



## EDWARD M. KENNEDY ORAL HISTORY PROJECT

### INTERVIEW WITH DAVID SUTPHEN

March 29, 2007  
Washington, D.C.

**Interviewer**  
Stephen F. Knott

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TRANSCRIPT

INTERVIEW WITH DAVID SUTPHEN

March 29, 2007

**Knott:** Perhaps the best place to start is simply to ask you how it is that you came to work for Senator Kennedy.

**Sutphen:** I was working as chief of staff to Congressman [Harold] Ford [Jr.], in the House, and decided, toward the end of 1998, that for a variety of reasons it made sense for me to move on. It was a great job politically, but I'd gone to law school and wanted to use my legal skills, and felt like putting out fires in Memphis was not really fulfilling that mission.

When I was leaving Covington & Burling to go work for Harold Ford, I happened to talk to some friends in the legal community in D.C. At that point Herb Kohl, who was a Senator on the Judiciary Committee, was also looking to fill a counsel slot, so I had some very preliminary conversations with some folks on the Senate Judiciary Committee and Senator Kohl's office, and in Senator [Richard] Durbin's office. I'm from Milwaukee, Wisconsin. It turned out that the timing was not going to work.

When I decided I was ready to leave Harold, I had always aspired to work on the Judiciary Committee. Once I decided that I was not going to practice law for real, and I was interested in politics—For any lawyer, especially somebody like me, who went to law school because I wanted to be a civil rights lawyer, working on the Judiciary Committee is the ideal place. I called a couple of the people I had met a few years earlier; it just so happened that one of them, a woman named Victoria Bassetti, who had worked for Senator Kohl, had left to become Senator Durbin's chief counsel on Judiciary.

I called her and she said, "Oh, my God, you couldn't have called at a better time, because I was just talking to Melody Barnes, Senator Kennedy's chief counsel. They're in the process of hiring a general counsel. They've interviewed some candidates and one of the things that Melody has lamented is that throughout the entire process, even though they've interviewed some very talented people, she has not been able to find one African American man to interview. Send me your résumé." I ran out of Harold's office, across to the Senate side, and gave Victoria my résumé, because I didn't know Melody at that point. Victoria took it over to Melody and maybe two days later, I got a call from Melody, who invited me to come in, and I interviewed.

Through Harold, I had become pretty good friends with Goody [Thurgood] Marshall [Jr.], because Goody at the time, worked for the Vice President. Since Harold was from Tennessee, our office worked very closely with—

**Knott:** [Albert] Gore [Jr.]’s office.

**Sutphen:** Yes, Gore’s office. I was able to call Goody and some other people who had strong ties to the Senator’s office and say, “This is a dream job; can you help me?” I don’t know what happened behind the scenes, but it all worked out. I left Harold Ford’s office probably the week after the election in November of ’98. At that point I did not have the job with Senator Kennedy, but I had decided to move on, regardless. I think it was the week of Christmas that Melody called to offer me the job. At that point, I had obviously interviewed with Melody, interviewed with the other counsels on the committee and interviewed with Carey Parker, the Senator, and with the chief of staff, Gerry Kavanaugh. I think there was a concern on their part that I was a little young. I was 29 at the time, but I had worked at the Lawyers’ Committee for Civil Rights Under Law, after undergrad, before law school.

**Knott:** Where did you go to law school, David?

**Sutphen:** I went to the University of Michigan. When I was in law school, I worked at the NAACP [National Association for the Advancement of Colored People] Legal Defense Fund in New York. I also spent a summer after law school, before I started clerking, working in Alabama, representing people on death row, so I had a decent amount of civil rights experience.

At the time I was interviewing, Kennedy had a fellow from the Civil Rights Division of the Justice Department handling the civil rights portfolio on the Judiciary Committee. Considering where I am now, it’s ironic that Melody Barnes said I wasn’t going to do the civil rights stuff for a while, but would do the business portfolio: intellectual property, antitrust, first amendment issues, and stuff like that. Once the fellow left, I took over the civil rights issues. For the first six months, that was my portfolio. As I said before we turned on the tape, however, my first day on the job, I believe, was January 4, 1999, and the impeachment trial started on the 7th of January 1999.

**Knott:** Did you get roped into that in any way?

**Sutphen:** Oh, yes. It was funny. Melody, Angela Williams—who was a former AUSA [assistant United States attorney] and a detailee from the Justice Department—and I were the Kennedy team on impeachment. Every day in the morning, again in the afternoon, and in the evening, we would spend time sitting down with the Senator, usually in his hideaway office, briefing him. Obviously, for the first few weeks I didn’t do anything other than observe. It was interesting, because I had been in the House of Representatives during the impeachment itself, so I was familiar with the facts and had a sense of what was going on. That helped my transition. I also had a sense of the personalities of the impeachment managers and a detailed understanding of the case.

One of the things that's great about working for the Senator, when it comes to big events—whether it was the impeachment trial or [John] Ashcroft's confirmation, which I worked on—is that he's very proactive, very strategic, and understands the importance of being a resource for his colleagues. It's a way to both keep him involved in the mix and be up to speed on things.

Melody, Angela, and I worked closely at the time with [Thomas] Daschle's staff. They put together a working group of counsels who were charged with coming up with the questions the Senators should ask throughout the impeachment trial, and with doing the research about what the precedents might or might not be, based on, I think it was Andrew Johnson's impeachment trial.

From a professional perspective, the impeachment trial was interesting. When you come and work for the Senator, it normally takes him at least several months to figure out who you are, because there are so many people who work on his staff. And the amount of actual face-to-face, substantive interaction you get with him, no matter how good you are or what issue you're working on, because he's doing so many things, is relatively limited. For Melody, Angela, and me to get to spend that much time with him in a condensed period was great. Melody and Angela, and Melody in particular, had been there for a while. He obviously had a very close relationship with her, but for me it was great because I got up the learning curve quicker than I would have in terms of understanding how to brief the Senator, how he likes things, which otherwise would have taken a lot longer to figure out.

I used to joke that, at that point, the only two black men in the office were Ngozi [Pole], the office manager; and me. I used to tease that it was a little easier for him to figure out who I was after a while. He'd look back on the dais and know, *That black guy works for me, so yes, that's*. . . [laughter] It was fun.

From an atmospherics perspective, the interesting thing about the impeachment trial was that it was political theater at its greatest, because everyone knew what was going to happen. Unlike, fast-forwarding a year and a half to two years later, when I worked on the committee and the 2000 election and the debacle with Gore and [George W.] Bush. The sense in the Senate, on the Judiciary Committee, at the time of the impeachment was, "Let's just get this over with, because it's just a pain in the butt and everybody knows how it's going to turn out."

When the 2000 Presidential election came around, there was a much deeper, and more profound, sense that this would truly be a constitutional crisis, that if this ended up in the Senate, we could do some damage to the institutions of government because of what was at stake. The scary thing was—and I'll come back to it—that with the election, when you started to look at the tree of how things would play out, everything ended up back with Bush winning the electors because his brother was Governor of Florida. Every tiebreaker went to Bush, so it was a very interesting dynamic.

**Knott:** Back to the impeachment for a bit. We had heard that Senator Kennedy played a fairly pivotal role, perhaps not well understood by folks on the outside. Part of that involved some negotiations with Phil Gramm, I believe, over the rules about witnesses and things like that. Can you talk a little bit about that?

