantage is, one of the things is

they're very smart. Basically, hiring Senate staff is wonderful. The people you get to choose from are just remarkable, especially the number of people who were drawn into government by Obama. I was just a young person when John Kennedy came into office. I've heard the stories, but Obama had something like 250,000 applications and resumes in two weeks or something like that. So the quality of the people who decided, "I'm going to come to Washington and take part in this," was just great.

The way a great staff works, there are different models. My students ask me about what it was like to be on the staff and I say there are a number of different models. The two extreme models are one: "We're all in this together. I may not believe in 100 percent of what the senator believes, but I'm a staff person and I figure that if I move the ball down the field for the senator, that's going to move all of the issues, and there may be some issues I don't agree with." The other is: "I'm going to come and when I don't agree with the senator and I'm going to try to change the senator." Well, we were always in the first category, just because of who Senator Biden is—there wasn't a whole lot of movement. Anybody who wanted to do that, they'd better bring the biggest bulldozer they ever found. We always had a very cooperative staff. Then the trick is getting people whose basic approach is not, "What do I think about Issue X, pros and cons?" It's "What would the senator think about the pros and cons?" There's no way that a senator can stay in touch with everything that's going on in their office, but you do have good managers and they do understand what it is that you're trying to do, and they do it. That's the quality control part of the puzzle. I was very accessible. I used to get in at eight o'clock and leave at eight o'clock, so if somebody had any questions, a legislative correspondent or anybody else, they could come to me. I tried to be extraordinarily accessible on a regular basis with everybody.

What you learn on the Senate staff is you keep doing things over and over again. Every time you start a speech, you don't start with a clean piece of paper. You start with what the last speech was on this, and what that was all about. They've got records of what I said in the hearings, at the press conferences, and when I met with press. I learn a lot from meeting with the press, especially the financial press. I went up to New York a number of times and I met with everybody from Andrew Ross Sorkin to Gretchen Morgenson with the *Times*, plus people on Wall Street, in the exchanges, investors, mutual funds people, brokers, everybody. I learned a lot from the press people because they know what's going on. When I used to be on the Broadcasting Board of Governors, when I went to a country, one of the first groups I met with were the U.S. press people in

that country. I remember in Beijing, I landed and the first thing I did was leave the airport and sit down for lunch or dinner with a half a dozen reporters from the *Washington Post*, *New York Times*, *Wall Street Journal*, *Business Week*, Reuters, and say, "Guys, what do you think is going on in this country?" Before I met with the U.S. embassy, before I met with the Chinese government people or anybody like that, those were the guys I met with. When I went to Wall Street, the same thing. I'd want to meet with the press people at Reuters, of the *New York Times*, or Bloomberg, I would meet with them to find out, "What do you think's going on with the up-tick rule?" Or "What do you think about too big to fail?" "What do you think really happened with derivatives?" "Why do you think none of these people are going to jail?" It was very helpful, and staff would be with me all the time.

So speeches evolved. You don't just give a speech and then three months later write a new speech. You're developing all along that line. It's tough in the beginning when you've got to write the first speech. You sit with staff and say, "Okay, we're going to do this speech." As a senator, you are intensely engaged in that process. What happens in a good office is the fact that the senator is there is really positive because you now have a touchstone. You've got your compass. You know where north is. I say one of the hardest things about presidential campaigns is there's so many smart people involved. Even the most trivial decision, not just because people are turf conscious but just because there are so many different positions, it's hard to move forward. The advantage of being a senator is—it's like the Lincoln cabinet, everybody's got a vote, but if it's 11 to 1, and the 1 is the senator, I wins. That's the way it has to be. That's the way my office was. That's the way Senator Biden's office was. That's the way most senators' offices are. You listen back and forth, but in the end everybody knows who's the boss. So when you first get started on an issue, you are intensely involved in it, but as it goes on you can do more and more things. Okay, we're on the road on Issue X, and now it's just correcting as we go along. Now I can work on Y. So X is at stage 2, Y is at stage 1. Then X is at stage 3, Y at stage 2, now I can pick up Z. That's the way it works.

I read every speech before I gave it. There's a famous story, I don't know if it's apocryphal, but I heard it from so many different people years ago. There was a Senator [Joseph] Montoya of New Mexico. He got crosswise with his speech writer, and he was famous for not reading his speeches beforehand. He was giving a speech in his home state, New Mexico, and got halfway through the speech, turned the page and read: "You're on your own now, you SOB." So, I went over every speech before I gave it.

But the staff people I had were so smart, and so on the program, and so understood the role of staff that we maybe did 40 or 50 op-eds, and more speeches than any other freshman. The only way it could work was if you had really good people who understood the program. When you've got the arbiters helping you, like Halie Soifer, who I hired for Foreign Relations, was amazing Sherman Patrick, they were great. One of them traveled with me to Afghanistan, and Pakistan, and Iraq, all the places I went. They knew exactly what it was that I was doing. That doesn't mean that they wrote the speech totally. They put new things in it. It had to be their ideas in it, too. But they were so great that in every one of these areas I was able to turn out a lot of speeches and a lot of op-eds.

RITCHIE: When you picked up those extra two committees, did you also get additional staff for them?

KAUFMAN: No, I didn't. They were committees that didn't have staff. But it was not a problem. By the way, I was the first Delawarean to serve on the Armed Services Committee. The fact that I was on Foreign Relations and Armed Services was really helpful. They really compliment each other. The other committee that compliments that area is Intelligence. But I had a detailee from the Defense Department, a guy named Jeff Colvin, who was first class. He just went over and took Armed Services. The committee picked it up and it worked out very well.

[Interview interrupted by a report on the extent of the earthquake]

RITCHIE: I wondered with all the technical issues dealing with finances if you were able to tap into your own staff for that?

KAUFMAN: Well, finances, as soon as I began to see that I would be working a lot in the financial area, I hired John Nolan, who had worked on Senator Biden's staff, and then worked on the House bill and came over and worked for me. Then there was a fellow named Josh Goldstein, who was getting ready to go to law school. He came in and did a fantastic job. Again, the quality of these people was so high that we could do much more than I ever thought we would be able to do, and do it well, and without any foul-ups. In the press operation, Alex Snyder-Mackler had been Joe Biden's press secretary in Wilmington. He came down to be Communications Director, and then we hired Amy Dudley to be Press Secretary, and Ted Goldman; a great team. Amy is now the vice

president's assistant press secretary. Anyway, we just started out with a good base and then I was fortunate enough that the people I hired turned out well.

