

LIFE AFTER THE SENATE

Interview #9

Thursday Morning, September 27, 2012

RITCHIE: I'm glad to see you again. How has life been after the U.S. Senate?

KAUFMAN: It's been great. Being in the Senate was a fabulous experience. It was just a great experience, but at my age I had already spent fifteen years getting the rhythm of my life more contemplative, slower. I had begun to learn how to look at things in more detail; five miles deep and an eighth of an inch wide, instead of looking at everything an eighth of inch deep and five miles wide. I worked hard during those fifteen years. I still worked many of those years for sixty to sixty-five hours a week. But I was in control of my schedule, and I did try to get to the more contemplative side of my life. Of course, that all went out the window starting with the press conference where Ruth Ann Minner announced that she was going to nominate me. Obviously, that all went in a cocked hat from thereon in.

When I started they asked me, "What do you think you can accomplish?" I said, "I can accomplish a lot because I'm going to try as hard as I can. I'm going to try everyday to get things done," which in fact I did. But it was intense. I came home at night bone tired. But it was clearly one of the great things in my life. My family loved it. Lynne loved living for two years in Washington. It just worked out. It was such a great experience. But at the same time, after I left people ask me a lot of times, "Are you glad to be out?" Or "How are you doing?" If I say right off the bat—and I learned this right away because literally hundreds of people have asked me the same question—I say, "Oh, no, I don't miss it." They immediately say, "Oh, I know, because it's so terrible down there." I say, "No, no, that's not it." It has nothing to do with that. It's a lot like when you go to college. High school was great but you don't want to go back and do it again—at least I never wanted to do high school again. That's the way the Senate was. It was a fabulous experience.

I have a good life. I'm teaching at the Duke Law School. I was the initial co-chair of the STEM education council for Delaware for a year. We got it up and running and worked on how to increase science, technology, engineering, and math education. One of the reasons I never became involved in lobbying is because I wanted to continue to help Joe Biden and not be conflicted. It has been great to help him over the years, but

also to work with Hunter and Beau. They have turned into smart, accomplished men and have unlimited futures. It has been wonderful to continue to work with the Vice President, and stay involved with Beau and Hunter. In addition, I've been writing a column every week in the Gannett paper here in Wilmington called the *News Journal*. And I'm spending more time speaking, reading, thinking, and writing. Most important of all is spending time with our children and grandchildren, who are spread all around. So it's turned out to be a good time.

RITCHIE: You were teaching before you were a senator and now you're teaching afterwards. Did the experience of being a senator affect the way you teach your class?

KAUFMAN: Not really. It does give me a new unique view of the Senate and the government. Being in the Senate, working the Senate for twenty-two years on the staff, knowing the senators, knowing the staff, knowing the process from a Senate staff position was important, but equally important was that I had been teaching since 1991, for twenty-some years, about the Senate. I think I brought to teaching a bigger, more strategic point of view. The students are great. They don't dwell in the weeds. They don't *know* the weeds! You get really good discussions on broad questions. So I don't think being a Senator has changed it pretty much at all. Clearly, I think, the students probably listen to me a little more because I've been a United States senator. But it hasn't changed the way I teach or much of what I say.

RITCHIE: You mentioned that you had Johnny Isakson come to speak. Have you had any other senators in your class?

KAUFMAN: Oh, yes, I had a great class with Senator John Barasso, who I like a whole lot. I don't agree with John on just about anything, but I like him a lot. He's a medical doctor and a very smart guy. He came and spoke to the class, and while he was there—we were in the Senate Foreign Relations Committee room—Senator John Kerry came by. He wanted to give me a picture of the Senate Foreign Relations Committee that I served on with a nice note from him on it. He stayed for a while and we had this wonderful experience for the students of John Kerry and John Barasso together, each one talking about, in close proximity, what their views were on the priorities of the country. The students found it amazing. I wish everybody in America could have seen it, because the students came away, when we did the debriefing on the whole day that we spent on

the Hill, came away feeling that number one, John Barrasso's position was exactly what he believed, and John Kerry's position was exactly what he believed, that John Barrasso reflected the views of the people of Wyoming, and John Kerry's views reflected the people in Massachusetts. This was not about politics. This was not about some ulterior motive. This was just the way they actually believed. It is so counter to what is in the popular culture about how politicians make their decisions.

Wherever I go, there's one thing that just about everybody believes to the bottom of their being. People with high school education or people with a Ph.D., and everybody in between, they absolutely, totally believe that the only thing that elected officials care about is reelection. The *only* thing. They think it is all about partisan politics. Every decision they ever make is because they are trying to advance their political objectives. It's very, very discouraging. My students come with the same opinion. When you read the media, that's always their take: John Boehner has never had an idea that wasn't based on how to move the Republicans forward. He never had a principled position about taxes. None of them do. Harry Reid, Mitch McConnell, Nancy Pelosi, none of them ever took a principled position. What I try to say to them is just counter to what people believe.

I met a man the other night at a party who wanted to talk about this. He absolutely, totally believed that what we need is more statesmen and stateswomen. We need to get rid of this polarized partisan politics. I said to him, like I've said to so many people, and so many of my students, "Do you believe senators have big egos?" He laughed. They don't want to embarrass me, so they don't want to say it. I said, "Let's just stipulate that senators have big egos, because they do." CEOs have big egos. Cardinals in the Catholic Church have big egos. The Archbishop of Canterbury has a big ego. You just can't get to those positions without having a lot of self-confidence. So say there have big egos. In order to believe what the media tells us—that is all they care about is reelection, you have to believe that someone with a large ego goes through running for the United States Senate; kissing babies, raising money, going through the whole process of running for office, and then when they get elected they come and they sit down at their desk and they say, "Okay, bring me the polls because the only thing I'm going to do here is exactly what the people want—what will get me reelected." I said, "That just doesn't pass the reality test." The problem is that they absolutely believe it, and it's totally corrosive to any kind of decision in DC.

As an example, if you pick up your paper when we start dealing with the fiscal cliff in the Lame Duck session, you are going to find anything members of congress do on the cliff attributed to straight partisan political reasons. In fact, I believe, what separates Democrats and Republicans is not that they're randomly selected to be a Republican or Democrat, it's the positions that they believe, and they genuinely hold these positions. That is really what drives it. Is there politics involved in this? Absolutely, positively, there's politics involved. But the main driving force is what these folks believe is the right thing to do.

RITCHIE: The *Congressional Record* can get pretty thick with people standing up and saying what they think. And they're doing it all during the entire Congress.

KAUFMAN: Exactly. But when you see what the media writes—again, every single story, when you get to the fiscal cliff, every single story, the *New York Times*, Fox News, CNN, if you pick up anything at random, a transcript or the paper, it will say: “John Boehner, in order to make the Republicans appear to be more reasonable, has decided to do this. . .” Or “President Obama is doing this because it's totally about partisan gain.” I think Obama was great on healthcare reform when he said, “Well, one thing everybody should know is I didn't do healthcare reform because it was politically popular.” [laughs] I mean, that's really great for him. That's one thing he points to right off the bat, and says, “Hey, look, if I was only interested in getting reelected, if I was only interested in partisan gain, why would I ever have done healthcare reform?”

RITCHIE: We spent a lot of time talking about the healthcare reform before, and since then the Supreme Court has weighed in, in a rather surprising way. [*National Federation of Independent Business et al., v. Sebelius* (2012)] I really wanted to get your reaction to that decision.

KAUFMAN: You know, one of the things that Joe Biden talked about a lot—he talked about it in his farewell address to the Senate, and I've talked about it in this oral history is that the secret to civility in the Senate is built around a reluctance to question other people's motivations. This is a good rule for life, but it's especially true in the legislative process. You don't *know* what people's motivations are. When you question their motivations, you may be right sometimes, but if you are just wrong once it ruins your relationship for ever. So it's just not a good idea to question people's motivations. I cannot question John Roberts' motivation. I don't know why the Chief Justice did what

he did.

Let me say this: Before that decision came down, I told everybody who was interested in an ex-senator's opinion on these things, that I thought the only chance—when you look at the decisions that this court has made with Roberts as Chief Justice, they all are, in my opinion, pretty much based, the big ones, on a business oriented Republican ideological position, whether you look at the *Citizens United* decision or you look at *Gore v Bush* or even look at some of the antitrust decisions that they've made. I've talked about this a lot. I've asked these questions at both the Sotomayor and the Kagan Supreme Court nominations. I questioned them about business. This is a very business-oriented court, the five Republican justices. I said, "If you look at that history of this court, you have to believe that they are going to overturn healthcare reform because that's what business wants and that's what the Republicans want, and it's pretty strongly felt." Again, not for political reasons, just because they are Republicans and that's the way they believe. I said I thought the only chance the president had to turn this around, which is what he did when he told basically everybody two months before it happened, he said, "Let me tell you guys on the Supreme Court one thing. If you make this decision, and you overturn the individual mandate," which by the way was invented by the Republicans—it was invented at the Heritage Foundation, the idea of an individual mandate, it was not a Democratic idea—"You invented it. You're the ones that pushed for it." It was in order to bring Republicans to support healthcare reform that the individual mandate is even in there. There were no questions at hearings raised about the individual mandate, The concern about the individual mandate was something that was constructed after the thing had passed. There was a point of order raised by Senator [John] Ensign about the individual mandate, but it was right at the end of the healthcare debate, it was not in the main part of the debate. And then afterwards, a group of people came up and said, "Oh, the individual mandate. That will sell politically. That's what we're going to push." And they believe it, too.