**Sutphen:** There was a lot of gamesmanship going on early on, with respect to day-to-day issues: How are we going to do that? What are the rules of the road going to be? There was very little that we got out of the research we did on the past impeachment that gave practical guidelines about how to deal with issues. One of the things that is special about EMK is that—and this is increasingly absent from the newer Senators—he had a genuine appreciation for protocol and for the institution. He felt that sitting around and arguing like two-year-olds for months about what the rules of the road were going to be made us look bad, that we needed to come up with decisions.

I think it was almost happenstance. I don't know whether they struck up a conversation or EMK happened to drop by Gramm's office one day, but it became this Gramm-Kennedy framework that they then took to their respective leaders and said, "We think we've come up with a model on how we can proceed and what the decorum should be for the trial." That's about as much as I remember.

**Knott:** Do you know the extent to which he might have been in contact with the White House during this time? Was he dealing with the White House counsel's office? Greg Craig, I believe it was.

**Sutphen:** Yes. Greg, obviously, because of his close connection to the office, was in close contact with Kennedy and with Carey. There were differing degrees of lines of communication between the team of White House lawyers and various offices. I do feel that, for a variety of reasons, our office and the Senator probably played a disproportionately large role in being an intermediary, because of the trust relationships that existed.

I also think the Clintons [William J. and Hillary Rodham] appreciated the fact that Kennedy knows how to fight when he needs to. That is something—at that point in time, as well as subsequently—I've come to appreciate. More recently it seems like the Democratic Caucus in the Senate has gotten a spine, whereas Kennedy was always willing to fight the good fight if he felt like it was winnable, or if he felt like there was a value in fighting the fight, for either principle's sake or political purposes. When we get to Ashcroft, there's interesting material in that regard.

**Knott:** Can you tell us about, after the impeachment went away, some of the other issues that you began to work on?

**Sutphen:** The biggest issues I worked on in my tenure were probably the hate crimes bill; the second coming of the Religious Freedom Restoration Act, which is a tortured-name statute, RELUPA [Religious Land Use and Institutionalized Persons Act], then Leave No Child Behind.

Hate crimes was the first core civil rights piece of legislation that I got to work on, and was a very enlightening avenue into the dynamic and the interplay between Senator Kennedy and the civil rights community. Having worked at civil rights organizations before I came to work on the Hill, I realize now I was very idealistic and somewhat naïve. If you spend enough time in this town, one of the benefits of sitting in different places is that it gives you a much richer and more

true perspective on things. You come to understand that although a lot of people criticize elected officials—they don't have principles or they don't know what they stand for or whatever—that criticism can often fairly be shared across the board.

Working on the hate crimes bill was a challenge in the sense that it was an issue that affected the civil rights community, broadly defined. You had, obviously, gender-based discrimination, race, religion, and the attempt to include sexual orientation, so it pitted, in many different ways, all of these groups together and against each other, depending on the nuance of the issue. I was in the Senate when the case in Texas, where the guy was dragged behind the pickup truck, led to a greater awareness about the issue of hate crimes.

Not too long before I left, we had reached a point where we felt like we had close to 60 votes to get cloture on the hate crimes bill, because every year more and more Republicans would step up to the plate. I'll never forget. Every year we'd introduce the bill and we'd go through the whole rigmarole.

The big issue, which I think they finally have dealt with this year, was whether to include transgender in the statute. One of the things that's always amusing about working for the Senator is knowing those issues, when you have to go in and brief him, for which he's going to get that look on his face: What are you talking about? I'll never forget, talking with Melody Barnes after having a meeting with the transgender community—It's a serious legal and community—gay, lesbian, transgender community—issue about what transgender means. Is it sexual orientation? Is it gender identity? We spent a lot of time trying to parse out the way the statute was written. It was written "perceived or actual gender." If you were beaten up or killed as a result of your perceived or actual gender or sexual orientation, the idea was that you were covered. We would sit there and ask them to explain to us how "perceived gender or sexual orientation" didn't cover somebody who is transgender. Someone either perceives that you're a man and you're really a woman or vice versa, or they perceive that you're gay and you're not. After we finished the meeting, Melody and I looked at each other, dreading going into the Senator and having to explain to him what we couldn't even understand and the community couldn't even explain.

That was one illustration, and there were others in the context of some of the other civil rights issues we worked on, especially judges and things like that, where you wanted to say to the community, "We're your friend. Why are you putting us in this position, where we could not only undermine the broader mission, but arguably undermine your goals?" Because if we start having the Senator talk about transgender, and he can't even explain what it is, how does that help anybody?

Sometimes I would get very frustrated with the advocacy community, in the sense that they knew Senator Kennedy was their go-to person and they would keep coming to him for things that were unrealistic. We would sit there arguing until we were blue in the face, saying, "We agree with you, but show us 59 other people who agree with us and we'll be happy to do what you're talking about. You can't come to us when there are just ten of us who are willing to fight, unless you want to go down and risk setting back the cause by showing our weakness in numbers." My point is to juxtapose a fight like this, where going down that road and losing is going to set the

cause back, against something like the vote on the war in Iraq, where it's the principle and the cause is not undermined.

The other thing, RELUPA, was for me personally probably the most fulfilling of the experiences that I had. Rarely, as a staffer, do you end up in a situation in which you get to work on a piece of legislation from the pre-introduction stage, to the introduction stage, to the passage stage, to standing in the West Wing, and the Oval Office, and the signing ceremony stage, especially on a bill that was in many ways the oddest bedfellow dynamic you've ever seen. I'll never forget standing in the Oval Office in the signing ceremony. You had the Human Rights Campaign and the Christian Legal Society in the same room together.

The Senator has always been a strong advocate of religious freedom, which is a cause he doesn't often get credit for championing. With the Supreme Court striking down the first coming, no pun intended, of the Religious Freedom Restoration Act, it was a challenge, not only from an intellectual perspective, but also from a purely constitutional one—How can we make this work in light of what the Supreme Court has just told us we can't do? Getting a coalition that covered Conservative and Orthodox Jews to atheists to Mormons to the ACLU [American Civil Liberties Union] to the gay and lesbian community, was unprecedented.

On top of that, there was the historical preservation community, all of which felt a bill like this was going to infringe on their ability to do land use. You had state and local governments that were opposed to it, and you had Eunice Kennedy Shriver, who worked with many of the very wealthy New York City historic preservation folks.

I'll never forget. Whenever any of the family members are involved in an issue that the Senator cares about, especially when they're on the other side of the issue, it's always a special experience. I got a call one day from the chief of staff or somebody, saying that Eunice wanted to come in with these folks from New York—

**Knott:** Eunice?

**Sutphen:** They were convinced that this bill was the worst thing that could ever happen on the face of the earth.

We were at a point in the process where the Senator had decided; he basically said to me, I don't care what my sister has to say, we're not going to change the bill. Here I was, a 30-year-old black guy, sitting across the table from these multimillionaire, billionaire New York City establishment types and the Senator's sister. She was telling me, as if I were a 12-year-old, that I didn't know what I was doing, and this and that. It was one of those Yes-ma'am-may-I-have-another experiences. *[laughter]* But it's par for the course; you just have to take it.

The other thing that was instructive about that bill was watching the interplay between Kennedy and [Orrin] Hatch. They were the lead sponsors on the bill. Obviously, they have a long-standing and interesting, sometimes dysfunctional, relationship in terms of their professional and personal dynamic.