RITCHIE: When you spoke on the floor, did you get much feedback? Did people respond to the speeches you gave on the floor?

KAUFMAN: Yes, much more than I thought. It goes back to the question I've had to answer so many times. People say, "When I turn on the television to the senate, there's nobody there." Well, the floor is the place where you make the record. It's extraordinarily helpful to give a speech on the floor that you can then distribute to the press. Like right now, if I just wrote something and sent it around, well, you're a reporter and you get it, why would you pay any attention to that? If you know me, and the rest of that, that makes a difference. But most of the time you have to be at a venue. You have to be at the National Press Club, or you have to be at Georgetown University, or you have to be someplace in New York. But in the Senate, you just go on the floor and give a speech, and all of a sudden it's on television, it's out there, it's in the record. If it makes any sense, there's a good chance that the press is going to report on it. Now, since the federal government is so big and the Congress covers so much that what you have in the media are people who just follow certain parts of the government, which is kind of axiomatic, so you may give a speech on the floor and nobody is interested in it except that person on Reuters covering Glass-Steagall a year before Dodd-Frank comes out. But it's an incredible place to put down something on the record. The bad news is that if you say X and it turns out to be Y, you can't go back and say it was Y. That's the reason why people will use it. They can use it, and they can use it a year from now. A year from now they can go back and pick out the speech you gave.

One of the powerful things I had was—for instance, I did a number of speeches on high-frequency trading. High-frequency trading was a financial issue that I got involved in after following along on short selling and the rest of it. I began to learn about this high-frequency trading. It used to be there were two stock markets. All the stocks were traded in eighths, and you used to sit in a broker's office and watch the tape come across, up an eighth, down an eighth. Then what they did, I think was in '97, they went to a decimal. Digitization could move things much faster. Then NASDAQ [National Association of Securities Dealers Automatic Quotations] came on and more and more trading was done on computers so not as much trading was going on on the market floors. The people who started using computers to trade were the traders. For people who

wanted to invest, the big banks started investment banking operations and started hiring PhDs who developed algorithms that could take advantage of trades, and now we're up to something like over 50 percent of all the trades are these high-frequency trading, when they trade three or four thousand trades in a mini second. Ninety percent of the trades are canceled. No one knows what's happening. We've gone from two markets to 50 markets. Some of these markets are what are called "dark pools." There couldn't be a better word for them because we have no idea what's going on in those things. You can trade big money.

The high-frequency traders say, "We increase liquidity." To some extent, generally they have increased liquidity, which means that it's easier to make a trade. But nobody knows, because there is so much trading going on, and because the Securities and Exchange Commission and the Commodities Futures Trading Commission have not put in the equipment they need in order to monitor the trades. They don't know what's going on with these trades. There are all kinds of allegations that these algorithms allow them to see trades before other people see trades, they're working under that advantage. There is a lot of controversy about flash trading, or exchanges, where they are letting traders for an additional price see trades before anybody else can see them, which the SEC said they were going to eliminate, but they still haven't eliminated. There is a thing called colocation, where because you are dealing with high-speed computers, the shorter the time is that you can learn about the trade, the more you have in order to take advantage, or not take advantage, or decide to sell and buy low, or go into one market and buy and sell in another market, before other person gets to it. That's not all bad. That's called arbitrage. That's okay. But if you're using electronic means and colocation—what colocation says is, "I want my computer to be as close to the market computer as I can, because I can find out faster in the miniseconds that it takes for the information to travel if my computer is right next to the computer where the trades are being made. If the other one is down the street, I'll find out first." In these markets there are all kinds of incentives. Since there are fifty-some markets all trying to get business, there are incentives to those who trade in volume. It is a classic "rush to the bottom". It's alleged that some of those incentives give them an unfair advantage. There is a lot of anecdotal evidence that people who trade in the markets believe that these aggregate traders have advantages. Now, the reason why there isn't an uproar about it is that there is very little profit—there's like a penny on a sale or something like that, and most of these people who are engaged in it, it gets passed along to their customers. In the end, the person who is getting hit is the retail investor, the small investor.

My basic statement on this, which has never been challenged, and I've done the press and everything else, is that wherever you have a lot of change, and there's been massive change, from practically no trades by computers—in fact no trades at some point—to over 50 percent of the trades being high-frequency trading, trillions of dollars in trades, three or four thousand a second, so there's a lot of change. And if you have a lot of money in these things now, massive, amounts of money. And you have no transparency. No one knows. SEC knows some of the information, but they don't really know what's happening, and they admit it. They don't know what's happening in these things. Without transparency you cannot have regulation, therefore finally there is no regulation. That's what happened with derivatives. You had this massive explosion of derivatives, a lot of change, trillions of dollars. The U.S. government said, "You cannot monitor or regulate this." And the whole thing blew up. I'm just as worried about high-frequency trading.

On May 6, 2009, we had a flash-crash, which is a mini-crash. The market crashed 900 points in a very short period of time. There have been a number of minor flash-crashes since then. One of the things I've done is I've created jobs: When I started expressing my concern about this, the high-frequency traders got together and set up a high-frequency traders lobbying group, which is growing by leaps and bounds because so many people are involved in high-frequency trading. But it's very risky, to my way of thinking, with lots of money, lots of change, no transparency, and no regulation, it's very, very risky. I'm absolutely convinced that if we don't do something about it, there's going to be a major flash crash, not just a minor flash crash.

In recent weeks there's been a lot of volatility in the market, and I think the volatility in the market, to a large extent, is caused by three things. One is the high-frequency traders. Two is the market structure, so many more markets, and a race to the bottom between the markets. All the markets are trying to get this high-frequency business so they lower the rules and they give them advantages in order to get the business. And then finally there's the elimination of the up-tick rule and the allowance for naked short-selling. I'm absolutely convinced these guys again will come out and drive the market down, when they get the opportunity.

RITCHIE: You mentioned the lobbying group. There must have been some pretty intense lobbying by a variety of groups on these issues. What was it like being a senator during the lobbying campaign?