What President Obama said to the court—he said it on television—was: "Look guys, if in fact you do this on top of your other decisions, you are going to become the most political court in history. And if you think that I'm going to let you off the hook if you do that, you're making a big mistake." Essentially, it was a clear message to the Chief Justice, "Hey Chief, you want to go down in history as turning the Supreme Court into an ideological political machine, you just go ahead and vote on this thing." I don't know if that's why Roberts did what he did. I think putting it at a noble level; I think he

did want to protect the legacy of the court. I think it would be perfectly rational for him to want to protect the position of the court as not being political. But whether that's what moved him or not, I can never say. If you predict something is going to happen *because* of a certain thing, and then it happens, it's a very rare human being that doesn't attribute why it happened the way you said it was going to happen. So I think no one will ever know—unless Chief Justice Roberts writes about it. But I felt at the time that Obama made that statement, for which he got a lot of criticism from Republicans, that it was the smartest thing he could do to try to move this thing, to try to get the healthcare bill approved by the court.

RITCHIE: It was sort of reminiscent of Charles Evans Hughes and Franklin Roosevelt. It was one way to take the court out of the political arena.

KAUFMAN: Yes.

RITCHIE: Otherwise it would have been a huge issue in this campaign.

KAUFMAN: Yes, but more than this campaign. If the president of the United States decides he's going to make you the issue, you're going to be the issue! [laughs] One thing though is that on the court cannot respond. So you're just going to get pilloried, if in fact you make that decision. I think that's part of Roberts' calculus. He also knows, and one of the reasons why this may well is *not* what motivated him, he knew that he was going to get pilloried by the Republicans. He knew that people were going to attribute this move, as many observers have, his motivation being one of just not wanting to see the court declared a political court. But as I said, I don't know why he did what he did. But that could be the reason. That's the reason that makes the most sense to me, because again on every other big, important issue, this court had gone on Republican ideology. Again, not because of political gain, but because that's the party they belong to and that's the party they're beholden to, and that's what they believe.

RITCHIE: I've been a little surprised that neither party has made much of the Supreme Court in this campaign so far. Clearly, this election is going to determine the future direction of the court.

KAUFMAN: Oh, this is going to be so huge. But one of the things about this campaign is, and I'm kind of partial to Vice President Biden, but he's done the best of

anyone saying “This is not a campaign for the next four years. This is truly the campaign for a generation.” This is the most important campaign in terms of where the country goes in my lifetime, because it’s so clear now that the Republicans and Democrats have such an incredibly different view of where we should be going in the future. All one had to do was look at the Democratic convention and the Republican convention. Nothing else, just that. You could see how dramatic the difference is. There are so many issues that the Supreme Court is really one of about a hundred issues where what’s going to happen is going to be vastly different. But I agree with you, I think it’s one of the biggest because it will solidify the court—if [Mitt] Romney gets elected, he has said that he is going to put on more people like Scalia and Alito and Thomas. It used to be Roberts too, but they don’t mention Roberts anymore. [laughs] He’s going to put on more people like that. Then when you have five, six or seven justices all with a strong ideological bent for a long time—and he will pick young justices, as has been done in the past—you will have twenty or twenty-five years where an overwhelming majority of the court has the same ideological bent. That’s one if not the biggest demonstrations of the fact that this campaign is not just about the next four years.

RITCHIE: By chance, I was in front of the Supreme Court when the decision was handed down. I had to go down First Street, and I recognized a lot of Senate staff out there with placards on both sides. It seemed to me that everybody was absolutely astonished, genuinely astonished when it finally filtered down as to what the court had done.

KAUFMAN: I think it’s going to be that way the day after the election. I think Election Day this year, after it’s over, whoever wins, people will be truly shell shocked. One of the things that I’ve been able to do over the years is remember better than many people how something actually happened. My favorite quote is: “Never underrate the ability of the human mind to rationalize.” Most people don’t lie, they just want to get to a certain place, and with enough time and push they can rationalize it. That’s the tough thing about being an elected official. You can’t rationalize because your vote is there in public forever. Trying to change it is very difficult, as Governor Romney is finding out. John Kerry found it hard in his race against George W. Bush. People sometimes don’t anticipate the actual outcome of an event and what it’s going to be, but this one is going to be a big one. Because of what’s been said and the clear difference about where the country’s going to go.

I went to the Democratic convention and it was just wonderful. First, I got to see a lot of people I hadn't seen in a while. But also so many people got up and said what I believe about the future of the country. Especially when the vice president got up and spoke, and the first lady, and former President Clinton, and then President Obama, it was great. What's interesting about it—I don't know if you noticed the Nielson ratings—but they said the single most watched speech was Vice President Biden's, which made me feel good. I thought he gave a great speech. When it was over, because I had not watched much of the Republican convention, but I had seen some, and I had seen the reports on it, it was like, for me, "Oh, my goodness, we've got to win this one," because they're convention really pointed out to me how dramatic the difference was.

I'm a partisan Democrat, but I'm a Democrat because I agree with most other Democrats on the issues, not because I want to wear a jacket that says "Democrat" on the back. It's just that I find that I agree with Barack Obama. I agree with Vice President Biden. I agree with former President Clinton. I agree with the first lady. I agree with [Julian] Castro, the mayor [of San Antonio]. I agree with Jennifer Granholm [former Governor of Michigan]. I agree with those folks and I don't agree with—although they are good people—John Boehner, Mitch McConnell, Mitt Romney or Congressman [Paul] Ryan. I really do hold them in the highest respect, but I just don't agree with them. If you're in my position, or if you're in a position on the other side—I have friends who are very strong Republicans—this is going to be an incredible wrench when on the day after election day you find that the country is going to go in a very different direction than where you want it to go. I think it's going to be more of a wrench for the people who lose than for the people who win. Because when you realize that the country is going to go in a very different direction, Supreme Court justices, plus positions on just about everything, it's going to be a real wrench.

RITCHIE: Well, everyone is waiting for the lame duck session this year because there is so much unfinished business. There's a sense that people are going to look at the election returns and that will determine how cooperate they are and where they are willing to compromise.

KAUFMAN: I think there's going to be a change. I wanted to spend a little bit of time talking about what happened during the two years I was there with regard to gridlock. I've said repeatedly that after I had been in the Senate for just two or three months, especially when I presided and listened to senators on the floor, watching what

happened to the stimulus bill it was clear to me that the Republicans had decided that they were not going to cooperate with the president. I hypothesize that there had been a meeting, right after Obama got elected that went something like this: Mitch McConnell and John Boehner went to their caucuses and said "Look, folks." These are principled people. They really care about the country and they really care about what they are doing. They look and they see that there are 60 Democratic senators. Obama has won by a big number. Democrats have the majority in the House. They say, "What do we do when we're faced with this situation. Obviously, we're going to get steamrolled on everything. If you really care about what we care about, this is going to be a disaster. How do we mitigate this? How do we turn this around?" Because the Republican party was in deep, deep trouble.

I thought at the time what they decided to do, and I said this for most of the following year and a half when asked that I hypothesized that at that meeting, whenever it was, not having known about the meeting or anything about it, that I think that Mitch McConnell proposed to the caucus: "I think what we should do is go with the 1993-94 strategy. What Newt Gingrich did in 1993 was say that "the Democrats have controlled the House for forty years. They control the Senate. They control the presidency. The best thing that we can do for two years is just try to lock everything down. Stop everything. Just try to throw sand in the wheels." Not because they wanted to throw sand in the wheels. Not because they were bad people, but because that's the only way they were ever going to get the House of Representatives back, and get the Senate back, and the presidency back, all of which came true. "Because what will happen is, even though we're throwing the sand in the gears, the Democrats control Congress and the presidency. They're going to get the blame for nothing happening." That's basically what Mitch McConnell and Boehner, I think, sold their caucuses.

The stimulus bill was really the last bill where we got any Republican support. We did get some later on, but not on healthcare reform. Susan Collins, Olympia Snowe, and Arlen Specter all voted for the stimulus bill, that's how we got it passed. Of course, Specter became a Democrat. Snowe and Collins, who I have great respect for, never once voted again with the Democrats on a major bill. My understanding from scuttlebutt on the floor, and talking to them, is that they were just treated like pariahs in the Republican caucus, because the Republican strategy was not to pass anything. The reason I raise this again is because there's a book out [Robert Draper, *Do Not Ask What Good We Do: Inside the House of Representatives* (New York: Free Press, 2012)] that

says that in 2009 that's essentially what was decided by the Republicans in the Congress at a meeting the night of the inauguration. And then early this year Mitch McConnell actually went on the record and said, "Our number one objective is to defeat Barack Obama."

The other thing I think McConnell said at that meeting, was "Look, folks, if we were going to beat Barack Obama four years from now, one of the best ways to defeat an elected official, contrary to what the popular perception of the American people is, is to have them renege on a campaign promise." People think politicians don't keep campaign promises. They couldn't be more wrong. Most politicians sit down on the first day they get elected and say, "What were my promises and how are we going to implement them?" That's what we did in Senator Biden's office, and that's what I did when I got in the Senate. He said, "What is Obama's number one promise?" More than anything else it was Obama saying, "I'm going to bring a new atmosphere to Washington. I'm going to reach across the aisle to Republicans. It's not going to be the way it was before." I think McConnell said, not to be funny but "One thing we can do is we can stop the president from being able to deliver on his number one promise." And it's worked out beautifully. In 2010 they won the House back. They really reduced the number of Democratic senators. And they really messed up Obama's number one issue. One of the things that they've run on since then is that Obama promised it and didn't deliver on it. I think that's what happened.