Manus Cooney, who was Hatch's staff director on the Judiciary Committee at the time, was known for being a little cutthroat in some of his tactics. At one point, we felt like EMK and Hatch had reached a compromise that the conservative religious community, including the Orthodox Jewish community, would not be happy with. Hatch had been carrying their water on many of these issues, where we were carrying the progressive community's water in an effort to find the balance between the concerns of the gay and lesbian community and the ACLU and conservative religious organizations. Manus called me and said that Hatch wanted to meet with the Senator, and invited us over to their office. I walked over to the office with the Senator, and when we walked into Hatch's personal office, there were about 15 representatives from the conservative religious community, waiting to ambush us. It was just one of those instances where your "friends" are trying to undermine you.

Everybody would always ask what it's like to work for Senator Kennedy. The thing that's great, once you get to the point where he trusts your judgment and he respects you, is that you have so much impact. He's such a powerful member. The hardest transition for me—going from working for somebody like Harold, who was a freshman, in the minority, in the House, to going to work for somebody like Kennedy—was to understand how much words matter, how important it was to be concise and clear with people about what it was he was willing to do. You are suddenly putting his butt and reputation on the line.

On the one hand, it's very empowering, but you have to be careful how you wield your influence. Looking at the staffers who I think the Senator liked and grew to appreciate and who did well under his tutelage, they were the people who understood that. I've always felt like there were two types of staffers who came to work for the Senator. There were those who were true believers, who came in and for whatever reason never really understood that you needed to work within the system—and would go at it with the Senator or go overboard—and those who understood that as long as you get all your ducks in a row and he's with you, you're golden.

There's a funny story about the signing ceremony for the religious liberties bill. I'm sure you've heard many stories about Splash, the dog, but this one is a classic.

**Knott:** Yes. Splash has actually been recorded.

**Sutphen:** That's a fitting segue into this story. We were getting ready to go over to the White House for the signing ceremony for the religious liberties bill.

I remember, real quickly, the way the bill got passed. It was one of those perfect storms of circumstance, in which you had this bipartisan bill on religious liberties that had no one who was really against it, but also didn't have a huge avalanche of people pushing it, because it was such a delicate balance that everybody was a bit afraid. There was the annual [John] Kerry/Kennedy softball game on the mall. That evening, unbeknownst to any of us, the bill was hotlined in the Senate, passed by unanimous consent. About ten minutes later, somebody rushed it over to the House side. They put it on the calendar and passed it by UC [unanimous consent]. In an hour, the bill went from nowhere to becoming law. It was almost anticlimactic, but a clear illustration of what a delicate balance legislating is. If you create the right thing, it might actually work out, it might get through, thread the needle, just barely.



We were meeting in the Senator's office, getting ready to go over to the White House, and there was—I forget the guy's name—some very prominent Bostonian who was a big supporter of the Senator's, who was interested in having an audience with President Clinton. The Senator said, "Well, hell, we're going over there for a signing ceremony, so why don't you come with us." We all piled into the minivan and drove over to the White House, and Splash was with us. We got out and went into the Oval Office, the Senator, Splash, this guy, and me.

We walked into the Oval Office and the Senator turned to this guy, who's probably worth 50 million dollars, and said, "Here, hold Splash." This guy's standing there in the Oval Office with Splash on his leash.

Splash, obviously, is very protective of the Senator, and there were maybe 35 people in the Oval Office. As the Senator was going around, working the room, Splash started barking incessantly, so the White House staffers were freaking out. The President was in his little hideaway office right off of the Oval Office. They said that if he heard this dog barking, he was going to go crazy. They came over to me, so I grabbed the Senator and explained that they were very concerned. He came over and told Splash to stop barking, so Splash stood there for maybe 30 seconds and then started going at it again. Finally, they had to stick Splash outside.

The President came in and said, "Did I hear a dog barking?" The Senator shrugged and said, "No, no." I was thinking to myself, *Who* brings their dog to the Oval Office? I was just glad I wasn't the one holding the leash. *That's* the guy who's holding the leash, not me. That was very amusing. I have another funny Splash story.

**Knott:** Please.

**Sutphen:** I think her name was Vicki. Was it Vicki? I know that's the Senator's wife's name [Victoria Reggie Kennedy], but I think it might have been Vicki. She was from Tennessee and was the executive scheduler or personal assistant to the Senator after Dena Graziano left. She was there for not that long a period of time, maybe about a year. When they announced that she was leaving, the Senator told her she could invite about ten or fifteen staffers from the office and we would go over to Sam & Harry's on 19th and have some drinks and food and a little going-away party.

Melody and I were fortunate enough to make the cut, so we went over there. It was one of those days when the Senator was in a great mood. He showed up, and while there were votes later that evening, we were ordering all this food, sitting around joking and laughing. About 15 minutes after he got there, he turned to somebody and said, "I left Splash in the minivan. Let's bring him in." We were in a steakhouse; fortunately, we were in one of those private rooms. Terry McAuliffe was next to us in the room with all these big Democratic donors, and the Senator was waving at him.

Then it was time to decide who was going to go out to the car and get the dog. I looked at Melody and I was thinking, There is no way that I am going out to the car to get a dog to bring into a steakhouse. I think it was Jane Oates, who is an awesome human being, who said she'd do

it. Jane went out to the minivan and came back in with Splash. The waiter was very accommodating and brought over a little bowl for Splash, so Splash was sitting there drinking his water.

Ten minutes later, the Senator realized, *Oh damn, I left the driver in the car.* We all thought, *How perfect is that?* The poor kid, some 20-year-old, sits there as someone comes out to get Splash and didn't ask him to come inside, too. The kid was sitting out there in the minivan for ten minutes and finally somebody went out there to get the guy. I don't remember his name. The Senator said, "I'm so sorry," and started feeding him lobster. I thought, *Now we know where we stand.* [laughter]

I would get into the minivan and Splash would be sitting—There would be the driver and Kennedy in the front seat; then there'd be the next row, where I'd normally sit to brief him when we were driving somewhere; and then there'd be the way, way back. On numerous occasions, dozens of occasions, I'd get into the van and Splash would be sitting there. I'd be thinking, *Splash, can you move?* He would look at me like a human being, as if to say, Who are you? I don't answer to you; I'm the royal dog. The Senator would look back and say, "Splash, move." Splash would look at me as if to say, OK, I'm going to move because he told me to move, but that's the only reason. I'd be thinking, *You have to be kidding me; I have to negotiate with a Portuguese Water Dog to do my job?* That was very, very amusing. [laughter]

**Knott:** Those are great stories. We've never heard either of them, so those are good.

**Sutphen:** The highlight of the job, in terms of political intrigue, was the Ashcroft confirmation hearing.

**Knott:** Was it tough for Senator Kennedy to oppose him? This was a fellow Senator. There is some sort of courtesy, I guess, extended to fellow Senators?

**Sutphen:** Not in this instance, no. I'm going to tell stuff that I probably shouldn't tell, but I'm going to tell it anyway.