KAUFMAN: It was really easy because they didn't lobby me. Essentially, they knew I was a lost cause. I wasn't really lobbied by just about anyone. Goldman Sachs never came in and lobbied me. They wanted to come in a few times, but it was kind of half-hearted. Not even Senator Biden's office. First off, I was only there for two years, and they knew in two years they weren't going to turn me around. I wasn't going to change.

[Interview interrupted by a phone call]

RITCHIE: You were talking about lobbying.

KAUFMAN: Yeah, here's the thing about lobbying. Monitoring who comes into a senator's office to do lobbying, that's not what it's about. In my opinion, the real power is not what's happening in Washington. What's really grown is grassroots lobbying, or sometimes astroturf lobbying. For instance, cap and trade. Cap and trade was not killed, in my opinion, in Washington. Cap and trade was killed by a nationwide, very expensive media campaign. The same thing with healthcare reform, I don't think most of it was Washington lobbyists. It was run out of Washington. People understood the issues, and the back and forth. But what was really powerful, just like the "Harry and Louise" ad was big against the Clinton health plan—it wasn't as big as people thought it was, but that was more effective than Washington. The ads were out, and the one I saw and went "OMG" was a cap and trade ad which I can talk about later.

One of the great things about the Senate, as I said before, is knowledge, and every Tuesday we would have a meeting of the Democratic senators called the Democratic caucus, just about every Tuesday. The Republicans would have a meeting of the Republican caucus. And, every Thursday we'd have a meeting of the Democratic Policy Committee. Byron Dorgan ran that. He was in the leadership. They would have speakers come in and talk to us. A lot of times during healthcare reform we'd just meet as a caucus. I was interested in STEM education, and I think STEM education is important because that's where the jobs are going to come from. Bill Clinton came to the caucus and said that—as Bill Clinton can, nobody in my opinion can understand and articulate policy issues better than Clinton—Clinton said, "Science, Technology, Engineering and Math are important. The real challenge of this recession is not just coming back," he said, "but when you look back over the last 10 years, the vast majority of job growth in this country has come in housing, finance, and consumer products." And he said, "Because of the crash, unfortunately we're not going to need all the residential carpenters we've got

in this country probably for my lifetime. Finance is not coming back. And consumer products isn't coming back because people have started to save because they're afraid of losing their jobs. Where are the jobs going to come from?" I've been using that and I don't hear anybody coming up to me afterwards and saying, "Boy, you're really wrong about that."

Then we had a meeting and John Doerr came. I don't know if you know John Doerr, but he's from Silicon Valley. He's a venture capitalist, and he made gazillions, he was on the ground-floor of a whole bunch of big companies, Google, and I think, Yahoo! He said, "You know, the Internet was pretty big," and everybody laughed. "I believe that clean energy jobs will be three or four times bigger than the Internet. There is just a gigantic opportunity for financial development and jobs, so I'm investing heavily in this." I started reading about it and there's a lot of information out there. Some people say it's not going to be as big as they say it's going to be. Let me tell you something, it is the biggest thing I know of where there are going to be jobs created. This is a big thing.

Then we had a fellow named Shai [Agassi] who is an Israeli, who is developing an electric car—not just a car but a whole system. He gave a presentation and talked about how he was going to use just present battery technology on an electric car. The way he was going to deal with long-distance travel was instead of gas stations there would be things that would look like gas stations. You would drive into the gas station, and you would spend just as much time as you would at a gas station. They can't recharge your battery then, but they could take out the battery and replace it with a new battery and you can drive away. Then he was going to put charging stations, kind of like gas stations, downtown and also along the road. So if you have a 40-mile radius with an electric car, you could drive down to work, 35 miles, plug it in and come out at the end of the day and drive home, and you'd be covered. You can imagine how many jobs that would create if you had to have all those new batteries, and all those new gas stations. That is a big economic development thing. He said he had been working with people in China, and in San Francisco. So I was like, "Okay, the guy must know something about what he's doing."

The great thing about the Senate is you meet all these world leaders. Not long after that, maybe a month and a half later, there was a delegation from China, a defense delegation, and they had luncheon with some members of the Foreign Relations and Armed Service Committees. I sat next to the chief aide to the leader of the delegation.

The guy I was sitting next to was pretty important himself, because he was on the State Council in China, which is what really runs China. So we were talking back and forth at lunch and I said—no leading question—“What are you doing about electric cars?” He said, “Oh, we’ve got this great program, we’re going to have these cars with batteries and you’re going to set up stations on the highways . . .” He went on to describe Shai’s system. Now, I don’t know if it’s going to work the way Shai thinks it is. I don’t know whether it’s going to work the way John Doerr does, but my basic approach is that’s where jobs are.

One thing that Doerr said was, “You’ve got to have a price on carbon.” He said, “This is a free market, but if people are allowed to continue to use carbon fossil fuels with impunity, and pay no price for it, we’re not going to be able to compete. Because we’re not going to have certainty. When we build a plant, we have to plan on that will be oil and gas prices do not crash in price. We need a carbon tax on oil and gas. A lid on how much emissions you allow. And that’s going to help create jobs for the middle class in new environmentally sound industries.” He convinced me. I don’t know what the exact thing is, but we’ve got to have a tax on pollution.

RITCHIE: Of course, that was part of the energy programs that Jimmy Carter was promoting in the 1970s.

KAUFMAN: Exactly. Oh, cap and trade was invented by the Republicans. It was a market-based reform. It’s really funny, it’s the same thing with healthcare reform, we signed onto their market solutions. A lot of people think we should have gone straight with healthcare with single-payer, and fought for what we believed in, but we get caught in the middle and alienate everybody. That being said, I’m at home one day, and I don’t watch much television at all, mostly sports events. I’m watching some sports event and this ad comes on. There is this nice middle-class looking guy. He looks at the camera and says, “You know, I just don’t understand Washington. Here we are in recession and they want to tax our electric utilities. And you know the utilities are just going to pass it on to me, and that means I’m going to have to pay more for electricity. I don’t know what Washington is doing. Fight the tax on electric utilities.” That’s how they killed the carbon tax and cap and trade.

This whole system of public relations firms has built up. The amount of people who are being hired and paid for, who are smart and dedicated, to stop any kind of

regulation of the finance business could fill rooms and rooms and rooms. The other problem is, on the other side there is nobody. One of my Duke Law colleagues, Kimberly D. Krawiec, did a study on lobbying of the SEC. She found that 93% of the lobbying was done by Wall Street and other financial institutions and 7% by the AFL and other public interest groups.