The best example of all, which has been repeated time and again, but still bears repeating one more time because I was shocked when it happened, if you go back and look—when I really knew this had happened was the president was ready to propose a commission to look into deficit reduction, Simpson-Bowles. The Republicans in the Senate blocked that from being passed. But then, a commission proposal came forward that had been cosponsored by seven Republican senators, good senators, and when the vote came up they all voted against it. That was a clear indication to me that they were not going to vote for anything that might help Obama. These were principled senators who took principled positions, but there clearly now was a strategy for them to regain power when the seven of them voted against it, and then turned it over to the president to appoint the commission, which they voted against before that. In my mind, this clearly was the nail in the coffin of the chance to negotiate.

One of the big fights in the Democratic caucus during the two years I was there,

especially the last year, was between those in the caucus who believed that the Republicans were never going to compromise. They were never going to compromise on healthcare reform. They were never going to compromise on Dodd-Frank. In the end, they were all going to vote against it. But we kept on negotiating, negotiating, negotiating. I think that's one of the reasons why healthcare reform is held in such low regard by so many Americans, because for six months Republicans just beat the immortal hell out of "Obamacare". The Democrats, in order to try to get something passed, held their fire. Then there was the Gang of Six, –I remember Republican Senators Grassley and Enzi, who were among the three Republicans and three Democrats who were trying to negotiate these things, went home for the August recess, we got all kinds of reports that they were out there in their home states of Iowa and Wyoming just beating the hell out of the healthcare bill. And we came back and Chairman Baucus wanted to reconstruct the Gang of Six. We were in the caucus saying, "You've got to be out of your mind!" We stood by on this, but it was clear they were just going to beat us up. They were going to try to destroy the healthcare bill, which is what they did. I think now that that's been passed, there's a survey out today saying that 73 percent of the American people believe that healthcare will not be repealed. If this campaign has done one thing it's at least put in people's minds what we'll lose if in fact they repeal healthcare. You don't hear very many Republicans still talking about healthcare.

RITCHIE: It's been noted that even people who are opposed to the healthcare bill have their over 21-aged children continuing on their health insurance policies and have already taken advantage of some of the sections of it. There are lot of pieces of it that are popular, they just don't like it as a whole.

KAUFMAN: Well, not only that but there's nothing you can argue in the alternative. The Republicans have been saying, "This is bad, we're going to repeal it." There was no way to push back on what happens if you repeal it. When they saw the 26-year-old provision, where children can stay on their parents' health plans until they are 26, but the most popular part was not allowing insurance companies to withhold coverage for preexisting conditions. If you didn't have everyone in the healthcare system, if you didn't have the individual mandate or some reason to get everybody in the pool, as was articulated beautifully by Governor Romney when he was governor of Massachusetts, why it's important to have everyone have healthcare, and why the individual mandate was essential. Those of us who didn't like the individual mandate would rather have something else where everybody had to be involved. There are a lot of different ways to

do it, but the individual mandate was a Republican way, and we were trying to get their votes. That's why it was in. But you can't have protection against preexisting conditions, which is really what most Americans I meet like best about the healthcare bill. But it only works when everybody has to buy insurance, because why would anybody buy healthcare insurance if they knew that if they got sick they could go to an insurance company and then sign up for healthcare and save all those costs they were paying in the interim before they got sick. I think when it got argued in the alternative, people began to realize, "Wait a minute, life is a matter of alternatives, and this healthcare bill has a lot of things in it that really are good that I want, and there really is no other way to get there." A lot of the things that have been said by Republican members of Congress really don't hold together if in fact you repeal healthcare reform.

The final piece is that—the American people don't talk about this, but I talk about it—anybody who thinks that if we failed to pass healthcare reform this time, any politician, any president, would ever touch healthcare reform again until the healthcare system totally collapses around our ears, after a popular president with 60 votes in the Senate and a big majority in the House finally got it passed, and then it was reversed, is fooling themselves. If it is repealed, we're not going to revisit healthcare until—and it wouldn't be long time—the whole healthcare system falls down. There are a lot of people in the Democratic caucus who believe that if that did happen, the kind of silver lining to all this is that we would go with a single-payer program like most countries in the world use, which would really be better for most Americans and would reduce the cost for most Americans. But if in fact the healthcare system is falling down around our heads, public opinion, single-payer, a lot of the options that Democrats wanted but didn't put in the bill in order to get Republican votes, could occur.

RITCHIE: When you look at it, it's been an issue in American politics since the 1940s, when it was first proposed.

KAUFMAN: Yes, and look, when we had what they called Hillarycare in 1993, we needed healthcare reform, but after that was defeated no president touched it for 16 years. President Obama got so much criticism at the time he proposed it, but even more criticism after it passed: Why did he ever bring up healthcare reform? Didn't he realize that politically it was going to cause gridlock? In fact gridlock was caused long before he got to healthcare reform. But one of the things that was great for me was sitting in those original transition meetings in Chicago after the election, talking about personnel

and what the policies should be. The president at the first meeting when they talked about issues said, "We're going to do a stimulus bill for the economy and jobs, we're going to do Wall Street reform and we're going to do healthcare reform, and hopefully, something about energy policy. I think people in the room thought sarcastically, "Oh, yeah, we're going to do healthcare reform," because there were a lot of folks, John Podesta and Rahm Emanuel, who had been in the Clinton fights and didn't want to do this again. Then we came back for the second meeting and Obama said, "We're going to do this, this, and we're going to do healthcare reform." He came back to the *third* meeting and he said, "We're going to do this and healthcare reform," and they said, "Wait a minute." He is serious, "We're doing healthcare reform."

This was a personal decision made by the president of the United States, President Obama that was incredibly courageous. I think when history looks back on him it will be an incredibly positive thing for him. And I think it's kind of a *prima facie* argument for the fact that he doesn't do everything political, I heard him say: "Nobody can argue that I did healthcare reform because of politics. You may think I'm interested in politics, but what was I thinking about doing healthcare reform if all I cared about was politics and the election?" It's an excellent argument. It also goes against what I told you earlier, the idea that all these politicians think about is reelection. Why would Barack Obama ever have embarked on healthcare reform if all he was concerned about was reelection? What past presidents have done when faced with this kind of thing was say, "Let's wait till our second term." I think Bill Clinton deserves a lot of credit for bringing it up in his first term. But you go back and look at most of the presidents, who raised this, raised it in their second term, not their first.

RITCHIE: When you were in the Senate, the stimulus was a big issue, getting the economy going again. In the last two years the national debt has been the driving force. How much do you think that's changed the equation about how people are thinking?

KAUFMAN: Well, the debt was a big issue day one when I arrived in the Senate. I was actually shell shocked. I went and presided over the Senate and Republican Senators would come down and talk about the debt. This was after President W. Bush, with help from republican senators blew up the debt,—the CBO said when he was elected we would have a surplus at the end of eight years, and we had a \$10 trillion deficit instead, because Bush supported massive tax cuts, two wars, and prescription drugs

without any plan to pay for any of it. The debt increased during the Bush administration, but in 2009 the Republicans talked about the debt and they worked the debt. While the debt is not an issue that usually resonates with the American people, it resonated this time. That's why I think, in retrospect, 20/20 hindsight, we all made a mistake, and President Obama made a mistake, because he never made the Keynesian argument that we needed a stimulus. He basically made the argument that "I have the votes to do it and we're going to do it." But he never really pointed out the fact that there's "good" debt and there's bad "debt". What he did, and one of the reasons why I think he took such a hit on the stimulus was, he was basically saying "Deficits are bad." And I know he knew deficits are bad because we had talked about it in the transition. He knew he had to do something about the deficit. But he said deficits are bad and then he announced this \$800 billion program, which the media then completely screwed up by every story saying that healthcare reform was going to cost \$800 billion, when in fact healthcare reform would generate a \$130 billion surplus, according to the Congressional Budget Office, which Democrats and Republicans look to. Sure, it was going to cost \$800 billion, but we were going to generate a trillion dollars work of offsets so that it would be the second largest reduction in the deficit when it reduced it by a \$130 billion over ten years. The American people say, "Well, he says deficits are bad, but here he's proposing to spend \$800 billion." The media just deserves so much blame for this. Every story—at least every one that I read—said that healthcare reform cost \$800 billion. It didn't increase the deficit by \$800 billion. The cost is \$800 billion, but the offsets are a trillion.