**Knott:** Oh, please do. Understand, by the way, that you control the transcript that's going to be produced from this.

**Sutphen:** All right, that's good to know. One quick thing, back to the impeachment, that was interesting is that I worked for Harold during the impeachment and then went to work for Senator Kennedy. At the time, my sister Mona [Sutphen] was working for Bill Richardson, when he was a UN [United Nations] Ambassador, and my sister's roommate was clerking for Justice [John Paul] Stevens. Justice Stevens wrote the 9-0 decision saying that it was OK for the President to be interviewed by Paula Jones, and my sister offered Monica Lewinsky the job at the United Nations. My sister's roommate, an African American woman named Olati Johnson, ultimately came to work for—

**Knott:** I interviewed her last week.

**Sutphen:** Yes. It was this odd, interesting dynamic of these three young African Americans in the three seats of power, who were all privy to this unique historical occurrence, but from different perspectives. We used to always joke that the three of us should have ghostwritten a book about—

**Knott:** Absolutely.

**Sutphen:** And no one would have ever guessed—

**Knott:** Oliver Stone would love it.

**Sutphen:** No one would have ever guessed that it was three young black folks who happened to be in these interesting positions.

Olati is great. I presume she told you about the craziness with the Sixth Circuit nomination and all that terrible stuff.

**Knott:** She did.

**Sutphen:** That was so unfortunate.

But the Ashcroft situation was instructive about the Senator and about the importance of the institutional role of confirmation hearings. I guess it would have been in mid-January of 2000. I don't know, because that was the *Bush v. Gore* craziness, which we can talk about if you want to.

Melody called me—I distinctly remember it was a Saturday morning at about 11:00—and said, “The President just announced that. . . .” I think it was right after the *Bush v. Gore* decision; the race was called. The sense was, OK, we're finally moving on. The thought was that Bush was going to be conciliatory in who he picked for his Cabinet because of how divided the country was, and then he announced that Ashcroft was his guy. Carey Parker called Melody. I don't know whether we had gotten wind of it before or it had just come out on the wire or whatever.

As we were talking, we were speculating, “If you had to guess right now, how many people do you think would vote against him?” We did our quick little back-of-the-hand calculation and came up with only ten Senators who we thought—in part for the reason that you just mentioned—would oppose him. There was a sense that this was a fight we might have to have, and that we might end up actually having to pick.

The other dynamic that was going on in the context of this was the election in which Mel Carnahan died. His plane had gone down and his wife won the seat. Two days after Ashcroft was nominated, we got a call from Roy Temple. He had been Governor Carnahan's chief of staff, I believe, and was the man behind his campaign, and also helped the now Senator [Jean] Carnahan through her last month and a half of the campaign. He called us and told Melody that they had about eight boxes of opposition research on Senator Ashcroft that they never used, because once the Governor died, the nature of the race changed, but that they'd be happy to share them with us if we wanted them.

Melody and I went to the Senator and told him that they had this stuff. At the time [Patrick] Leahy was the chairman of the committee. The Senator said that Leahy was the chairman and he didn't want to step on his toes, so we should talk to Leahy's staff and tell them about the research. We talked to Leahy's folks and told them that we'd been told there were some interesting things in there. They were skittish, didn't know how they felt about it.

We went back to the Senator and he responded, "Screw it. Tell them to ship the boxes to Washington." They shipped them and about eight of us one evening plowed through all the documents. At about 10:00 at night, we were going through the documents, reading everything. We took everything out that we thought was useful, went over to Kinko's, and made several sets of copies.

We found everything in there. We found the Christmas card that he sent, touting the fact that he had given the commencement speech at Bob Jones. We found the business-expense reimbursements that he had been given as the Senator, for taking the trip to Bob Jones to give the commencement speech. We found the vetoes of the voting rights bills, when he was Governor in Missouri. We found a variety of interesting things. There was his interview in some Confederate magazine.

Once we had an idea of the universe of issues, we sat down with the Senator and figured out the three or four most important areas. We decided to become a warehouse of documents, so we started creating documents that told the story of who, we thought at least, Senator Ashcroft was, based on his record.

The Senator was very strategic in identifying which colleagues he thought would be moved by which things. It was interesting because as more came out about Ashcroft—some of which was a result of what we had uncovered, and Jim Manley played a role in the press strategy associated with some of the—the tide started to change, at least within the Democratic Caucus. The feeling seemed to be, as much as this is somebody who was one of our colleagues, the more I learn, the more troubled I am about whether he's going to be the kind of person that we want leading the department.

By the time the confirmation hearings started, we had Leahy's people calling us. We had categorized all the different areas: if you wanted something on voting rights, if you wanted something on X, Y, or Z. We had offices calling, saying their boss was interested in this angle, and asking if we had anything on this, that, and the other. Forty-four people ended up voting against him. That was a function of how well briefed the Senators were for the confirmation hearing, that they raised the kinds of issues that resonated with people. Anyone who is a Democrat would look back at that, based on his tenure as Attorney General, and say that everything we thought might be the case proved to be true.

One of my close friends now, someone I deal with in this world, is a guy named David Israelite, who was Ashcroft's deputy chief of staff at the Justice Department. Adam Ciongoli, with whom I clerked on the Third Circuit, was one of Ashcroft's staffers on the Judiciary Committee, and went with him to Justice, and then clerked for [Samuel] Alito just recently. It's a small-enough

town that you know all this. As much as they would say the Kennedy guys tried to take them down, it's one of those things that's—Like anything else, you respect your opponent. You understand that this is the way things are. It was a tribute to the Senator's appreciation and understanding of when it's time to fight and when it's time not to fight.

**Knott:** Were there some Democrats that you weren't able to bring along with you on that one?

**Sutphen:** Yes. For example, I think [Russell Dana] Feingold voted for Ashcroft because of his relationship with Ashcroft from Ashcroft's serving on the Judiciary Committee. There were a couple of other, more conservative, members. Bob Kerrey, I think, was still around, a couple of those folks. It was one of the few examples that I can remember where facts and the actual process of a confirmation hearing moved the dial in a profound way. It was a very interesting experience.

One of the things that was unique about working for Kennedy on the Judiciary Committee was that you became in-house counsel for the entire office. There were other people in the office—who worked on the Health Committee or some of the other committees or maybe in the personal office—who were lawyers, but maybe 90 percent of the lawyers in the office work on the Judiciary Committee. What ended up happening was that when there were quintessentially legal issues that arose in the context of other committee work or issues that came out of the personal office, the Judiciary Committee staff handled them. Issues over detentions and detainees in the war, the Judiciary Committee folks handled them, even though that fell within the Foreign Relations or Armed Services Committee jurisdiction. The same thing with the Health Committee, labor issues, education issues, safety issues. If there was a core legal component to them, we'd handle them.

On Leave No Child Behind, which I worked on right before I left, one of the big stumbling blocks was the civil rights protections, so the last issue to get resolved in the bill was the civil rights components of the bill. I was involved throughout the process of the bill, but for the last two or three weeks, it was Kennedy; John Boehner, who at the time was the chairman of the House Education Committee; George Miller; Judd Gregg; me; and one or two of their staffers meeting in Kennedy's hideaway office, trading language back and forth to try to come up with a compromise.

The concern was with several of the new programs included in the statute, like these 21st Century [Community] Learning Centers and afterschool programs. The way that Republicans wanted the statute written, those programs were going to be opened up to private organizations to run. Churches and other entities were going to be able to take direct Federal funding to run an afterschool program or run what was called a 21st Century Learning Center. Our concerns were that there weren't going to be adequate protections to prevent a church, for example, from saying, "We're not going to serve Jewish kids," or "We're not going to serve teenage pregnant girls because we think it's immoral that they're pregnant," so they wouldn't be able to get tutoring services. We were also concerned about all the Title IX issues associated with gender equity. I think we did a good job of getting the language we wanted in the statute.