When I used to go up to Wall Street, it reminded me of the inner city sign, "No Snitch." Tee shirts. They'll tell you off the record, "I'm really glad you're doing something about the up-tick rule." "Well, why don't you say something?" "Oh, I can't say anything, they'll come after me." Or "It's really great about what you're doing about high capital standards, but I can't say anything about that. I can't get my bank mad at me." So you have this incredible imbalance in the war for information. It isn't just the Heritage Foundation and Cato versus Brookings. It's just millions of dollars that are being poured into college campuses, hiring people, hiring academics—I don't think any of the academics are necessarily prostituting their ideas, but if you've got five academics and one will write that high-frequency trading is a good idea and four of them won't, which one gets the funding? There's nobody funding studies that say high-frequency trading doesn't work, there's nobody funding them, zero. There's nobody funding studies on the fact that we should do something about too big to fail banks, there's no money on that.

There's one operation in town, called Better Markets, led by former Dorgan staffer, Dennis Kelleher where they are trying to do something about controlling regulations, but that's like three or four million dollars against hundreds of millions of dollars. And that's just the battle over the regulatory agencies. There was an article in the paper not too long ago that the Commodities Future Trading Commission's lobby is usually empty, but since Dodd-Frank passed it's full. It's not full of people arguing against Wall Street, it's all Wall Street folks. It's just a totally one-sided fight, and these regulatory agencies are required to go through process. In fact, I saw one ruling of the SEC was reversed by the courts because they didn't do enough process. Well, when you send in a whole bunch of very smart attorneys, they're going to make it very difficult for the regulatory agencies to work. That's what I think is going on.

By the way, with the *Citizens United* decisions allowing corporations to pour unlimited funds into races, now it's about campaign financing, which I think is really scary. Up until now, I think it's been much more about grassroots public relations,

change people's attitudes at the grassroots, then have them come back to their member of Congress and tell him.

RITCHIE: One of the things about Glass-Steagall was that it created two separate entities, commercial banks and investment banks, and they used to each have lobbying operations against each other. So when they first proposed repeal of Glass-Steagall in the '80s, there were a lot of securities lobbyists who were opposed to the deal because that meant that commercial banks were coming into their territory. Once they merged, you lost the countervailing force.

KAUFMAN: Yeah, they were countervailing forces.

RITCHIE: Even the senators from New York used to take sides with either the banking or securities interests. Senator [Alphonse] D'Amato filibustered against repeal of Glass-Steagall in the '80s and then as chairman of the Banking Committee in the '90s he tried to get it enacted.

KAUFMAN: A wonderful place, isn't it? Washington is a wonderful place!

RITCHIE: When you mentioned cap and trade, I thought you might want to talk about your environmental initiatives in the Senate.

KAUFMAN: Yes, and since I wasn't on the committees, and was so tied up with everything else, most of my environmental work was built around Delaware issues. I think you could say my votes were pro-environmental. I was for putting a tax on pollution and the rest of those kinds of things. But the big things for me were the National Wildlife Refuge System, and trying to build that up. Delaware is an important part of that. I was involved with White Clay Creek. When I was on Senator Biden's staff we got the DuPont Company to put up a whole bunch of money and we set up a way to protect White Clay Creek, and we got together with Pennsylvania. I wanted to make that the Wild Clay Creek into a National Wild and Scenic River. So that was another piece.

I had a big fight with Philadelphia on dredging the Delaware River. My understanding is that most rivers that are boundaries between states, the states split it right down the middle. Not the case here. Delaware controls the entire Delaware River bed. The Port of Philadelphia, primarily, but some other ports up the Delaware wanted to

go in and dredge the Delaware deeper to allow bigger ships on up the river. In order to do that, our position was—before I came—that the Natural Resources and Environmental Control office in Delaware had to determine the impact on the environment. They took quite a while to decide what they were going to do, and the Army Corps of Engineers went ahead. Senators [Robert] Casey and Specter from Pennsylvania had a section of the appropriations bill with money for dredging the Delaware River, clearly not something that I wanted to do. So I went to Senator Inouye and introduced a proposal to eliminate that, and I was successful.

One of the interesting things with Senator Specter, who I hold in the highest regard, we used to ride back and forth on the train together. Talk about someone who does what they think is right, it's Arlen Specter. But after I did that, Senator Specter came to me. He was upset with me because I had put in my amendment and I hadn't told him and Senator Casey. I said, "We're friends, but if I remember correctly, you and Senator Casey and your staffs never contacted my staff to tell me you were originally putting in for the dredging, so I figured that you would see what I was doing in response." It was just one of those great little things between two senators. You talk about civility, we just talked it through and came to resolution. If the Senate was like they say it is, he would have been shouting at me and I would have been shouting at him. I like Senator Specter and I think he's smart as hell. Anyway, that's how it worked. But then the Corps of Engineers said they were going to go ahead and do it even though we stopped the funding. It was one of those bureaucratic situations that went back and forth.

RITCHIE: How was it resolved?

KAUFMAN: I don't think it was resolved until this day. I don't think they've started dredging yet. I haven't read about it.

RITCHIE: You were also interested in wind energy.

KAUFMAN: Yeah, and I worked with the University of Delaware. Delaware put in a gigantic wind mill down at Lewes, on the Lewes Campus. I had worked with Blue Water, which is an outfit that wanted to build a wind farm off the coast of Delaware in the Atlantic, which is an ideal place to build it because the shelf goes out so that you don't have to dig so deep, and there's a lot of wind. So I worked on that and tried to get that done. That's turned more into a business problem than a regulatory problem. That is,

that the state got NRG, which is our local power company, and Blue Water to join together, and now it's a problem of finance. But I believe that alternative energy, clean energy, is really the place for the jobs. As Doerr said when he was here, the good news is that all these—he made a list of wind, geothermal, and all of these things that were growing. He said, “The bad news is, we're not in the game.” Something like one of the top ten companies in each one of these things, we have one, maybe two corporations, so we have got to get the government involved in helping do this. There was money in the stimulus bill, the Recovery Act, to help develop energy.

RITCHIE: I would think any Atlantic Coast state would want to take advantage of wind energy.