But the debt was a big issue and they pushed it. So when we came to the stimulus people said the deficit is bad, but then proposed the stimulus. The stimulus was good debt and in the end reduced the deficit. I used to go around Delaware giving a presentation on the stimulus and I'd say that on the month before the stimulus passed we lost 725,000 jobs, which was the bottom. After the stimulus was passed, we never hit that again and went just about straight up to actually creating jobs. I think that the Obama administration created 4.6 million jobs. This all started the quarter the stimulus passed. The Dow-Jones industrial average hit bottom in the month we passed the stimulus bill. After that, it went up and is the process of getting close to setting new records. The production index hit bottom and started up the quarter we passed the stimulus bill. Now, you have to believe that this is the greatest coincidence in the whole world that all these indicators went up after we passed the stimulus bill or you can believe that Keynesian economics in this case worked. What this did was prime the pump, which was my argument. We had a two trillion dollar hole in our economy. If we just left it there, it

just would have stagnated. What we had to do was fill up at least \$870 billion. Clearly, it would have been better if we had a trillion or a trillion and a half, but folks that say we should have had a bigger one didn't understand that we were incredibly lucky to get the \$870 billion that we got because the Republicans didn't want any of it. Ideologically they didn't want any of it, but also it was part of their gridlock strategy. Clearly, the reason that the economy held tough and it didn't do worse than that was because of the stimulus bill.

I can remember about a year and a half later when the stimulus was running out, I was on the squawk box with CNBC and there was an economist there saying—and this is amazing because this Wall Street economist said—and a number of them said it, I've got a newsletter from Merrill Lynch and they say it—essentially, “Look, the public sector did their part. They passed the stimulus. It's now time for the private sector to move forward.” Basically at that time the banks had two trillion dollars worth of assets they were holding that they could spend. The corporations had a couple of trillion dollars and they were just sitting pat. The idea that the corporations and the banks lacking the stimulus would have done anything is ridiculous; we would have just spiraled down.

I think if you look at what is going on in England, where the Tory administration, the Conservatives came in and [Prime Minister David] Cameron convinced them to not go with a stimulus and in fact cut back, or if you look at what's going on in Greece or Spain, all of them by cutting back have hurt revenues and in fact increased the debt. So it's clear to me that the stimulus was an incredible point. The other thing about the stimulus was how little waste there was. It's absolutely incredible there was so little fraud and waste. I think the Obama administration deserves a lot of credit. The vice president, who headed it up, Biden deserves a lot of credit for the fact that we laid out \$870 billion and very, very little even arguments that there was fraud. I think there was incredibly small amount of fraud for putting out so much money in such a short period of time.

RITCHIE: And a lot of infrastructure was built as a result.

KAUFMAN: A lot of infrastructure and a lot of stuff that helped us on energy. The fact is that we were spending a lot of money on energy in the stimulus bill. There was a lot of money in there to encourage doctors and hospitals to put in more computers, more technology. There were a lot of things in that bill that turned out to be useful. It

wasn't just infrastructure. It was the things we all believed in, the Democrats believed were important, and that is the government has got to spend money on R&D. The federal government has got to spend money on infrastructure. The federal government has got to spend money on training. The federal government has got to spend money to encourage innovation. Everybody understands that, but somehow again this is a partisan divide. Republicans basically think government should be smaller. Some of the things they want to cut are education, training, innovation, infrastructure, which would be a disaster for this country. If we don't have better educated citizens we're not going to be able to compete in a global economy, if we don't have the people who are trained to do the jobs that need to be done, we're not going to be able to compete in a global economy. That's just a partisan difference of opinion. It comes out of, not of any meanness or anything; it just comes out of the idea that Republicans basically think that's not what government should be doing. I don't know who they think should be doing it if the government doesn't.

RITCHIE: Well, one of the arguments lately is that there actually are jobs to be filled, but the unemployed can't fill those jobs because they're not trained to do them.

KAUFMAN: Yes. Usually there's one and a half jobs for every person who's out there looking. Today there's like five people for every job. So there are always going to be mismatches. The problem is partially a mismatch, and that's the reason I worked so hard for science, technology, engineering and math education, because that's where most of the jobs are that we cannot fill. So we have to do that. That's always a problem. The bigger problem is there just aren't enough jobs.

RITCHIE: A criticism that comes from the left on all of this is that the Obama administration has put so much effort into economic and financial recovery that it didn't do enough in terms of financial reform.

KAUFMAN: Clearly, the person who's kind of the poster child for this argument is me! I think when you look at what I said on the floor, and if you follow what the financial press said, even now, that the one senator along with Sherrod Brown, the senator from Ohio—we had the Brown-Kaufman amendment to slim the banks, along with Carl Levin and Jeff Merkley, who were the champions of the revised Volker Rule. I have some real differences of opinion with the administration and with Secretary of the Treasury Geitner about how we should proceed. If you want to read more about it there

is a number of books out there where they talk about my contribution in this area. Arianna Huffington has a book where she talks about this a lot. A guy named Jim McTague talks about my approach on high-frequency trading in his book “*crapshoot investing*”, and a guy named Scott Patterson wrote a book about *Dark Pools* that talked about it. Neil Barofsky, who was the inspector general for the TARP, wrote a book called *Bailout*, where he says a little bit about what I’ve done. And then my former chief of staff, Jeff Connaughton wrote a book called *The Payoff*, where he pretty much documents my concerns about this.¹ But there’s a lot in the popular press, a lot in the *Financial Times*, the *Wall Street Journal*, the *New York Times*, about my position on financial reform, which I’ve talked about earlier in this oral history.

RITCHIE: Do you think the moment has passed for that or is there still a chance to instrument more reform measures into the mix?

KAUFMAN: No. One of the things, and I don’t know if I mentioned it before but I think it’s worth mentioning twice, my argument was that the Senate should make bright-line rules, Glass-Steagall, Brown-Kaufman, slim the banks down, you should be able to be a commercial bank and be in Wall Street investment banking. That’s what Glass-Steagall was about. The Volker amendment was an approach to that, and the Merkley-Levin Amendment, which was never voted on, was an approach to that. But in retrospect, Glass-Steagall is really what we need. I’ve said in the *Record* and I’ve written in my columns in the *Huffington Post* and the *News-Journal*, that we’re going to get Glass-Steagall. It’s just a matter of how much damage we do before we get there.

One of the things it does is demonstrate why we should have bright-line rules coming out of the Senate, like the Pecora Commission did after the Depression. In the 1930s they wrote Glass-Steagall, and that’s what we should do because one of the big

¹Arianna Huffington, *Third World America: How Our Politicians Are Abandoning the Middle Class and Betraying the American Dream* (New York: Crown, 2010); Jim McTague, *Crapshoot Investing: How Tech-Savvy Traders and Clueless Regulators Turned the Stock Markets into a Casino* (Upper Saddle River, N.J.: FT Press, 2011); Scott Patterson, *Dark Pools: High-Speed Traders, A.I. Bandits, and the Threat to the Global Financial System* (New York: Crown, 2012); Neil Barofsky, *Bailout: An Inside Account of How Washington Abandoned Main Street While Rescuing Wall Street* (New York: Free Press, 2012); and Jeff Connaughton, *The Payoff: Why Wall Street Always Wins* (Westport, Conn.: Prospect Press, 2012).

reasons was that regulatory agencies are great at regulating, but it's a very difficult process to really write the rules. They can write rules, but they can't write the law. There's an old saying that good fences make good neighbors. If we had given the regulatory agencies good fences they would have been able to handle it, but just for instance this whole idea of commercial banks and investment banks, which everybody has decided is a big problem, we passed the Volker Amendment. Well, you know, the Volker Amendment says that banks should not be involved in proprietary trading and I've said repeatedly that trying to figure out what's proprietary trading takes you back to the Middle Ages when they were debating how many angels can dance on the head of a pin. What was demonstrated how this was going to go, one of my colleagues at the Duke Law School, Kim Krawiec, did a study. She went back and looked at all the contacts between individuals and the four regulatory agencies, the FDIC, the Fed, the CFTC, and the SEC, that 93 percent of the contacts with the members of those commissions or their staff was made by the following groups: 1) Wall Street banks; 2) accountants for Wall Street banks; 3) lawyers for Wall Street banks; 4) trade associations involved with finance and Wall Street banks. They were the only ones who had the money to hire the people to go after this thing, and they spent a lot of money on this, \$50 to \$100 million. There is no money on the other side. The 6.5 percent who contacted the agencies that were not tied up with Wall Street banks, half of that, 3 percent, were Senator Merkley and Senator Levin and their staffs contacting them. The other 3 percent were consumer groups and unions. Again, if you want to read more about it, Kim Krawiec wrote something about Joe the Plumber.²

Remember, after the regulatory agencies get through propounding the rules, the Circuit Court of Appeals can still say "You didn't do enough cost-benefit ratios and we're going to turn you down." In fact, the DC Circuit Court has done that. So when you've got 93 percent of the people contacting you in favor of an issue, you have to be careful what you're going to write, if you want to write it, that the DC Circuit Court doesn't say you didn't listen to what other people have to say.

So, no, I think we're going to have to go through another very difficult period, unfortunately, in the financial system. The banks now are too big to fail. Everyone knows they are too big to fail. They're going to fail. What's in the bill will not protect

²Kimberly D. Krawiec, "Don't 'Screw Joe the Plummer': The Sausage-Making of Financial Reform," Duke Law School Working Paper.

them because there are no rules on resolution of these major banks across country lines. Right now we're over three years into the Lehman Brothers failure and bank receivers are still playing with that because there are still some creditors. The idea that Citibank or J.P. Morgan Chase could be resolved without the taxpayer having to step in, it's not supported by just about any of the major economic thinkers. A number of members of the Fed have pointed out the problems with it. I think we're just going to have to go through another bad patch before we have to do it.

