

Birch Bayh
Former US Senator (D-IN)

Interviewed by Julia Lamber
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In the Senator's office, February 19, 2004

Julia Lamber: Why don't we start with some biographical information.

Birch Bayh: I was born January 22, 1928, which seems like at least two generations ago, in Union Hospital in Terre Haute, Indiana. The hospital is still there but it's gone through several major renovations. There is not a Birch Bayh room or wing. Nor should there be. My Dad had been a coach for sports at Indiana State, and then became the athletic director of physical education for the Terre Haute school system. He was also a referee. He made quite a reputation; in fact, he is in the Indiana Hall of Fame because of his exploits on the floor refereeing. He refereed 10 final games in a row of the state high school basketball tournament. He was a great human being, one of the most personable fellas you ever met. And he taught me a lot and stimulated my interest in athletics. I didn't inherit enough of his talent, because my dream was to be a professional baseball player. I played quite a bit but I made the right decision; I didn't want to be a Bull Durham character. Mom was a school teacher in Fayette Township High School when she and Dad were courting. (Perhaps I should put Fayette Township [Indiana] on the map. It was as close to Illinois as you can get. It was as far away from the county seat of Terre Haute as you can get.) My mother was the only child of John and Kate Hollingsworth. He was one of the most prominent farmers in the area. He came over the Alleghenies in a covered wagon when he was a year old, right after the Civil War. They put together this very nice farm. In 1936, Dad was offered the job of director of physical education with the public school system here in the District of Columbia. My grandfather wanted my dad to take over the farm so the family wouldn't move to DC but we did. We lived out between Bethesda and Rockville back when old Georgetown Road was a two-lane road and Washington was sort of a southern city. And the reason we moved that far out was that was the only place we could buy a house on a school teacher's salary. He drove back and forth to work every day.

I keep getting an occasional reference from those individuals acknowledging my father. One of them had worked in the old Franklin school building, which at my previous law firm I could literally see out the window. I remember going in there when I was seven or eight years old. Dad was a great gardener and he would take an armful of vegetables in and give them to the staff there. My sister and I enrolled in the elementary school out in Montgomery County. I went to junior high school in the DC area and one year of high school – Bethesda Chevy Chase High School. My mother died in October of 1940. In April of '41, the Army Air Force (there was no Air Force, it was either Army or Navy at the time) asked Dad to join the service as a civilian. He

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had been a Captain in World War I. His task was to set up physical fitness programs all over the country where the government was laying down concrete strips. At that time they were preparing for what was to happen at sometime in the future. But since the job required a lot of traveling on Dad's part (he later became the Assistant Director of a Special Service School for the Army Air Force at Lexington, VA), we went through a series of housekeepers. Finally, at the end of the semester he made the judgment that we'd be better off with our maternal grandmother and grandfather back on the farm. So we went back to the farm in the early summer of 1943.

JL: You went back for your junior and senior year in high school?

BB: Yeah. And that was one of the events in my life that really was to shape me and become a major part of my character to this very day. They say you can take the boy off the farm, but you can't get the farm out of the boy; I am a case in point. My granddad got me a 4-H Club calf—in fact two of them. Later in between my junior and senior year, I put out a plot of tomatoes, which turned out to be the best tomatoes in the whole State of Indiana. Made me enough money for about a year and a half at Purdue really.

My granddad bought this old ragged pair of unmatched horses and brought them out to the farm. He had a bunch of harness around there—he had as many as eight or ten teams of horses going at one time back before the tractor age. And he taught me how to harness those horses. He also had an old one-row cultivator. He showed me how to hitch up those horses and said, "You're cultivating these tomatoes." A buddy and I planted them and then I spent a lot of hours in the hot sun trying to keep those crazy horses from running over my tomatoes.

We had just started picking tomatoes before school started. They'd ripen in a burst during August and September (with maybe one more picking in October if you were lucky—it depended on the frost). I'd get up at 5:00 o'clock, before the sun came up, drive into town with the truck. The Campbell Soup company had a plant in town and it imported a lot of farm workers to pick the tomatoes. I'd drive maybe 12 of them (I think the first year it was Jamaicans, the second year it was Mexicans) out to the farm, put them in the patch, and head off to school. My granddad had a fellow who farmed part of the farm for him. Nothing else was happening on the farm at that time of the year—it was before soybeans are harvested—so he would manage the pickers. When I came home from school, there would be these long rows of hampers full of tomatoes (about 7/8 of a bushel). They were pretty heavy, and they would be stacked clear down these rows of tomatoes—it was usually a two-day operation. We'd load up the truck with the hampers of tomatoes and head for the Campbell plant in town. I would wait in line to unload; sometimes it would be 11- 11:30 before I'd get home. The next morning I had to get up at 5:00 to repeat the cycle.