KAUFMAN: Well, especially here. There are places where you just can't do it. On the West Coast, from what I understand, there aren't as many good places, but right along here it's ideal. Of course, Google is putting in this [undersea power] spine that's going to run down the coast. One of the problems is there's great places where you can develop a lot of energy, but they are far away from the places where you need the energy. The beauty of this thing is you're right next to the user. They're going to build a spine that runs down here so that you can get the energy in from the windmills easily. There is a loss as you move it, the amount of energy degrades.

RITCHIE: You also got involved in offshore oil drilling as an issue.

KAUFMAN: Yeah, I did. My basic approach is no offshore drilling, especially off the Atlantic Coast. Basically what happened was the president came out in March 2010 with a plan where he wanted to open up the Atlantic Coast and the Gulf of Mexico to offshore drilling. My approach is that just doesn't work. My approach was that the risk of drilling off the shore is just too great. This was before the big oil spill. I wrote a letter to Interior Secretary Ken Salazar that said the problem with drilling off the coast was the fact that you could have a spill, and really for Delaware, tourism is a major economic factor, so I'm opposed to drilling off the coast unless someone convinced me that we could do it an absolutely safe way and not have any risk. That was my position. Then I signed on—I remember Secretary [Ken] Salazar called me on that. He said, “I think we can protect Delaware.” I said, “If you can protect Delaware, it's up to the state. But I am absolutely opposed right now to drilling off the coast of Delaware.” And then when BP [British Petroleum] hit, talk about having made the right argument! I had no idea that it

would happen this quickly, but it really helped in term of slowing this down.

My argument with BP was really, it's an engineering argument, it's the same argument that people say we don't need to regulate Wall Street because it's going to cost too much money. The cost of the meltdown was trillions of dollars, and you're talking about nickels and dimes you're going to save on regulations. That's the same thing with offshore drilling. We don't know what's going on on those drilling platforms in the Gulf of Mexico. We don't know if there's another piece of equipment that's bad.

One of the big things that really concerns me for the country is regulatory capture, where the regulators are being captured by the industry, and no one was worse than the offshore drilling agency in the federal government, where you hired people from the oil business to oversee it. It's clear that they didn't try to get independent employees. . It's clear that all kinds of inducements were made to people not to regulate the platforms. There wasn't really inspection of these things. So I'm not for opening another well off the coast until we know that it is truly safe, that somebody other than the people that gave us BP are out there inspecting it. And I have no trust in the—I mean, talk about outrageous, when you read about the programs—and this is not just anecdotal evidence or something you hear on the Internet. This in fact was documented by the Congress, that the program to deal with a spill, they just took the one they had for the North Sea and put it in a different binder and passed it in for that. There was no real planning if in fact you have a spill. But even more important to me is there is not enough protection in terms of inspection. Every house in America, before it is sold, you have to go in and have an inspection. But nobody is checking to see if the batteries are working on the offshore drilling platforms. So that was my argument on that.

RITCHIE: Was there much of a debate in the caucus over this? Because you had the senators from the oil-producing states.

KAUFMAN: Oh, yes. Senator Landrieu and Senator Menendez had a really great little back and forth on that, on the liability caps. Oh, no, this issue is not a party issue, this is a regional issue.

RITCHIE: I suppose it almost doesn't matter who it is, if you know senators are from a particular state you know what position they are going to take.

KAUFMAN: That's true. As I think has been mentioned several times, where you stand is where you sit. If you're from Louisiana and you're concerned about jobs in Louisiana, therefore you want the drilling to go forward. If you're from New Jersey you're worried about tourism jobs, so you're more interested in making sure there aren't any spills.

RITCHIE: I'm curious about the debates that take place in the party conferences. How much does that influence what goes on on the Senate floor?

KAUFMAN: Well, it depends. One of the great things about being in the Senate was the caucus, where the senators meet and talk about issues. It was one of the high points of my entire time in the Senate. One of the great surprises to me, which I didn't really appreciate when I was chief of staff, because I didn't spend that much time around senators when they were just senators, but they are very funny, good to be with, thoughtful, whether you're having dinner with somebody, just the two of you talking about anything, or standing around, five or six people on the floor talking. It's a very unusual environment. You are in an environment where you are scheduled from morning to night. But the Senate is the Senate, so it doesn't work the way your schedule wants. If they decide to put three back-to-back votes at two o'clock in the afternoon, you're basically on the Senate floor for a while. You may go off to make some calls, but you find yourself for a period of time together on the Senate floor, and they are just good company, all of them.

The caucuses, every Tuesday you get together. We met in the Mansfield Room. All of the Democratic senators come. We hear from the historian, which is always interesting. Then Harry Reid has the agenda. If there's a big issue, like healthcare reform or Dodd-Frank, that will take up a big portion of it. It's just a great break in the day. It usually takes about two hours. There's two kinds of senators, ones who find a chair and sit down and stay there for the entire term of the congress, and others that each week move from table to table working the crowd. I would sit. I used to sit between Jon Tester and John Kerry. Senator Inouye used to sit at our table. Mark Udall. Kay Hagen a lot of times. Jay Rockefeller for a while.

It was so interesting, I didn't follow it, but there was a period where—I don't know if it was just a coincidence or not—but Senator Kerry and Senator Rockefeller used to sit at our table and there was a lot of back and forth between the two of them. They're

both enjoyable people to have a lunch with. I can remember when someone was kidding Senator Rockefeller and told the story about some senator who was on a Codel, a congressional delegation trip, and Senator Rockefeller was standing there with an attache case. Somebody said to him, "Why are you bringing the attache case? What's in it?" And Rockefeller said with a deadpan, "Cash." When we had the clean energy debate, Senator Rockefeller was from West Virginia and Senator Kerry was pushing hard for clean energy. I think Senator Rockefeller said something that Senator Kerry didn't agree with. All of a sudden, Senator Rockefeller wasn't at the table anymore. But that was the exception, we just had a great time. And as I say, it was great for a break in the day.