Of course, we got screwed, when it came time for the regs to be written, by the Department of Education. One of the interesting things about my tenure there is that I was there when we were in the minority, then it became 50/50, and I left when we were in the majority. When we were in the majority at the end—you see it now, like the oversight of the Justice Department, the Civil Rights Division, with some of the stuff they were doing.

The other cool, Washington story we had was when Ralph Boyd became the head of the Civil Rights Division of the Justice Department. He was a lawyer from Boston, African American guy, obviously Republican, had been an AUSA, a decent guy, good guy, but we weren't completely convinced of his commitment to the cause, so to speak, of civil rights. Sure enough, as soon as he was confirmed, the department started wiggling its way out of cases that were disparate impact cases. Suddenly the department was backing away from any case that had a disparate impact theory, and this type of thing.

We found a mole into the department who started sending us information about cases that the department was switching positions on. I'll never forget. We had one of those meetings at the Senator's house one weekend. This guy from the Justice Department showed up and we met on the back patio. He gave us the litany: here are these cases, this is what they're doing. We used it as fodder for trying to hold their feet to the fire a little bit on some of these issues.

The other thing that happened during my tenure there was John F. Kennedy, Jr., died. My mom died two weeks after he died. One of the things that had the biggest personal impact on me was that when my mom died, I went home to Milwaukee, and the Senator called me three or four times, just to give his condolences and check to see if I was OK.

I had never lost anybody close to me before. Our family's grieving process was public to the extent that our friends and neighbors who knew my mom came to her funeral service. I thought to myself how difficult it was to lose my mom, to go through this process, with the awkwardness and discomfort you feel about other people being in your business. It's one of those moments where you want to be alone. Then to think about everything that he's had to deal with personally in terms of grieving and having it be such a public spectacle and multiple times over, and the strength to persevere.

In a weird, corny way, it helped a lot, because I thought to myself, *As bad as this feels for me, if he can do this and can have done it as many times as he has and seemed to get his life back together and go on and stay strong. . . .* It was very inspiring.

**Knott:** Can you give us some sense of the kinds of relationships that Senator Kennedy had with other members of the Judiciary Committee, those relationships that were good and perhaps some that weren't so good?

**Sutphen:** He really, really, liked [John] Edwards. One of the things with the Senator is that he respects people with personality. He sets a high value on personal dynamism, which is understandable, partly because his brothers were so charismatic. When Edwards came on to the committee, he went out of his way to be personally helpful to Edwards, but also encouraged us as staff to help him.

I'm biased because I worked for Melody, but the Senator's had many very amazing, talented people work as his chief counsel. My personal opinion is that Melody and Justice Breyer are the two iconic ones of the crowd. They were both very smart but had a lack of arrogance about them. People always tell the story that one of the reasons why Breyer got confirmed so quickly was because he had developed such great relationships with the other Senators and the staff, that when he got nominated, people thought, *Well, he's great.*

Melody was someone who everyone on the committee, including Leahy's people, would come to for advice: substantive, strategic, political, legal, personal, you name it. That gave power to Senator Kennedy, having his chief counsel be the person everybody comes to and shares their individual concerns with—"How do I deal with this issue?"—becomes a wealth of information that can then be utilized to help guide the Senator about what other offices are thinking.

Personality-wise, I think he had a decent relationship with Leahy. I think sometimes he felt that Leahy wasn't as willing to stand up and fight on issues and was a little too concerned about looking like he was being fair and balanced, as opposed to just saying, "Why are we getting screwed?" Especially on judges.

I don't think the Senator initially expected much from [Charles] Schumer, coming in. Everyone thought, based on the way Schumer was in the House, that he was going to come in and want a lot of press and attention but wasn't willing to be a workhorse. Everybody was pleasantly surprised to find that Schumer was as much of a workhorse as he was a media hound. Over time, again on the judges, and on some of the more edgy political partisan stuff, Schumer quickly became a strategic ally, and someone the Senator grew to respect and count on. He appreciated his strategic judgment and his willingness to shake things up.

I think the Senator personally likes [Dianne] Feinstein. I think from a legislative perspective, she can be difficult to pin down. Dianne is one of those people who—Do you know those football games where the last team that has the ball is going to win?

**Knott:** Yes.

**Sutphen:** That's that way it was with Feinstein. The last person to talk to her had a good chance of getting her vote. She would say, "I'm with you," and then Jeff Sessions or Senator [Jon] Kyl would go over and talk to her about something. She'd come back and say, "Ted, I've changed my mind." He'd say, "What do you mean, you changed your mind?" and then convince her, so he'd want to bang his head up against the wall.

[Joseph] Biden. I think the Senator's view of Biden is probably similar to everybody else's, which is that when he's on, he's magnificent. I can remember two instances of this. One was the Ashcroft confirmation hearing, where I thought he was brilliant. He was saying things like, "Come on. Come on, John, what were you thinking when you went to Bob Jones to give that speech" as though they were friends. The second was a markup on a class-action reform bill. If he felt like Biden was on, it would be great.

But the other issue with Biden was that I think at times it felt like he had it out for Kennedy, because there were definitely times when it seemed as if Biden's people would stand in the way of us doing something for no reason other than that they could. There were a couple of times where Melody and I had meetings with Biden's chief of staff and we would come out feeling, *You have to be kidding us. You guys are making this harder than the Republicans.* It almost seemed personal.

I am a firm believer that members' staffers—It's like dogs. People say that dogs reflect the personality of their owners. It's the same thing with the staff on the Senate Judiciary Committee. Leahy's staff reflect his personality; Bruce [Cohen] and Ed Pagano are smart and very thoughtful. The same thing with Biden, kind of snippy. Then there are Feingold's people. The Senator probably respects Feingold intellectually. I think he thinks he's probably a little holier-than-thou at times, such as on campaign finance reform, but substantively they agree on many things. I just think the Senator's approach to things is different.

Who else was on the committee when I was there? Durbin. I think he really liked Durbin. The thing about Durbin, from a staff perspective, is that Durbin is very independent as a Senator. It's maybe changed, now that he's in the leadership, but he relied very little on his staff, as opposed to Kennedy, who relied enormously on his staff. From a staff perspective, sometimes you couldn't figure him out, because you had no idea of what he was going to do or how he was thinking, because he kept everything to himself.

On the Republican side, I think he respects Hatch. I think he doesn't totally trust Hatch. I don't think he had a lot of love for Kyl and Sessions.

**Knott:** There was a history with Sessions, right?

**Sutphen:** Yes. He had blocked his appointment to the federal bench I believe. Ironically, one of my colleagues worked on a prison rape bill that was a Sessions/Kennedy bill.

The other thing that I respected about Kennedy, compared to the approach of some other people, is—There are a lot of people, as evidenced by the [Joseph I.] Liebermans of the world, whose approach to things I don't fully understand, because they want to show up at the compromise. It doesn't work that way.

If you were to put all the Republican Senators in a "truth chamber," they would all say they'd much rather negotiate a piece of legislation with Ted Kennedy than they would with Joe Lieberman. They'd say that at least with Ted, you know where you stand. He will say he doesn't agree with you on this and he does agree with you on that, so let's work on the things that we agree on.

There are risks associated with being this way. You know what happened with Leave No Child Behind? He took a risk and may have gotten the short end of the stick. There are two types of people in politics. There are people who are willing to put skin in the game and there are people who are unwilling to put skin in the game. It's like anything else in life; if you put skin in the game, you're going to get burned sometimes.