The Campbell plant was located at the edge of town [Terre Haute]—why they put the plant there I don't know; no one grew tomatoes in that county. Their mission was to convince enough Vigo County farmers to grow tomatoes. They knew that if John Hollingsworth grew tomatoes on his farm that others would follow. They made a proposition to my granddad—why don't you let this be the boy's 4-H project? Well, Granddad said I appreciate your interest but I'm too old to

change – I’ve made a living with corn, soybeans, and hogs and cattle; I just can’t see myself changing at this stage of my life (he was in his 80’s). (Talk about an event in your life where you have two grandparents, both in their early 80’s – my granddad lived to be 89). I had been listening to the conversations secretly in a little alcove. They didn’t know I was there. My grandmother had been part of this conversation. She had been a schoolmarm back in the days where you board with the kids, walking in the snow back and forth to school. She was 5 feet tall at the most; her hair went down to the back of her knees which she put up every morning. I don’t think she weighed 100 pounds. She was just as important to the success of that farm as Granddad had been. She fed the thrashing hands, churned butter every week, and picked up the eggs everyday. She took the eggs and butter to town and sold them every other week to help with the expenses. Anyway, she heard the entire sales pitch [about the tomatoes]. When the Campbell Soup men left, she turned to Granddad and said “John, the boy wants tomatoes, and he’s going to have them.” “Yes Kate.”

JL: Got your tomatoes!

BB: Yes. The deal with Campbell’s was they’d provide the fertilizer and the plants, but you had to pay them back when you got the tomatoes. I had to do all the work necessary for the tomatoes. I remember my granddad standing out there and watching me plow under all that fertilizer according to their instructions. He said, “I don’t know, boy, how you’re ever going to get your money back plowing in that much fertilizer.” I’d plow under 12 hundred pounds an acre (he was a progressive farmer; he’d probably put 300 pounds per acre on his corn). When those tomatoes started coming in and those checks started coming in, he was impressed greatly. That patch of tomatoes won the whole state tomato-growing contest. It was a contest, not just a 4-H project, but for adult farmers as well. Granddad had a sense of pride in his grandson because I really worked my behind off.

JL: Then you went on to Purdue?

BB: I graduated from high school when I was 16. I was young when I entered school. When we moved to Washington, they had different age requirements for starting school. I had to go either forward or backward and Mom and Dad decided that I should go forward. So there I was getting out at 16. The war was still going on but I couldn’t enlist in the Army or any other service; I didn’t even qualify for the draft. But in August, it was all over. Since I couldn’t get into the service, I decided to go to Purdue. It was another major turning point in my life.

There was a wonderful man named John Malling, one of my father’s best friends, who was the principal of the Woodrow Wilson Jr. High School in Terre Haute. Jake must have been like 6’ 4” tall; he didn’t have a hair on his head, tall, kinda had a potbelly; he was getting along in years but he was the most likeable guy. In November, before I graduated, he had taken me to the ATO [Alpha Tau Omega] fraternity at Purdue for dinner with the guys up there. One of the students was also from Terre Haute, George O’Laughlin (his father was the county clerk). I asked for his help later on when I ran for state legislature - - small world. I visited with the guys and they visited with me. Jake, as they all called him, was the province chief for the fraternity. He

advised all of the ATO chapters in Indiana and Illinois. The president of the DePauw chapter was Lee Hamilton; he became my best friend in Congress and wrote that book over there [pointing to Hamilton's book on his office coffee table].

The first time I met Lee Hamilton was at a fraternity officers' training camp at Gettysburg. It was in my senior year, Lee was a junior. As he told the audience at the Court House Federal Building naming ceremony, "I've known Birch Bayh for 53 years." Wow.

JL: That's what I say - - wow! You joined ATO?

BB: Yes. I was busy on the farm. I was working. I wasn't paying any attention to anything. A month before Purdue opened, Jake called me and said, "Have you sent in your application?" "What application?" "Well, the application for Purdue, you're going to Purdue, aren't you?" "Oh, yeah, no, I haven't." "I'll be out there tonight; you fill it out, I'll mail it in the morning, and I'll be there the day before school starts to take you up and see that you're registered." He did and took me to the fraternity house; the guys pledged me. I didn't know what a fraternity house was. Nice furniture, nice rooms, the guys were fine.

JL: Place to live...

BB: So there I was. I spent my freshman year in engineering. It was not a year of great accomplishment. I was just an average student. I couldn't concentrate on school – had no idea what I wanted to do with my life. And when I hit analytical geometry We didn't have any of these advanced courses, chemistry, calculus, or anything like that at Fayette Township. In fact, one of the new teachers at Fayette Township School, Roy Davidson, put in Algebra I and II and Physics. This was the first time. And I think he did that because he saw something in me and my sister and a couple of the other students – he thought well maybe they need something more if they are really going to go on. And a couple of others did. My sister did, I did. He was another great human being in my life.