RITCHIE: When you talk about the lobbyists, for years the financial industry had lots of lobbyists but they were divided between the brokers' lobbyists and the bankers' lobbyists, so there was an internal competition. I remember during the first discussions of repealing Glass-Steagall, the banks were all in favor of it and the brokers were all opposed. There's been some balance that's been lost now that they've merged.

KAUFMAN: You have to look back. In 1973, when I first got involved, around that time John Kenneth Galbraith, a professor at Harvard, wrote a book about countervailing pressure.³ What he talked about was that one of the things that kept this country having realistic positions when it comes to working people was there's always a battle between the corporations and the unions. It helped control corporate power, so certain corporations couldn't do anti-labor things, not just corporations that had unions but corporations that were under the threat of unionization. The union movement now in terms of manufacturing is just about gone in this country. You can see by the way corporations make many of their decisions now; they don't have to worry about the employees. That's why they did away with their defined pension programs. Practically no one has defined pension programs anymore. The only people left are government employees, and there's a move to take that apart because why should government employees have them when the private sector doesn't? Well, the reasons why the private sector doesn't is because the corporations went and took the money, set up insurance to cover pensions and 401Ks and then took the money and handed it out in profits and bonuses. Right now, corporations are beginning to eliminate the healthcare benefits, or figure out some way to reduce their exposure. None of this they could do when there were actual countervailing pressures. So you're right, countervailing pressures made this country great.

³John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power* (Boston: Houghton Mifflin, 1952).

Right now, when you look at many of the major issues we have, there is no one on the other side. Corporations can spend millions on hiring really good people to lobby, and more than that, on 30-second spots. People focus too much on lobbying in Washington. One of the big things that is happened is that there are very, very qualified men and women who if you give them money they can go out and create a campaign in your state or your congressional district and turn your public opinion around.

One of the classic examples is climate change. The public utilities and others, the coal industry, decided to spend the money. They went out and did 30-second spots all across the country saying: "Why does the federal government want to tax us now when we're in a bad economy? This is just a bad idea. Contact your representative and say we should not have any kind of a carbon tax on public utilities." The whole attitude towards climate change, while there is more and more evidence that climate change is a reality, more and more scientific organizations saying climate change is a reality and that it was caused by human behavior, the public opinion is going the other way. That's because of a lot of money spent by very smart people to alter people's thinking.

Too many people want to focus on Washington and campaign financing reform. We do need campaign financing reform. It would be the number one thing I would do, but what's changed in the last forty years since I've been involved is they can go over the heads of members of Congress, they can go back to their districts or states, they run ads, and they change people's attitudes. The elected officials who believe they are a delegate, who believes they have to represent the people in their district, or they get voted out and they vote somebody in that does believe in climate change, is not happening. Really, you're absolutely right; the lack of countervailing pressures and the incredible amount of power in the hands of corporations and moneyed interests has really changed the name of the game in Washington a lot.

Now, I'm not pessimistic about the future of America. One of the great things about a democracy, as I tell my students, is if this were Russia or China, they'd be in deep trouble, and I think both countries are in deep trouble because there is no way to bounce back. They have incredible control by a small number of people with a lot of money, but they don't have a democracy. They don't have freedom of the press or freedom of speech. There is no way to turn it around unless you crash and burn, which I think will happen to both of them in the not too distant future. But in the United States, once the pendulum swings too far to one side, it swings back. I think right now people

are beginning to realize that this thing has gotten totally out of whack. That's why this election in November is so important because is it going to continue down this road or is it going to be time to change.

One of the interesting things is—and I think President Obama missed an opportunity when he came into office by not making the same kind of speech that Teddy Roosevelt gave, and Franklin Delano Roosevelt gave, when they came in, and said we've got to rebalance the economic forces in this country. Teddy Roosevelt did it by the Sherman Anti-Trust Act, FDR passed a whole bunch of bills including Glass Steagall to realign things so there was more balance, and more countervailing pressures. Obama, if he had given that speech, and again, hindsight is 20/20, if he and his Treasury Secretary Timothy Geithner had not been so careful to take care of the banks and not do anything like England did with the Royal Bank of Scotland, where they actually went in and replaced the top executives. That was exactly what America did with the automobile companies. We did it with the automobile companies, replaced those CEOs, but we didn't replace the bank CEOs. It was a chance to redress this, but it didn't happen. I have a feeling that in President Obama's second term I think he sees this. If he gets another term I think he'll be a lot more concerned about addressing the economic balance in this country.

RITCHIE: Franklin Roosevelt was looking at recovery but he was also looking at reform. He was attacking economic royalists, and that actually strengthened him politically. But some of the criticism was that it didn't allow the country to get out of the Depression. I wondered if the administration thought that reform would be counterproductive to recovery?

KAUFMAN: I think that clearly Secretary of the Treasury Geitner believed that the banks were fragile. But the British did it with the Royal Bank of Scotland. We did it with the automobile companies. Why there couldn't have been a wholesale change in the management of these banks, I don't know. I'm an engineer, I have an MBA, and so I know a little bit about finance, a little about how complex finance is. I also know how complex, having worked in two corporations for over ten years, I also know how complex running a manufacturing business is. The idea that running a bank like J.P. Morgan Chase is more complicated than running General Motors, it just doesn't pass my test. It's ridiculous. We replaced Rick Wagoner at General Motors. Pulled him out and put somebody else in. But there's Jamie Dimon still running J.P. Morgan Chase. I just

don't get it. The Brits did it with Royal Bank of Scotland and they did just fine. They replaced the CEO, so it was just an attitude.

While I was in the Senate, Harry Reid appointed me to the congressional oversight panel on the TARP, the Troubled Assets Relief Program. He put me on the panel and there were five members. It was really a nice thing, the two Republicans and the two Democrats on the panel voted unanimously to make me the chair. I replaced Elizabeth Warren, who had been the chair and done an incredible job. She put together a great staff. One of my concerns when I went over there was that I had always had a great staff. I had a great staff when I was Senator Biden's chief of staff. I had a great staff when I was a senator. I was picking up a whole new staff, but they were wonderful, the staff director, the communications director, just great people—I shouldn't name anybody because they were all great. One of the things I found out was that out of all the money that we spent on TARP, we spent a lot of money, and Treasury spent a lot of time worrying about the banks but in housing we really didn't do anything at all. We had a program called HAMP, the Home Affordable Modification Program, which was supposed to modify four or five million mortgages, and when I left it had done about 700,000. Just never really had the attention of the leadership at Treasury. The first thing they did was appointed Fannie Mae and Freddy Mac to administer the program. I can't imagine picking worse agencies. But again, that's not Treasury's bag. That's not what they do.

Damon Silvers, who was my vice chair on the TARP, made an excellent point. We ended up—at one point they thought the TARP would cost \$700 billion. Then it came down to appropriation I think of \$350 billion. It ended up it's going to cost \$25 or \$30 billion, and people thought that was good. I thought it was good because we thought it was going to cost that much. But Damon Silvers made the point: "Yes, but we really didn't do anything about housing. Maybe if we had spent the \$50 billion that we had in the TARP for housing." We had \$50 billion in TARP for housing and when I left we had spent less than a billion dollars. That's exactly my point. We didn't put the emphasis on housing.

The Obama administration—again Obama as I've said before is a great delegator. I noticed that when I worked on the transition and watched him. He does delegate. He delegated this to Secretary Geithner and there's a lot written about it in these books, including *The Payoff* by Jeff Connaughton. Noam Scheiber wrote a book about the

Obama administration and he goes into the meeting I had with Geithner and the meeting I had with [Larry] Summers to talk about this.⁴ They are good, smart people but they have just a different view of where the problems were in the country. President Obama delegated to Geithner and Geithner's approach was banks, banks, banks, banks, banks. The effort by the Treasury Department to try to deal with the housing crisis was embarrassing, and that's all documented in the hearings I had with the congressional oversight panel on the TARP and also the reports that I wrote. It's all there if anybody is interested in what happened. In my view, it wasn't an idea that was tried and found failing, it was an idea that was never really tried.

RITCHIE: It seems surprising in retrospect, given that the housing crisis caused the banking collapse, because of the risky investments, that they didn't go back to look into that condition.

KAUFMAN: Well, there again, this was a partisan issue. I mean the Republicans basically, by and large, said, "No, this was Fannie Mae and Freddy Mac. This was Barney Frank and Chris Dodd who didn't look after Fannie Mae and Freddy Mac. People were just encouraged to buy housing." I remember one of the most striking things of this whole campaign was—I had a hard time watching the Republican presidential debates, just because I had such a difference of opinion, but I was watching one debate because I was interested in how [Rick] Perry, the governor of Texas, would do. I thought he was the one person who would have the financial wherewithal to stay up with Romney so right after he came into the race I was out with my daughter Murry's family in Detroit. I started watching it and there was one segment where the questioner asked Michelle Bachmann, "What do you think about the fact that no one has gone to jail during this thing?" This was something that resonated with me. I had spent a lot of time and I had talked about it in this oral history about the Fraud Enforcement Recovery Act, FERA, and how much money and effort was put into it, but it is surprising and very disappointing to me that we never brought cases to trial to send people to jail for what I believe was fraudulent behavior. The Permanent Subcommittee on Investigations hearings on Goldman Sachs and Washington Mutual, and the rating agencies, demonstrated fraudulent behavior. But there were lots of things. The Lehman Repo 105 [a maneuver where a short-term loan is classified as a sale], so many things were just

⁴Noam Scheiber, *The Escape Artists: How Obama's Team Fumbled the Recovery* (New York: Simon & Schuster, 2012).

clearly fraud to me. But we didn't bring any cases.