There was a period—and I don’t remember whether this was in 2001—when the Senator had pneumonia or something. He was at that age where people were wondering, *Is this pneumonia, or is this something more than pneumonia?* He was out for maybe two and a half or three weeks. I remember looking at the Democratic agenda, the floor agenda for the next month, and thinking the party would be screwed if something happened to the Senator, because the agenda included minimum wage, healthcare, hate crimes. He was going to carry the water on 70 percent to 80 percent of the key affirmative policy priorities for the caucus. That was deeply troubling.

There are very few people who know how to move something from start to finish. As a relatively young staffer who’s coming into the political game that is Washington, the thing you come away with, when you spend enough time with the Senator, is that—I used to talk about this with my sister Mona, and she would say the same thing about Richardson, who many people say is very savvy and strategic in the way that he thinks about things. The way I describe it to people, it’s like a genealogy tree, almost like a decisional tree. The beauty of somebody like Senator Kennedy is when you’ve been around the block long enough, you can figure out very early in the process what branch of decisional tree you’re on.

What he has the capacity to do is to look at an issue, look at the political dynamic, and say, “OK, here are the three ways this is likely to play out. If it plays out this way, here’s what we need to do to cover our flank. If it plays out this way, here’s what we need to do. And if it plays out that way. . . .” What ends up happening is that on a strategic and substantive level, more often than not he is prepared for whatever’s coming down the road because he’s already anticipated it.

It’s like chess, but multidimensional. That is lacking in many people. That’s what used to strike me, that at some point you’d look back and realize that he said this was going to happen. It’s very empowering. I’ve learned, even since I left the Hill, that in this town there is nothing better than walking into a situation where you know not only the substance better than somebody else, but you understand the dynamic of what’s going on better than anyone else. You can then play people off of each other or know how to do a bank shot or whatever.

**Knott:** What’s his take on [Arlen] Specter? Do you know?

**Sutphen:** I think he likes Arlen. This is pure speculation. If you were to ask him his honest opinion about Arlen, I think he would say that Arlen’s somebody who always had a lot of potential but never really lived up to it. The notion that he is this moderate Republican is all a function of the fact that he voted against [Robert] Bork. There’s little else if you look at his record over the course of the past 20-30 years.

The thing that really, really irked the Senator, vis à vis Arlen, was that Arlen was always the lead Republican sponsor on the hate crimes bill. We would work tirelessly, as would HRC [Human Rights Campaign], with Arlen and he’d leave the impression, Yes, I’m with you. I’ll never forget; the last cloture vote we had on the hate crimes bill when I was there, Arlen voted against cloture.

We had seven Republican Senators who were original co-sponsors of the bill. He was the lead Republican, and he voted against cloture. Kennedy went up to him on the floor with the little paper version of the bill. He took it to him, pointed, and said something like, “You’re the lead Republican sponsor. What the hell are you doing voting against our bill?” Probably with a little more color. Arlen replied that he thought the bill had been rushed to the floor. Kennedy’s response was along the line of, “I saw you this morning at a breakfast. If you had a problem with what was going on, you should have said something to me. But for you to sit there, not say anything to me, let us do this, and then vote against the bill—Screw you!”

The thing about the Senator is that there are times when he feels like he doesn’t care and he’s not going to accommodate somebody else’s concerns because he’s either unwilling to or has for long enough and isn’t going to do it any more. But in a circumstance like that, he would have easily been willing to listen to what Arlen had to say.

The only people that the Senator was intimidated by, and this was more of an institutional reality, were the Appropriations guys. He used to dread having to go talk to [Robert] Byrd. I think that had less to do with him somehow being personally intimidated by Byrd, but rather knowing it was like going to the doctor and taking your medicine. One time we sent him in to see Byrd about something. When he’s in a good mood, EMK is a jokester. The Senator came out into the hallway—we were somewhere in the Capitol, halfway down the hallway—and started stumbling like a prizefighter does after he’s had the shit beat out of him. He said, “I’m not doing that again. I’m never doing that again. You can’t make me do that.” We were saying it couldn’t have been that bad and he replied, “You weren’t in there. You don’t know how bad it was.” OK, OK, whatever. [laughter]

Again, I give an enormous amount of credit to Melody. If you were to ask other people in the office during that time, they would say that the group of people we had on the Judiciary Committee from ’99 until 2002/2003—

First of all, we were almost the only diversity in the entire Democratic Senate committee staff. At one point, it was Melody, an African American woman; Olati, an African American woman; myself; Esther [Olavarria], a Latina; Julia Sessoms, who is part Filipina; and then we had Stephanie Teaford, a white woman; and a guy name Robin Toone, who was our token white guy.

It was illustrative to the Senate as a whole, but it was of enormous value to the Senator for him to have an extremely talented and well-liked group of counsels, the disproportionate number of whom were people of color. That was not only because of who the Senator is and what he cares about, but also because there was a bit of personal pride for him. He would look around and be able to think, *Those folks are with me.*

Unfortunately, of my experience in the Senate, that is what was the most disenchanting: that during my three and a half years on the Judiciary Committee, I was the only black man who worked on the Democratic side as a lawyer. There were two black guys who worked on the Republican side. There were very few, if any, senior staff of color on anybody’s committee, anybody’s office, period, but very few, if any, on the committee staff. It’s still the case today.

There's a very telling photo from the recent Alito confirmation hearing. It's a picture taken from behind the witness desk. The view is looking at the dais of members and all the staff; there's not one person of color anywhere in the entire photo, and it's a span of the entire room. That is the most tragic thing about the institution as a whole. I think Goody Marshall, Ron Brown, and one other African American male, and me, were the only ones who ever up to that point—I remember joking with my family that I wasn't going to get the job because I'm not the son of some famous black guy. *[laughter]* But it worked out OK—worked for EMK.

**Knott:** You've spoken very positively of the Senator. Were there any things about him that made you think, Geez, I wish he did that a little better, something you saw in him that perhaps you considered a weakness?

**Sutphen:** The frustrations you feel as a staffer working for him have less to do with his personality and his approach, and more to do with the fact that he's *so* busy. There are times when you get frustrated by the fact that he's not focused. At the time, you take it personally, but when you take a step back, you realize that it has more to do with the fact that he has too much going on.

One thing I used to say, having worked for people for whom this is not the case, is that he wasn't lovey-dovey all the time. There were times when he could be very snippy, a little bit mean, and just kind of nasty. But it's fair to say, at least in my personal experience and what I've observed, that he usually had a reason to be upset. He's not the kind of member who gets pissed off for the sake of getting pissed off. It may be that his expectations are unrealistic.

Of all the things I would say, it was that sometimes he had unrealistic expectations. Sometimes the facts just aren't on our side or something just does not exist. As much as you may get frustrated and get pissed off and pout and bang your table, ranting that you want a chart that says X, Y, and Z, it's not going to happen, so you need to get over it.

When he would get mad at you and yell at you, if he was wrong about it, which was rarely the case, he would usually call you later in the day or call you at home, or the next time he'd see you, he'd say, "I'm sorry I yelled at you. I was just in a bad mood and I apologize." You'd take a step back and you'd understand why he was upset about that.

I've been in this town for ten years now and have interacted with a whole universe of people. Just because of who the Senator is, he lives in a different world, but who wouldn't? All of the things that I look at about him that would make me wonder, *What is that?* I understand, so I don't view them as—He's not a mean person; he's not fickle; he's not irrational; so as a staffer, I couldn't ask for somebody to be a better mix.