The same thing for the floor. Senator Biden told me early on, in 1973 when we were talking about senators, he said, "There's a reason why every senator was sent by his state and if you spent a long enough time with them you'll see it." And it's true. A guy like Jim DeMint, who I don't agree with on just about anything, Senator Kerry had a dinner at his house for the Foreign Relations Committee and I sat next to Senator DeMint for an hour and a half to two hours and I enjoyed our conversation. He's from South Carolina and my sister teaches at the University of South Carolina. So I just found one of the real pluses of the Senate was the members. They talk a lot about "my good friend" and all that, but it really serves a purpose. One of the big things that you learn in the Senate is that politics does make strange bedfellows. You may be fighting with someone one day and the next day seeking his support. Senator [Mark] Warner and I were working together on this high-frequency trading and the same day that we gave a speech together on that he gave a speech opposed to Brown-Kaufman. One day you may be in favor, the next day you may be opposed. It's important to maintain good relations. But they're just affable people. Essentially they are people who enjoy other people and want to be with other people. They've had incredible experiences.

I told you earlier that at the Senate spouses have a dinner every year. One year, I sat at a table with four conservative Western senators and their spouses, and they started talking about rodeos, and it was just fascinating. I had been to some rodeos, but they started talking about the politics of it, and how you handled it, and it was absolutely fascinating. Mike Enzi is a senator from Wyoming whose office was right across the hall from me. He had just gotten reelected and he was talking about the fact that every weekend he goes home and travels around Wyoming. I said, "Well, it must be nice to get home to Gillette every weekend," that's where his home is. His wife said, "No, we only get to Gillette once a month." He said, "We fly to a portion of Wyoming, we go around

that district, and then we fly back to D.C.” This is a guy who has just been reelected. He’s not doing it for reelection. That’s the way he views his life. When you talk to senators, you find out what makes them, and it’s nice in a very busy day to take a break with some interesting people and stand around and talk.

I had met Sherrod Brown when I was traveling with Joe Biden, when he was running for vice president. We had a bus for two days through Ohio. For a lot of that time, Sherrod Brown, who I had never met, was on the bus. Sherrod Brown is like Paul Simon, he’s written a lot of books, and he just knows everything about everything. One day I was on the floor when the up-tick rule was on my mind. He’s on the Banking Committee, so I went up to him and said, “Hey, Sherrod, I really think we ought to do something about the up-tick rule, that they removed it.” He looked at me and said, “What’s the up-tick rule?” I started answering, and then I started laughing and said, “You mean there’s something you don’t know something about, Sherrod?” One of the other senators said, “Come over here, come over here, there’s something Sherrod doesn’t know about! Sherrod doesn’t know anything about the up-tick rule.” [Laughs] I said, “This is incredible, Sherrod!” He’s kidded me about it ever since. It’s just small things, but we’ve all had experiences where you work with somebody and you just enjoy seeing them.

It wasn’t just my party. John Barrasso is the other senator from Wyoming. He was originally born and raised in Reading, Pennsylvania. God, I just really liked him. We got along together. I enjoyed seeing him. Senator [Mike] Johanns, Senator Risch, they’re just good people. I used to go to the prayer breakfast from time to time and would see them. One of the things that was great was I liked going to Mass once a week. I would go on Sundays but then go to daily Mass once in a while. My basic feeling is I like to go someplace where you can say “do unto others as you would have others do unto you,” and nobody laughs. “Be your brother’s keeper,” and all the rest of that. I’d go to Mass and Senator Voinovich would be there a lot of times, Senator [Sam] Brownback, who was a convert to Catholicism. They are just a good group.

Especially having Tom Carper as a colleague—I said my greatest accomplishment was making Tom Carper a senior senator. Tom Carper is a wonderful public servant and a great elected official. He was treasurer for many years. He’s been elected in more elections than anyone in Delaware history and I’m sure he’s retired the trophy. He was our treasurer, and I knew him back then. It was 1974 and he was getting his MBA at the University of Delaware, and he was working as treasurer for a really

great political science professor, who has died in just the last few years, Jim Soles. Jim was running for Congress against Pete DuPont and lost, but made a good race, and Tom was his treasurer, so I met Tom there and then Tom was picked to run for state treasurer. He wasn't even at the convention, he was down at the beach. We didn't have a candidate. It was supposed to be a sacrificial lamb. We got Tom and he ran and won time and again, then Senator Biden and I helped talk Tom into running for Congress against another good guy, who I've become good friends with and a big supporter, Tom Evans, who was a congressman and former chairman of the Republican National Committee. Tom Carper ran against him and got elected to Congress. Then in 2000 he ran against incumbent Bill Roth, another great senator, so much integrity, so smart. He went to Harvard law school and Harvard business school and was chairman of the Senate Finance Committee. But Tom is just a wonderful person.

One time he was at the prayer breakfast and said something that I'm sure he won't mind my repeating. He went on and on about the Golden Rule, doing unto others as you would have them do unto you. And I want to tell you, after he said that—that was about 2009—I could not think of a single case where that wasn't evident in his behavior, as I remember back and from that moment on. He's just remarkable, and he's indefatigable. He gets a lot of respect from his colleagues, and is just a wonderful person to work with.

RITCHIE: How closely do two senators from the same state coordinate?

KAUFMAN: Oh, it varies all over the lot! Oh, my God, and it doesn't necessarily have to do with being from the same party. And in fact, being from the same party sometimes can be a problem. It can be tough to be from the same party, because you're both trying to go after the same constituents, so it varies a lot. A lot of times there's back and forth on the staff level. For instance, there's going to be a post office that's going to open up. You've been working to get the post office there, and you want the credit, but the other senator wants the credit, so there's always this credit problem, which frankly always is harder on the staff than on the members. When Senator Biden first came in and was there for a while, I was having some problem keeping the staff focused on the fact that we weren't opposed to Senator Roth, even though we were Democrats and he was a Republican.

Senator Biden called a staff meeting and said, "There is one person in the state of

Delaware that I know I'm never going to have to run against and that's Bill Roth. It's a firing offense for anyone here to not cooperate with Senator Roth and Senator Roth's staff." So we had a wonderful relationship. But the Delaware delegation, we've always had it great—they call it the Delaware Way. We always get along, with Congressman [Mike] Castle, he's a Republican, and Senator Tom Carper and me, for the two years I was in, a lot of the press releases were joint press releases. But there are also a lot of stories in the Senate, when I was there, of two Democratic senators or two Republican senators that just really, really didn't like each other and were quite open about the fact that they didn't like each other.