They asked Michelle Bachmann this question during the debate and she spoke for close to five minutes and said it was all Fannie Mae, Freddy Mac, Barney Frank, Chris Dodd, that was what did it. She never once blamed the mortgage brokers and Wall Street, not a word, not a syllable of blame. So to answer your question, the reason it didn't happen was more than forty Republican votes in the Senate just was not going to recognize that Wall Street was complicit if not caused this problem. The enormous securitization, the way it was organized, and then straight-out fraud as demonstrated as I said by the Permanent Subcommittee on Investigations. When I went to speak to people on Wall Street, and I spent a lot of time up there. It was like, "No, this was like a hurricane. This went through here like a natural disaster. You just don't understand, Senator Kaufman. This happened and then it moved on. All the bad people are gone. This is not a problem." And if you watched the financial programs, Lawrence Kudlow, a lot of the programs on CNBC—not the [Jim] Cramer program, but others—if you follow the financial press, that's the attitude. "Who me? What? No, there's nothing wrong here. We don't need to make any changes." That's really what they've said from Day One.

Their strategy has been to complain about regulations. They're complaining and people actually write in the financial press today, in September of 2012, about how the implementation of the Volker Amendment has caused all these problems, when the Volker Amendment has not been implemented. It is still in the rule-making process. I doubt if it will ever be implemented. But the financial press writes about it like, "Oh, my gosh, we've had to deal with the Volker Amendment!" I remember Goldman Sachs closed down their proprietary trading sections. Oh, yeah, cut me a break. And J.P. Morgan Chase. Meanwhile they've got this guy called the "London Whale" [Bruno Iksik] losing over \$5 billion, maybe as much as \$7 or \$9 billion by investing in what's got to be pure speculation. They call it hedges and they say it's not proprietary trading. Well, what I learned at Wharton, and what everybody knows is a hedge is to reduce risk. You can't lose a fortune on a hedge because the hedge is there to reduce risk. This was not a hedge, this was the London Whale trying to make a killing on the market, which J. P. Morgan Chase clearly had done in the past, and was one of the reasons why this whole section was set up. They cannot argue that if the Volker Rule was in place it would have made a difference, when you can have individuals at a bank through, if you want to call it investment, I call it, speculation—can lose billions of dollars and still have the chairman

of the bank say this is not proprietary trading. Clearly, they are still doing proprietary trading on a massive scale, and the Volker Amendment is not even law. All it is, is a rule that has been proposed by the four regulatory agencies that are supposed to look into it with, I forget what the numbers are now, three thousand questions raised, the vast majority by Wall Street banks.

RITCHIE: I can remember back, I think it was 1995, when Barings Bank failed in London because of rogue trader. Everybody seemed surprised at the time that a rogue trader could do this. Now there have been all these other rogue traders. The question is: Where is the management of the bank that allows this? It's not so much too big to fail but too big to manage.

KAUFMAN: Exactly right, that's true. They are too big to manage. Alan Greenspan said, "Too big to fail, too big." I say, "Too big to manage, too big," especially when the taxpayer is going to bail it out if it fails. The classic thing to me, one of the smartest people I've ever been associated with, not only personally but also from observation, is Bob Rubin, who was secretary of the Treasury under Clinton. I have had some disagreements with him. He was one of the leaders in doing away with Glass-Steagall, and changing rules on derivatives. But he's an incredibly smart guy. He's vice chairman of the board at Citibank. Number Two at Citibank, and he says he didn't know that Citibank had \$50 billion that they took off the balance sheet in order to make their balance sheet look better. He said he knew nothing about it. Well, let me tell you something: \$50 billion is not chump change, even at Citibank. The idea that the vice chairman—everything I've heard of Rubin makes me think he's an honest person, I don't think he would say that if it wasn't true—but if he didn't know about that \$50 billion then Citibank is too big. Too big to fail. Too big to manage. Too big.

RITCHIE: You mentioned the Treasury Department a couple of times, what about the Justice Department?

KAUFMAN: Well, the Justice Department was just incredibly disappointing to me. If you want to read about this, and my views on it, you can go to the Congressional Record and read my gazillion statements on it, or the University of Delaware website, where they have all of my floor statements, or you can go to some of these books. Probably the best book on this particular thing, the fraud enforcement and the financial reform would be Jeff Connaughton's book, called *The Payoff: Why Wall Street Always*

Wins.

RITCHIE: Which I have here. I have the Senate Library's copy.

KAUFMAN: Jeff has done an amazing job of laying it all out and making it very readable. He's a very good writer. It's kind of says what I was trying to do. Jeff was incredibly helpful to me as were a number of people. My chief counsel on Judiciary was Geoff Moulton, former First Assistant United States Attorney for the Eastern District of Pennsylvania, and Josh Goldstein, who was an intern and is now at the Yale Law School, was incredibly helpful on the high frequency trading issue. John Nolan, who had worked at Goldman Sachs and also worked on House side, came over and worked with me, and a number of other staff people. I think we have a very enviable record, which I think has stood up very, very well, based on what's happened in the next two years and I think will get better as time goes on. But Jeff has a very readable section of the book on what I did and why I did it. He talks about the meeting I had with Treasury Secretary Timothy Geitner and Larry Summers, and other things which I said and done, which I wish he *hadn't* put in the book! [laughs] But most of the book is very kind to me.

If you want to read about my views on that, that's an excellent way to do it, or you can read I don't know how many speeches I gave on the Senate floor, how many op-eds I wrote, how many columns I've written in the *News-Journal*, how many books have sections where they talk about what I did, which I am very proud of. I'm just proud of what the staff and I did, working with great senators like Sherrod Brown, Jeff Merkley, Carl Levin, Sheldon Whitehouse, Bernie Sanders, just so many good senators. We failed on Brown-Kaufman, which would have been the biggest thing. It was clearly the biggest vote on the Dodd-Frank financial reform, but we made the good fight and we fell well within my standard for success, and that is when the vote was over and we had lost, I didn't feel bad because I knew that I had tried as hard as I could. I had done everything I possibly could. I had used everything I had ever learned in my entire life, everything I had taught about, to try and get it done. But the votes just weren't there. Simon Johnson has written extensively in the *Huffington Post* and also in a *New York Times* on what the Brown-Kaufman Amendment was all about. Sherrod Brown has introduced it again in the 112th Congress. But that and re-introducing Glass-Steagall are two of the things that we're in big trouble until we do them.

RITCHIE: Well, a lot of legislation doesn't pass during the Congress when it's

first introduced. It often takes several Congresses. If the problem persists, then legislation keeps getting re-introduced until enough members pay attention to it.

KAUFMAN: And usually they pay attention because the pendulum swings back. If the legislation is really good legislation, time will show that the reason why it was put in was a good reason and what basically is the assumption when you put it in, that something bad is going to happen, happens, then people will do it. That's the reason why I still continue to talk to the press about high-frequency trading and Wall Street reform, because I want to lay down when in fact bad things happen—which I hope they don't but I'm convinced they will—my view of why they happen, so that when we get to fixing it we can have something laid out on why the bad things happened. One of the big things that happened in Wall Street form was the failure of that financial commission to look into why it happened. The Pecora commission in the 1930s did a great job of why Wall Street crashed in '29 and what we could do about it. We never had, really, a good investigation. Senator Shelby, the Republican chairman of the Banking Committee—who, by the way, voted for Brown-Kaufman, one of the few Republicans to vote for Brown-Kaufman, I think there were three, I should name them, they were John Ensign and Tom Coburn from Oklahoma. But Shelby was right when he said we never had a definitive discussion of what went wrong. The financial commission turned out to be just partisan. Exactly the point you raised earlier: why don't people think it? Because the Republicans on the commission refused to blame Wall Street for just about any culpability in what happened.

RITCHIE: Even Glass-Steagall was introduced in several Congresses before it finally passed, and it got tougher with each version, especially after the Pecora investigation.

KAUFMAN: That's why I say—when you spend a lot of time around the Congress you can get very philosophical. As the pendulum swings further and further, then the medicine is a lot harsher. In fact, one of my concerns is, that I've said from the beginning, if we didn't put these things in place, and we sent it to the regulators, and bad things happen, we're going to have over-regulation. We don't have over-regulation now, but we could get very punitive over-regulation. The pendulum never swings back to the center. If in fact folks of my ilk, if in fact we have another Wall Street melt-down, we're going to have over-regulation. That's not good for the economy, and I'm opposed to it. Either you deal with it in the cool, calm collective setting of "let's deal with it," or you

do it in response to a major crisis. It's much better to do it in a cool, calm way, but I think it's actually going to take a crisis before we do what we have to do, on too-big-to-fail, on the proper capitalization of the banks, on high-frequency trading, and the dangers of that. If we don't get in and do something now in terms of legislation and regulation, we could do some real damage to the economy.

RITCHIE: In reading Jeff Connaughton's book, one of the things he was disappointed in was that he thought Vice President didn't have a say in who was appointed to the Treasury and the Justice Department, that that was out of his sphere.