A lot of members are a little crazy, which is one of the reasons why I would not probably go back and work on the Hill, ever. People would ask me if I would go back. Why would I go back and work on the Hill? What better experience am I going to get than getting to spend three and a half years working for Senator Kennedy, three of which were on an issue that he cares more deeply about than arguably anything, which is equal justice and so forth?

The family dynamic could be frustrating at times, but that too is relative, because I worked for Harold Ford. To come from the Ford family, in which you have to deal with his uncle, who's off on the highway pulling out his gun, shooting it in the air—it's relative. You have to put things in perspective. [laughter]

The other thing is to look back at the experience, now that I've been out. I went to Amherst for college, and by the time I was a junior, I thought, *You've got to be kidding me*. There were 1,600 people and I wanted to just shoot myself. Once out of school, and looking back, I realized that one of the reasons why I'm a good writer is because I went to a small school where I never had a teacher's assistant. Looking back on working for Senator Kennedy, 80 percent of the time I was happy. The 20 percent of the time when I wasn't provided valuable lessons about how to deal with a principal like that. When I say "a principal," I mean an individual with that much power and influence.

One of the things that I've taken away from that experience is that I now know how to convey very complex things to people in very straightforward, understandable ways. That's a useful skill regardless of what you're doing. Also, the friends and extended family that I developed through that job are people who I will always remain close to. I will probably have other professional experiences, but for the stage in my life where I was, in my late 20s, early 30s, and for the nature of what I got to do, I don't think I could have gotten a better professional experience.

**Knott:** You mentioned *Bush v. Gore* in passing earlier and you said there might be something there worth talking about. I wonder if you would do that.

**Sutphen:** The interesting thing about that was that whenever there was a big crisis going on, somehow we always ended up getting involved with it. For example, when it became clear that there was going to be a recount, people from Florida were saying, "Call Senator Kennedy's office, because they must be smart." We had people calling us from Florida, so we started again. This is the modus operandi. When something is going on, he wants to be a resource of information, not only for his own edification, but also for the broader arena.

You see that reflected in his attitude about staff, as evidenced by the number of people you've interviewed. There are people who have been in the Senate for nearly as long as he has, for whom you would be hard pressed to find 10 percent of the people that you probably have interviewed already, who would be worth talking to about their experience working for him.

One of the things that makes the Senator so powerful is the universe of people that he has who have worked for him, who have gone on to do amazing things. Part of that is his understanding of the value of being a resource of information in every way, shape, or form. It's just the way he operates.

The thing with *Bush v. Gore* was—Going back to what I was saying earlier, the Senator has a profound appreciation for the institution of the Senate, but also for the institutions of government and the protocol of ceremony and those kinds of things. From having some conversations with him as the train was running down the track at full speed, I wouldn't say he was afraid, but it was the first time that I sensed in him this notion that we can't let this get out of control.

We used to joke off the record that we were like judiciary staffers for Bush, because we were so afraid of what would happen if things were to get to us. To have so many people as battle tested as we all had been, and the Senators, looking at this crisis and, for the first time probably since Watergate or something weird like that, having a sense that this could be greater than us, something we could not control and couldn't understand the possible negative implications of, was sobering.

You know, I was also working there when the 9/11 attack happened.

**Knott:** Yes, I was going to ask you about that.

**Sutphen:** Looking back now, even though I was only there for three and a half years, it was an interesting ride to see him and the institution deal with all these crises. I would, in a weird way, put *Bush v. Gore* at the top of the “Oh, shit” list—once people realized the plane wasn't coming toward the Capitol—in terms of threats to the foundational, institutional levels of government, people's trust in government. He's clearly a student of those things, so to see his reactions in these different settings was very instructive.

**Lindskog:** How did you come to know, as a staffer, what was expected of you? We hear this story again and again, how more is expected of you than the job description and there's this internal ethos, yet the Senator—

**Sutphen:** How does it get conveyed?

**Lindskog:** Yes.

**Sutphen:** Carey plays an enormous role in that respect. If I were doing a spreadsheet analysis of the people who worked for Senator Kennedy who were successful, I would say that once you got above the minimum bar of intellectual competence, the successful people would skew very heavily toward high emotional intelligence quotients.

There are many very subtle things. For example, you write remarks for a hearing or you write talking points for a press conference, and they come back from Carey with red ink all over them. The successful people are the ones who are sophisticated enough to understand that Carey is reflecting the Senator's voice, little things like the catchy way he would like to say things. When you were briefing him, it's understanding how you convey an issue, what's at stake, and what engages him. If you spend enough time with him, you know going in which issues are going to be the painful briefings, where he's not going to be paying attention, and which things are going to get his blood going.

The other thing, to be honest, is that he likes to, whether it's in the context of a briefing or whatever, defer to a staff person in a room filled with other Senators. He'd say, “Well, David, you tell them what's going on and what our strategy is.” He placed enormous value on people who were very good at communicating and interacting with other people and who weren't just trying to jock him because he's the Senator. There's a little bit of that.

He wants you to push back on him, and sometimes he demands it of you, but there's a subtle difference between doing that because he's trying to understand whether his instincts are right or whether your instincts are right, as opposed to people who don't get it. I learned a lot from watching Melody interact with him, and watching Michael Myers and other people who had been around for a very long time, and how they would react, for example, when he was in a bad mood and was dismissive, "I don't want to hear it," just watching how they would deal with it. OK, this is how you respond to him when he's in this kind of mood, so a lot of it is perception.

He also likes people who are funny and who know how to bullshit and when to bullshit. It's that sense of walking in and knowing, *Today he's not in the mood for me*. It's like knowing your parent. I'm not going to ask Mom if I can go to the sleepover today because she's not in a good mood, but if I wait until she's in a good mood, she's going to give me the answer I want. Some people didn't get it and it was like oil and water, no matter how hard they tried, no matter how smart they were.

When we entered the majority, we had a situation in which we had a lot more money. We must have interviewed 12 former Supreme Court clerks. We would look at their résumés and think, *My God, could you be any smarter?* But after five minutes of interacting with them, we could tell that this person was not going to get along with the Senator. It goes back to Melody, because Melody understood—unlike some other people who work for the Senator—that it's not just about smart. It's about personality; it's about disposition.

Over time Melody's credibility, in the eyes of the Senator, continued to skyrocket because he felt a genuine comfort level with the people she surrounded herself with and who she hired and brought on board. It became both the individual and the collective. You could feel that he was very comfortable with his Judiciary Committee staff. There was an internal ebb and flow of whose power ranking was going up in terms of influence in the office. I'll bet if you were to look at a distributional model of that, it shifted over time. When Jane Oates was at Education [Senate Health, Education, Labor and Pension Committee], he would rely on Jane for many things.

It was very personality driven. It was a function of the people who are very successful with him being engaging, dynamic people. Some of them could be a bit overbearing, people like Ken Feinberg and Jeff Blattner and those guys, who are "always right." That's the beauty of it; everybody doesn't have to have the same personality. He doesn't want that, but he appreciates certain types of skills.

That's an interesting question, because when you come in, it's very hard. I think he knew who I was for those first two months of the impeachment trial, and then there was a period of, Who are you again? I was fortunate to be able to observe, be a fly on the wall, and see the questions he asked, the kinds of answers, how he liked the questions answered, where he was likely to be headed when he was pursuing a particular line of questioning, and to write memos, sensing what was going to be of interest to him. It's the nuance of being a savvy person.