My favorite was North Dakota, Kent Conrad and Byron Dorgan, Kent Conrad married Byron Dorgan's chief of staff. Now, that's pretty close! So as many different senators and states there are, there are that many different approaches. But Delaware has a long tradition of cooperation. When it comes to issues that help Delaware, there is no party division.

RITCHIE: That makes a lot of sense.

KAUFMAN: Well, a lot of these things make sense, but they don't always happen. Now, the caucus is a place where you go for strategy. The whole time, for the two years I was there, there was a real battle in the caucus on how we should proceed in one regard. The leader and a lot of the caucus believed—and both of these things make sense—that we needed 60 votes and what we needed to do was how we get our 60 votes. At several periods during that time we needed a Republican, at least one or two Republican votes, for instance on healthcare reform, on Dodd-Frank. We went through a lengthy process on healthcare reform. We had the Gang of Six and they met, three Republicans and three Democrats, they went on and on and on. One of the reasons in the end, in retrospect, why healthcare reform turned out to be so unpopular was that for a long period of time, for about six months, we were trying to make a compromise, therefore we were not saying anything bad about what the Republicans were doing. The Republicans were just beating the mortal devil out of us. Even at the end, we went away on the August recess. Mike Enzi and Chuck Grassley were both on the gang of six committee and there were reports in the press about Enzi and Grassley just ripping us apart on all kinds of things. We came back to the caucus and there was a move afoot to reconstitute the Gang of Six. We were saying, "Whoa. Why do we want to reconstitute the Gang of Six?"

Then we went through the whole argument about the public option. There was an argument that what happened on healthcare reform was that when the numbers of people who disapproved of healthcare reform started to go up, Mary Landrieu and a number of those who were more moderate said, "Look, we've got to do away with the public option. We've got to get the independent." Bernie Sanders got up, and said, "Wait a minute. If you look at why our numbers are going down, it's not because the moderates are turning away from it. It's because our people are turning away from it." He said, "If you're out there and 65 percent of the people—not just the Democrats—think we should have a public option, and you're opposed to the public option, and another 60-some percent are opposed to taxing Medicare benefits, and we're for taxing Medicare benefits, that's why the numbers are going down." That's what Bernie said, which I think turned out to be true. I remember one survey, it was like 42 percent in favor of healthcare reform, this was near the end, and 46 percent opposed. But of the 46 percent opposed, 17 percent were opposed because they didn't think it went far enough.

So there was this constant battle about what should we do. One of the reasons why we passed so much legislation was because the leader kept us to the 60 votes. The problem was, some of us in the caucus were concerned about the quality of the legislation. Clearly on Dodd-Frank, there was a lot of concern about that. But also on healthcare reform, that we should have had more of the Wyden-Bennett things in it, we should have had maybe the public option and the rest of that in. See, what happened was, the Republicans would load it up. There were loads and loads of ideas on healthcare that the Republicans put in, especially during the HELP Committee mark-up. I think there were 245 Republican amendments, so there were plenty of Republican ideas in there. In fact, the "death panels" on which we got beat up terribly, which had nothing to do with death panels, that provision was introduced by a guy I worked with a lot and liked a lot, and that's Johnny Isakson, who I think it's fair to say would describe himself as a conservative senator from Georgia. He put it in. It had nothing to do with rationing, but we got killed on it, and it wasn't our provision.

We had a number of arguments about what the strategy would be. There were a number of us, more and more as the year went on, who said we should put forward a bill that's a Democratic bill and if we don't get it passed, that's okay. It's better for us to pass a good bill—and obviously that was my concern and a lot of concerns about Dodd-Frank. I said, "The Republican negotiations have got to be stopped." About in February 2010 I got up at a caucus, this was when there was a jobs bill up. I got up in the caucus and said,

“We’ve got to stop these negotiations with the Republicans at a certain point. It’s like Lucy and the football. They keep promising on healthcare, Dodd-Frank, jobs bills, they keep saying ‘Let’s just negotiate a little longer.’ Meanwhile, they’re beating us up, and time is going, and we’re taking their amendments, and they end up not voting for it.” On the stimulus bill three Republican senators voted for it. One of them was Specter who became a Democrat. Healthcare reform it was zero. Dodd-Frank, they voted against it.

So the argument I made, and it wasn’t just me, it was a number of senators, was that we ought to just put the bill up and do it. We actually tried it on a bill. We had a jobs bill that was proposed—everybody said we want to do a jobs bill. Senator Baucus, who was chairman of the Finance Committee, who carried those negotiation, came to the caucus in March and said, “I’ve sat down with Senator Grassley and we’ve come up with a compromise bill on the jobs that is not just going to create jobs but it’s going to have a whole lot of other things in there, tax extenders and the rest of it.” This is what the Republicans did—they would negotiate and then they would beat us up for putting all these other extraneous things in the bill. You could just see it coming again. The caucus just erupted. “Look, we need to do just a jobs bill.” The White House had come out and said they endorsed the Grassley-Baucus bill before the caucus had even seen it, so people were pretty upset about that. They said, “Let’s just go with a bill that eliminates everything else and creates a job bill.” My good friend Sheldon Whitehouse put out a Lucy cartoon, with the Republicans promising to hold the football. We actually passed the bill. We picked up five Republican votes and it passed.

Harry Reid wasn’t leader when I was on the Senate staff, but man I’ll tell you, in terms of putting things together he did an absolutely incredible job. That’s the only reason why we passed so much legislation. He did it. I remember on the healthcare bill, we got down to the end and he literally educated himself on all these issues, figured out where the compromises were possible, where we could make it work. He’s a truly great legislator. But there were a number of us in the caucus who thought that just like the jobs bill we should put the public option in there and get the Republicans to vote against it. It’s really extraordinary the number of Republican candidates for president, and pundits on television, and senators, who have called the healthcare bill “socialism.” It may be a lot of things, but it doesn’t even have the public option anymore. They basically took the talking points for the Hillarycare bill, which wasn’t socialism either—socialism is when government controls the factors of production, that’s a public health plan, that’s what they do in England. Which, by the way, my daughter who has had three children in

England thinks the English system is great. I do, too. It's mostly done with midwives and they actually come to your home. It's a much better system than what we have. Socialism would be if all the hospitals were owned by the government and all the doctors worked for the government. We've gone the other way. We've got the worst of all worlds. We've got this crazy system we have now that's based on insurers, but yet lots of the American people call Obamacare "socialism." So maybe we should have stuck with the public option.