KAUFMAN: No, no, he had his say. I was there for most of the time when they were picking that. I didn't see that section of Jeff's book, but the VP had his say. The way every complex organization works, whether it be a corporation, or a nonprofit, or government, or the church, or a university is that somebody's in charge—as George W. Bush said “the decider”—but there's also a bunch of people around the decider who help make it. Obama has always listened to Vice President Biden. One of the reasons why they have such a good relationship is because Vice President Biden did not want to be vice president, but he decided that it was his obligation to use what he had learned when the president asked him. But the deal was, he said “I'll do it, but I've got to be the last person in the room. Right before you make that final decision, I'm the last person in the room and I get my say. Then you decide what you're going to decide and I will follow your leadership,” which was incredible for someone who spent his whole life not working for somebody else. Forty years in the United States Senate not having to report to somebody else. I'm prejudiced but I think he's done a masterful job over these four years in so many ways and especially in sticking to that deal. And I think President Obama stuck to his deal. He's always had the vice president the last person in the room on all these decisions. But what's really amazing is that there's never been any indication that the vice president hasn't followed whatever the president said and defended the president.

Now, that being said, when I first came into the Senate and Harry Reid called up and asked “What committees do you want?” I said Judiciary and Foreign Relations because that's what Senator Biden had been on and I knew a lot about them. But in retrospect, after you look back on the time I spent here, I spent a lot of time on financial reform, which if I had known in advance I would probably have asked to be on the Banking Committee. The reason was because frankly the vice president is interested in

everything, and was involved in everything while he was a senator, but Woodrow Wilson said "Congress in committee is Congress at work." He had picked the committees he was most interested in, which was Judiciary and Foreign Relations. He was interested in everything, but he was not that as interested in the whole Wall Street reform and those kinds of issues. He wasn't on those committees. He was interested in fraud enforcement, and he's a big backer of the fact that we needed the FBI agents to go after this fraud, but this was not an area of his expertise. When he waded in on the discussions, he waded on anything he thought he would be good and most of the time he waded in on issues in Foreign Relations and the Judiciary Committee issues, the general issues, the overall issues of what the tone of this government should be, and things like that. There's no doubt that the vice president had input on every single cabinet secretary and undersecretary in the administration, that the president had because in those meetings he was there with the president and before the president made his final decision the vice president could, if he felt it, could weigh in.

RITCHIE: I got the sense of what he was saying was that he didn't see people in those two agencies that were identified with Senator Biden before.

KAUFMAN: The Justice Department is full of Biden people! I mean *full* of Biden people. If you want a list of where Biden people are, there are a whole bunch of people in the Justice Department, and a whole bunch of them in our foreign policy establishment, and a whole bunch of them in the White House, OMB, and places like that. But since financial reform wasn't one of his major interests, he didn't have people in it. Although I must say, after I left the Senate I was offered two major positions in the financial area of the administration which I turned down. He would have had one person in the financial area if I had not decided that my time of full-time employment days was over and that I had a different view of where I was going to go.

RITCHIE: You weren't even tempted?

KAUFMAN: I was not even tempted. These were jobs that twenty years ago, oh, my Lord, I would have loved to have had those jobs! It wasn't just—to be totally candid, I was over seventy years of age. I knew what those jobs were. They weren't sixty-five hour a week jobs, they were eighty-five hour a week jobs. And getting up to speed would have been 120 hours! There wouldn't be time for sleep, and there definitely wouldn't be time for anything else. So it wasn't hard for me because I just don't think at

that particular point in my life I could have really tried enough. I would have felt good about how hard I tried because the only way I could have accomplished it would have been to just say for as many years as I served that I was going to do nothing else. I mean nothing else. I'm not sure that I physically could have made that sacrifice. But I was honored that I was asked—really honored that I was asked. But there's a time for all things under heaven. It was not time for me to do those jobs, or the other jobs that I was offered.

RITCHIE: The other issue that Connaughton made a big point about in his book was how difficult it was to deal with people, especially in Congress, because they were seeking campaign funds from the same financial interests you were trying to reform.

KAUFMAN: Yes, I don't agree with everything in Jeff's book, We have a different view on a number of things. I do agree that we need to go back to publicly financing campaigns. I think the single most destructive thing that's come along in a long time is the *Citizens United* ruling. The Supreme Court really made a mistake on that decision. That was such an incredibly bad decision. And it's turned out to be exactly what we said it was going to be, not me but a lot of people said it's just outrageous. Let's forget about the general election, let's talk about at the primary elections where Governor Romney was able to carpet bomb Gingrich and destroy his candidacy in Florida because he outspent him five, six, eight, ten times. Did the same thing with [Herman] Cain, did the same thing with [Rick] Santorum, just carpet bombed them. People are giving millions of dollars. The press reports that this guy Sheldon Adelson has given a hundred million dollars. How can you justify a hundred million dollars? And for the court to say "this is not going to corrupt elections," clearly the system has been corrupted now.

But here's my opinion: I do not believe the popular perception of members of Congress, that someone comes in and says, "I'll give you \$10,000 if you'll vote this way or that way." That may happen but I've never seen it happen. I was never offered that in Senator Biden's office. I think people knew where I was coming from and where the senator was coming from. But here is how it is corrupting: if you and I wake up one morning and we both decide we're going to run for the Senate, and you say, "I'm going to run for the Senate because I care about the poor and disadvantaged. I think poverty is a real problem in this country. I think we've got to spend more money on education, especially for disabled children. That's really going to be my driving force in the Senate. I'm going to make it the keystone of my campaign." And I wake up and say—and

genuinely believe—that “What’s wrong with this country is not enough growth. In order to do that, we should be cutting the taxes on just about everybody. We should do away with corporate tax. I think capital gains should be eliminated.” All reasoned positions, and we both run for the Senate. Who’s going to get the money? There’s nothing corrupt about it. I’m going to get the money because all those people who are concerned about those issues have the bulk of the money. So you do have a bunch of people in the Senate—there’s a selection process that’s almost Darwinian—that share these views. Good people, a lot who are pretty liberal on a bunch of things, but do believe from the bottom of their being that this is really risky with the banks, we’ve got to be careful about this; it comes up especially when you talk about tax policy.

I got up in the Democratic caucus after I had been there for a year and I said, “I have been in this caucus for a year now and I can’t believe that I’m in a Democratic caucus. No one has mentioned increasing taxes. Not that we haven’t done anything about increasing taxes, no one has mentioned it. It’s been one of the great disappointments.” And I sat down. There are loads of people in the Democratic caucus who are left of center—they’re all left of center compared to the Republicans, according to the latest *National Journal-Congressional Quarterly* analysis—but they do share some of the views regarding capital gains, do share some of the views about taxes, but also do share the same view about regulation of the financial industry, and do believe that we can’t go back to Glass-Steagall no matter what, genuinely believe that the banks are fragile therefore you can’t implement Brown-Kaufman.

I think the place where Jeff and I would part—and a lot of people agree with Jeff, and I agree with Jeff on so much, but I don’t agree with him on everything, and this is one. The corrupting influence is who gets elected, not corrupting influence where members take money from the banks and therefore vote the way the banks want them to vote.

RITCHIE: Or at least have to go constantly seeking funds from them.

KAUFMAN: Yes, well, there’s the old quote, I think it was [George Washington] Plunkett who said an honest politician is one who when they’re bought they stay bought. You can make the argument that they took the money from the bankers and they then decide they changed their position when they saw what had happened but they’re afraid to vote that way because they’re going to lose the money. That could be.

That's an argument that people make on the NRA, the National Rifle Association. People run for office supporting the NRA position, then get into office and find out that it's wrong but don't want to stop taking the money and the support of the NRA. With the NRA it's a lot more support than it is money. But the whole campaign finance issue—if there's one thing I could do if I became czar of the world (I couldn't do it as president or chief justice of the Supreme Court), I would put in a public financing system with real teeth in it, because I think it so distorts the priorities of the county because certain kinds of people get elected who basically agree with the very wealthy of this country.

RITCHIE: I was surprised to hear the other day that Senator [John] Cornyn, who is the Republican Campaign Committee chair, said that in the next Congress “perhaps we need to look at campaign financing.”

KAUFMAN: I like Senator Cornyn a lot, but that is one where he is not saying pass, he's not saying do anything about passing it, he's saying look at. The one I love—I'm being sarcastic—the great ironies of the Congress are incredible. Mitch McConnell as a senator argued every single Congress when campaign financing reform was brought up, “all we need is transparency.” I mean, if there was a campaign finance debate and Mitch McConnell was coming to the floor, it was going to be about transparency. Since *Citizens United* passed, the Democrats proposed a bill to make things at least transparent, and Mitch McConnell says we don't need it. And this is not just Mitch McConnell and the Republicans, some Democrats if you watch their careers over twenty, thirty, forty years, you watch how—one of the great things about Vice President Biden when he was a senator, and I did it for the two years I was there, is he's very much a process person: look to the process. Be consistent. Know what you believe in. He knows what he believes in, look to the system, and then look to the process. Far too many senators look to the end result and will use whatever process is involved—I'm talking about people to the left of the spectrum and right of the spectrum—use whatever process there is in order to get there, where the ends justify the means. I say, when that happens, you're going to be embarrassed about the ironies and the vagaries of political life that you are going to be one embarrassed son of a gun, because at some point there's not going to that consistency in what you're doing and you're going to look like, to yourself, not to anybody that follows this thing, but to your families, a fool, because you say something and then two, four, six, ten years later you make absolutely the opposite argument. I must say, I feel bad for Governor Romney sometimes. I don't know how it hurts him politically but he consistently has to take a different position from the position

that he's taken in the past as governor of Massachusetts. I often say that running for the Republican nomination for president having been governor of Massachusetts is like running for the Democratic nomination for president having been the governor of Texas. To be elected governor of Texas you just have to hold a whole set of views that are just totally inimical as to where the Democratic party is, and I would say the same thing for Governor Romney for the positions he took in order to be governor of Massachusetts, which are inimical as to what the Republican party believes in. I'm not questioning his motivation; I'm not questioning how he did it. He says he had an epiphany. I'm a big believer in epiphanies, but boy it sure makes campaigning tough when you say one thing and then someone comes back and says, "Wow, you know, he said something different two years ago."