**Lindskog:** You started by telling us the story about the transgender community. We hear about this tension all the time about Senator Kennedy as advocate for a civil rights group and then

Senator Kennedy as political reality check. I was wondering if we could talk a little bit more about that. In terms of when you were communicating this to civil rights groups of different kinds, were there some groups, women's groups or African American groups—Did you sense more trust in some groups as opposed to others?

**Sutphen:** This is true in any good members' staff/outside organization interaction, regardless of whether you're talking about civil rights issues. Again, it's very personality driven. You would look at the universe of people in the civil rights community and you would know that somebody like, for example, Wade Henderson, who runs the Leadership Conference on Civil Rights—Wade is somebody you could pick up the phone and call after a coalition meeting and say, "You've got to be kidding me." Then Wade would say, "Well, understand where we're coming from."

It's almost like what Nancy Pelosi said to the President recently, "Take a deep breath, recognize again that we each have our constitutional role and we should respect that in terms of each other." The short answer to your question is yes, there were certain communities that had a longer-standing working relationship with the Senator, where there was a greater degree of trust. The traditional civil rights community, the African American leadership, felt a pretty strong degree of trust in the Senator.

The women's community, with whom Melody dealt primarily, was a little bit sketchier, although I think they felt that at the end of the day, the Senator would go to bat for them. I also felt, however, that the Senator, personally and because of his own religious beliefs, was probably a little less comfortable, sometimes, with some of the positions he took, from an institutional and movement perspective. I think he also felt frustrated by that community's either unwillingness or inability to get other people to carry the water as well, especially some of the women Senators. I think he felt, at times, *Why am I the one who has to do this? Why can't you convince somebody else? I'll do it, but come on.*

Dealing with the gay and lesbian community was instructive. At one point we had a vote on the hate crimes bill, and at the time the Senate was 50-49-1. It was when [James] Jeffords switched over. Forty-nine Democrats voted for the bill. Bob Byrd was the only one; he never voted for it because he used to be a member of the Ku Klux Klan or whatever. We had a meeting in Daschle's office. Elizabeth Birch was then head of the HRC. It was Daschle, Kennedy, Melody, me, Daschle's staff director, and the HRC folks, who came in acting like we needed to do more. The Senator just went off on them, saying, "We delivered 49 votes. You keep saying that this thing is a bipartisan issue. Stop hounding *us*. Go get these other people."

What happened to Olati, to me, is the perfect encapsulation. I worked for Elaine Jones at the LDF [Legal Defense Fund] the same summer that Olati did, and Olati ultimately went to work there full time, but we summered together there after our first year in law school. To be honest, there were times I resented the civil rights establishment community, because I felt increasingly, with the shifting winds of the foundations of politics in this town, that they just didn't get it any more.

They kept coming to us with things that made me think, *I'm not going to put the Senator out there to take all these harpoons just because—and don't come to me and Melody and Olati and question our commitment to the cause. How dare you say that, when we've been the ones who have been carrying your water all the time?* Their response would be, “Well, I don’t understand why the Senator won’t oppose this person.” Mine would then be, “What does that get us, other than destroying our credibility when it comes time to oppose somebody who we think we can defeat? At some point, the boy who cried wolf can become a legitimate criticism.”

This absolutist attitude about things made us want to say, “You guys need to wake up and smell the coffee. The times have changed and you need to think about creative ways to deal with it.” It was very frustrating. Over time, that tension has become a little bit more palpable. Back in the day, when Democrats were in the majority and we had the House of Representatives, and regardless of whether the White House switched back and forth, there was a certain kind of willingness to fight. Increasingly what would happen would be that we didn’t even have the rest of the caucus with us. You can’t even get the *Democrats* to agree that this is something that’s a priority. It was very frustrating.

I don’t know what Olati had to say, but I think for Olati it was even harder. I had only summered at civil rights organizations, whereas some of these institutions and some of these people were her friends and her extended family, having worked for them. For her to be in that position, where they were suddenly asking her to take a stand on a nominee.

The irony of the whole Sixth Circuit thing is that the memo that Melody and Olati wrote said he shouldn’t do it; it wasn’t the right thing to do. That’s what we were there for as a staffer. We’re there to look out for the best interests of our boss and balance that against whatever the cause is asking for. The fact that the community would have felt comfortable even asking for that in the first place is deeply troubling to me. The irony, of course, is that he’s the only person that they would have ever asked that of, and it put him in an unfair position. When you start to cross that line, where you ask of him things that you would be deathly embarrassed to have get out, that’s very frustrating.

**Knott:** We’re near the end. Can I hit you with one more question and then I’ll let you go?

**Sutphen:** Sure.

**Knott:** Do you have a sense of where this devotion on Senator Kennedy’s part, to civil rights, comes from? I’m asking you to speculate. It’s a question I’ve asked many folks, and we’re getting some different takes on it. I’d be curious to see what you have to say.

**Sutphen:** I guess a couple of things. I’ll put on my pop psychology hat. It’s a combination of the fact that he has suffered through a variety of personal experiences—whether it’s the Chappaquiddick thing or the loss of family members—so he has an empathy, an inherent empathy, that many people in positions of power and influence and wealth tend not to have. They rarely have experiences that create that foundational capacity to understand pain and suffering. On an almost spiritual level, he understands it.



I also think that the Chappaquiddick thing—The frustrating thing sometimes about working for somebody like Senator Kennedy is there are always those people who are such haters of him. I was dating a woman and we went to play pool one night. She said, “Oh, you work for Senator Kennedy? How could you work for him? He killed that woman” and this, that, and the other. My reaction was, “Whoa, just relax.”

I honestly think that, after seeing what happened to his brothers, the personal experiences that he had, he feels some responsibility to try to make the world a better place, whether it’s to assuage some guilt that he might feel or just because—I’ve always sensed from him that he has one of those views of the world that at the end of the day, you’re going to be judged by the good things and the bad things you’ve done. I think he wants to be able to put all those positive things from the Senate on one side of the ledger and say, “I may not be perfect; I may be flawed, but I sure did my best to try—within the power that I had—to make a difference and change things for the better.”

I also think that from a family perspective he understood, by observing the roles that his brothers played, that in a weird way his position in the Senate may have given him a greater platform to try to make change. The reality is, no matter how great a President you are, you’re only there for eight years. There’s only so much you can do, even from the bully pulpit, to foundationally shift—Once he realized that he was not going to be President, his commitment to these kinds of principles—I think he understood, OK, well, if I’m not going to be able to change it in this way, then maybe I can change it in more profound and fundamental ways.

From a personal perspective, I think it’s the empathy thing, because that’s what anybody who has suffered enormous amounts of injustice—If you haven’t had a similar life experience, if you can’t empathize with them, then you’re never going to get to—Which is why there are so many people in positions of power and authority who don’t have that capacity.

There’s still the reality that—the irony, of course, is that he is this committed civil rights icon and soldier, but he also still is—He lives the life of a Kennedy. That juxtaposition is still there and is somewhat amusing and ironic. At the same time, it doesn’t bother me, because I feel like there are many people who have the one side of that and have never tried or done anything to check the boxes on the other side.

**Knott:** Thanks. This has been a great interview. We really appreciate it.

**Sutphen:** Sure.

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