I definitely think we should have stuck with Brown-Kaufman Amendment to Dodd-Frank, if we had put back Glass-Steagall, if we had done what a majority of Democrats think, and if we had gone with some of the bipartisan issues, like on healthcare reform, if we had really implemented Wyden-Bennett—We passed a lot of legislation, and there was an ongoing fight over should we have stuck more to our guns on these issues and maybe not passed quite as much legislation. Although there were those of us in the caucus who thought we could have passed the same amount of legislation, it would just be better.

RITCHIE: Was Senator Reid essentially trying to find the center of the caucus, to get everybody on board?

KAUFMAN: No, what he was doing—that's kind of it—but he was trying to get the 60th vote. His strategy always was that. I can remember after we had had this debate for the entire two years practically, we were all the way at the end, I can't remember what the issue was, and Sheldon Whitehouse got up and gave an impassioned plea for us sticking to our guns, and Harry said, "But, Sheldon, where are we going to get the 60th vote?" So even after all that discussion, it was basic approach.

RITCHIE: The problem was that nobody on the other side wanted to be the 60th vote.

KAUFMAN: That's right, but the point is for a long time we had enough votes. We had 60 votes. And really the moderates drove it. The Ben Nelsons and the Evan Bayhs and the Joe Liebermans. When I first came, Jeff Connaughton and I were having this conversation and Jeff was saying, "I can see what's happening. We've got 60 votes. The key to success in this Congress is going to go to the moderates. You ought to be a moderate so you can get to say what's in these bills." I said, "Geez, but I'm not a

moderate." Jeff said, "Yeah, that's good." But Jeff was right on the strategy, it just would not work for me. I'll never forget when we were doing the stimulus, they had a group of moderate senators who were sitting down and talking about the stimulus. I went to my first meeting and it was being run basically by Joe Lieberman and Susan Collins. There were about 14 or 15 senators and they were talking about \$200 or \$300 billion. I came to the second one and Susan Collins said, "We just can't support a stimulus over \$300 billion." We had a \$2 trillion hole in the economy. Even \$800 billion wasn't enough to fill that hole. I sat there and I thought, now I've got three courses of action here: one, I can go along with them; two, I cannot go along with them, and then tell them what I think; or I can walk out. And I walked out.

I imposed what Vice President Biden used to call the "Disraeli Rule." There was this famous story that a new member of the House of Parliament came to Disraeli and said, "Mr. Prime Minister, do you think I should speak tonight in the House of Commons?" And Disraeli said, "Better people wonder why you didn't speak than why you did." That has really helped me over the years. Many times when I've been getting ready to say something in public or on TV, I think its better they wonder why I didn't speak than why I did. So I got up and walked out and that was the end of Ted Kaufman, Moderate.

One of the things that I found when I first came to the Congress, and teaching about it, is that you have to understand how compromise works. You have to understand about logrolling. I'll help you on this bill if you help me on that bill. You understand that people in particular positions can exert influence on a group, because I need Sam, or Mary, or Harry's vote, and they say, "For my vote I want this, that, or the other for my district." That's part of the process. Bismarck was right, neither sausage- nor legislation-making should be seen in public. It's a very messy process. I did find that after 30 years my ability to see the larger good was slowly disappearing. Several deals went on during the Dodd-Frank bill—this was in the newspaper, so I'm not saying anything out of school—Senator [Scott] Brown just sat with Massachusetts' banks, so when it came to capital requirements, they're determining what the capital requirements in the Susan Collins amendment was because the Massachusetts Brown said, "I won't vote for it unless you do it." And of course the agreement with Ben Nelson and Medicare, and ethanol being put under the Agriculture Department instead of Energy. You see that stuff and I can understand why people get upset. But it is the legislative process and it's always going to be like that. As long as you have a democracy, you're going to have to

do it.

I just felt that I had done enough. My 35 years of participating and trying to deal with it was enough. But it was disturbing. As I said earlier about civility, sometimes you'd be more upset with the Democratic senators than with the Republican senators. But when the Democrats are in control you're trying to get the 60 votes, and if you're 59 or 58, or if you're 52 and 53 and you're not doing a filibuster, you can do it. It looks a lot like extortion. I just wasn't into it. It's interesting how different senators take different approaches. What I supported—there was a discussion early on about the filibusters, how do you get the 60 votes? Someone in the caucus, who had been on the House side, said that Tip [O'Neill] had a rule that on procedural votes you voted with the caucus. On the Substance of the issues, nobody could put pressure on you, but on procedural votes you voted with the caucus. I thought we should institute that rule. When it came to a vote on a filibuster, if you didn't want healthcare reform that's fine, but you had to support the caucus on cloture on a motion to proceed to healthcare reform bill and things like that. I really think that was the way to proceed, but there were a number of senators that whenever there was a filibustered bill was they had some deal that they wanted to make to make it go. But it's a lot like our criminal justice system. If you don't have compromises you're not going to move forward. Therefore you have plea agreements and all the rest of this kind of thing. And it's just not pleasant to watch. It's just like sausage. It's better if you don't have to see it being made.

RITCHIE: I'm just noticing it's about 20 to 4:00. We have a lot more to talk about, especially filibusters. Shall we pick it up there tomorrow?

KAUFMAN: Sure. Maybe we could talk about filibusters, but I'd also like to get through this list of legislative issues. I think we pretty much got through restoring confidence in government, and I think we got through clean energy and the rest of it, STEM education. We could do a little bit on that. Healthcare, I don't know whether we want to do any more than we've done. We did the transition. I want to talk about impeachments, and obviously want to talk about Supreme Court nominations. Defending America's national security, that's the part. Maybe we ought to start with that before we do the filibuster tomorrow. Defending America's national security and defending human rights are the last two items on my list. I think that will probably be good. And then I think we've pretty much covered the issues—oh, and the other one is federal workers.

[End of the Sixth Interview]

Photos from top to bottom:

Senator Ted Kaufman with the Dalai Lama, and Senators John Kerry and Harry Reid.

Senator Kaufman in a military helicopter in Afghanistan.

With Senators Carl Levin and Jack Reed at a shura, a meeting of local Afghani leaders.