RITCHIE: That's the theme of Robert Caro's biography of Lyndon Johnson. He was elected locally but he had to had to try to appeal nationally, and there's always that tension between the two.

KAUFMAN: Well, one of the things about having spent eight years in North Carolina is the '60s, if you were going to run for office—like Johnson running from Texas—if you wanted to run for Congress this was not a negotiable position: You had to be for segregation. So that's a base decision if you're going to run for office. It's pretty much true now about guns. If you don't accept the NRA's position, you cannot run for the Senate or the House in most of the southern states. There's no way that you can get elected if you don't have the NRA position on guns. It's kind of interesting how many "liberal" Democratic senators come from Border States who have a very NRA position on guns. Again, it's a selection process. If two people are running in many of these states and one of them is pro-guns and the other is opposed to the NRA's positions, that's the end of that race. It's over. The NRA supporter is going to get elected. So you're not going to elect anyone from that district that does not support the NRA position. The only way that you get Democrats is Democrats who are pretty progressive on just about every issue but do believe strongly in Second Amendment rights to bear arms.

RITCHIE: There are a lot of interesting demographics coming out of the South right now. Because of in-migration, the southern cities are growing. Some states that were essentially rural states are becoming more urban, and the Democrats' choice of meeting in Charlotte was driven in part because a state like North Carolina is now more competitive because its growing cities counterbalance the rural areas that tend to vote

Republican.

KAUFMAN: I think the main thing in most of these states is the incredible growth in the Hispanic populations and African American populations. One of the great things about doing this for a long time is you really learn some things. It's like reading detective novels. I like solving the problem before you get to the end of the book. One of the things I found about myself that I really love being a senator, and I liked about staff, was if you look on public policy as a whodunit, what is the answer to healthcare reform, what is the answer to our policy in Afghanistan, the idea that you can get information, just incredible amounts of information, is great. It's just great to be able to sit down and know a lot about what we should be doing in Afghanistan, not that you have any answers but you're allowed to get a lot of information. As I've said many times, the great thing about being a senator is when you call someone they call you back, I don't care who it is. Just the ability to have the information allows you to know a lot of things.

After the census was announced and they talked about how there has been a redistribution of congressional offices, the headlines said big win for the Republicans because all the states that are losing congressional districts are in blue states and all the seats are being gained by the red states. I looked at that and said, "That is not necessarily good news for the Republicans." The reason why those red states are getting those seats is because of the growth in Hispanics and to a lesser degree in African Americans. You look at what's happening to the red states, they're going blue. That's the real story. When you look at a lot of states, North Carolina being at the top of the list, when you look at the growth in Hispanic voters who are Democratic voters—Obama won 67 percent of them, I forget what it is exactly—and African Americans are even more Democratic votes. As their population grows as a percentage of the population of the state, the state moves from being a Republican state to being a Democratic state, and that's absolutely what happened in North Carolina. Part of it is urban-rural, I agree with you, but I think the even more basic thing, having sat in a number of strategy discussion sessions on where the Obama campaign should place its emphasis, North Carolina is there, and that's because the balance of people who agree with the Democratic point of view as opposed to the Republican point of view is shifting, and that's right across to Texas. I mean, Texas is heading to be a Democratic state. The idea that the Republicans are going to figure out some way to get the Hispanic votes after all they've said during debate on immigration that is a total and complete pipe dream, at least for the next ten years.

RITCHIE: And that's one of the arguments about the voter ID laws that the same states are trying to discourage voters.

KAUFMAN: Right, and if they think that this Hispanics, and African Americans, and poor people aren't noticing what they're doing. They went through the Republican debates and just savaged Hispanics, just savaged them not just because of illegal aliens but denigrating them because they were Mexican, and doing it time and time again, and then think that they are going to pivot and do the etch-a-sketch, as one of Romney's staff said, and then win Hispanic votes, they're wrong. I'll never forget when Reagan became president, one of the architects of his success was a political operative named Lee Atwater, who was from South Carolina and supposedly invented the wedge issue. For Republicans a wedge issue is one that splits the Democrats and creates what became Reagan Democrats—people you would think would be Democratic voters but because of the social wedge issues would end up voting for Reagan. Lee Atwater announced that he was going to speak at Howard University and they were going to start getting the African American vote. I'm like "You gotta be kidding me! You think these people don't see what you do?" He went to speak at Howard and then two weeks later Ronald Reagan went to speak at Oral Roberts, which to most African Americans is not a place someone would go who was supportive of their futures.

I think these stories have been written in terms of the future of the Republican Party being in doubt because of the demographics and because of the positions they are taking, and continue to take. Articulate Republican writers and philosophers have been warning the party themselves that this immigration position that they are taking and wrapping themselves up in is incredibly shortsighted in terms of the future of the Republican Party. When you looked at the Republican convention and the Democratic convention, there were a lot of color and women on the stage at the Republican convention, but when you looked at the crowd it was basically an all-white crowd. When you looked at the Democratic convention there was a lot of color and different groups on the stage but also when you went down into the body. So in terms of the Democrats, whatever you think about the policies of the two parties, they are much better positioned demographically for what's coming.

RITCHIE: Even Karl Rove has been speaking out on this issue.

KAUFMAN: Oh, yes.

RITCHIE: But the problem is you've got a party base that's not amenable.

KAUFMAN: Well, it isn't just a party base. Again, go and look at the seven or so candidates for the Republican nomination. This is the leadership of the party, listen to what they say. Listen to what [Reince] Preibus, the head of the Republican National Committee, says. This is not just the base. Look at the votes on the House and Senate floor. Listen to the speeches. This is a pretty widely held position by Republicans and not just the base of the party. That's why so many people have left the Republican Party and become Democrats and Independents, because they just don't agree with the social policy and the kind of immigration policy, and a lot of the decisions that are being made by the Republican Party. The Republican Party in my state, Delaware, keeps getting smaller and smaller, and more and more united on the fact that immigration is a big issue, and abortion is a big issue, the kind of social issues that are driving out a lot of young people, a lot of minorities, and making them into Democrats or in many cases Independents.

RITCHIE: Do you think there's much chance for immigration reform in the next four years?

KAUFMAN: Oh, is there a chance, absolutely. But a lot depends of what we talked about before, and that's the dynamic—how does the Republican Party face up to the results in November, and how does the Democratic Party face up to the results. There is an excellent book written by Tom Mann and Norm Ornstein, who I look to for their writing on the Congress.⁵ Norm is at the American Enterprise Institute, which is basically right of center. Tom is at Brookings, which is left of center. But in their book they point out that the gridlock is primarily caused by what the Republicans did, which I've talked about at length in terms of their decision that their only way out of the woods was to develop a gridlock strategy, just like Gingrich did in 1993-94. That's really where the gridlock is.

The problem with modern media now is they always want to say on the one hand and on the other hand. It drives me crazy. The classic one is: "The Republicans won't have tax increases and the Democrats won't touch entitlements," which is totally untrue.

⁵Thomas E. Mann and Norman J. Ornstein, *It's Even Worse Than It Looks: How the American Constitutional System Collided With the New Politics of Extremism* (New York: Basic Books, 2012).

The Democrats just say the only way we're going to deal with entitlements, if in fact we get some revenue, which is where we should start. In terms of balancing the budget, George H. W. Bush supported this. Bill Clinton supported this. We actually ran a surplus. The Republicans are saying, "I don't care what." What was it their presidential candidates said in answer to a question at the Republican primary debate? "Ten to one spending cuts over taxes, I'm still not going to support it because I'm not going to support one dime in tax increases, no matter what." It isn't two parties that are having this problem. The Democrats aren't always right, I sure know that. But on this one, this is totally a Republican gridlock, not to increase taxes. Every Republican member of the Congress except for seven has sworn that they will never vote to increase taxes. I don't see any Democrats signing on to not cut entitlements. In fact, they will decrease entitlements that are no big secret. I've been in the caucus and made suggestions. They voted for doing something about entitlements, but they will not make it part of a grand deal unless it includes some revenue, because that's the only way you're going to get this thing done. As President Clinton said so articulately at the convention, "It's all about arithmetic."

Do you want to take a break? Let take a break and get some lunch.

[End of the Ninth Interview]

Photos on the following page:

Senator Kaufman's staff in Washington.

The Senator and his staff in Delaware

"Edward E. (Ted) Kaufman: United States Senator from Delaware and Chief of Staff to Senator Joe Biden, 1976-1994; 2009-2010" Oral History Interviews, Senate Historical Office, Washington, D.C.