Anyhow, there I was at Purdue, and at the end of that first year I was very frustrated. I really liked the fraternity but I didn't like the education that I was getting, wasn't comfortable in engineering. I was sort of wandering – I didn't know whether I was going to be drafted. I just I had not set my goal to accomplish anything. So I enlisted in the army– spent a couple of years in the army, a year over in Germany. I ended up as a Private First Class.

While I was over in Germany, an officer in charge of their special services program said, "If you reenlist, I'll make sure you're a Sergeant." He wanted me to run that program, particularly the baseball program, which he knew nothing about. But that's a year ahead of time.

I enlisted at Ft. Mead and took basic training at Camp Lee in Virginia. I enjoyed that. I mean it was grunt work, but I enjoyed it. I had taken ROTC at Purdue and I had been in the Boys Scouts, so I knew a little bit about left and right and one thing and another. So when I got to basic, this was just an extension of what we'd done in ROTC. When we got to the rifle range, I

won the Battalion Marksmanship Award, expert marksman. And out of the blue, they had me out front, carrying the guide arm for the company when it marched. That was unexpected. But it made me feel good about what I was doing. After basic, they put some of us in an 8-week quartermaster course for clerks there at Camp Lee.

We went over to Germany. I was stationed at Giessen in the 529th military police of all things. They had sent several of us (I think it was the people who had the highest grade point on the Army tests) to Clerk's School, where I learned typing and bookkeeping. I didn't mind typing but that bookkeeping stuff, well that wasn't fun. That was also at Camp Lee. We went overseas from there. I remember the morning we went over on one of these little Liberty ships – they don't ride very well out there on the ocean. You know the bunk's pretty high and you hope the person who got seasick was on the bottom bunk. I remember arriving in Germany on an April morning. It was a nice warm day, the sun was coming up – we were going down this waterway, and that's the first time I ever saw Germany. My great-grandfather on my father's side had come over to this country in 1858 on a 4-masted ship. His name was Christopher Bayh, that's obviously where young Christopher's name came from. Didn't understand a word of English. He had on an old pair of overalls with a tag on them – send through to Dayton, Ohio to work on the railroad. He ended up in Patricksburg, Indiana, down in Owen County, south of Indianapolis. That's where his family grew up, including my Grandfather Fred and my Dad.

Anyhow there I was in Germany. That was rather uneventful. I was assigned as a company clerk in the military police. We could volunteer to go out on patrol with the regular patrol, but we were not in the military police as policemen; we were there to manage the company. And that would have been a very dull experience except for my love of athletics. I liked football; I had always wanted to play but didn't have football in high school. In fact, we didn't have basketball or anything. But I played football, basketball, and baseball and I learned how to box. A German was running this sports facility that had a track and a baseball field in this old, what they call, *sportplatz*. Also there was something like a club house. He lived there with his frau and he had fought against Max Schmeling, who later becomes the heavyweight champion.

He was teaching all these young Germans how to box on Tuesdays and Thursdays. I ran four or five miles after dinner every evening; I also played baseball. One evening I got to watching them box and he said "hey, Joe, Joe" – he didn't speak much English, and he kept goading me on. "Well okay." I got into the ring. I had taken a course in boxing in physical education at Purdue my freshman year. I had cultivated a very good left jab. I kept pounding that out there, "Oh Prima, Prima." Then one evening, he said "Joe, you box the Polish fighters." The Red Cross sponsored Sunday afternoon matches between GIs and Polish GIs and I said, "Oh no, I don't want to do that." He said "Oh yeah, you fight Lecky. Lecky is the guy you ought to fight." "Do you think I could beat him?" "Ya, ya." "Well, I'll do it on one condition," I said. "For the next month you're going to be teaching me all I need to know about boxing." So I got a pretty good training in that sport. I enjoyed participating in that when I was back at Purdue and in the Golden Gloves.

That was one thing, baseball was another. I was the manager of our camp baseball team.

Imagine, at the age of 20 and managing some guys that had fought in the war. Some of us were young and most of us had been through one year of college. There were 5 white guys and 13 black guys. That was my first experience in that kind of relationship. We didn't discriminate in Fayette Township; we just didn't have black people. The baseball team was a wonderful experience. I got very comfortable with those guys, and they with me. I knew I was probably as good as anybody else on the team, maybe better. Immodest to say that, but that's why this lieutenant in charge of special services (who was observing all of us, he watched us practicing) wanted me to manage his team; I did. I also played football and basketball. I wasn't a great basketball player but better than the rest of these guys. We took on the Polish basketball team; first time we played them we were in a very small practice gym. These guys were big – they filled up the whole court, and they really put it to us. The next time we played them, we played in our gym at the camp, which had a regulation basketball court. So, we spread it out and we fast-broke them to death.

JL: So much for the game always being played on the same size court

BB: Yeah, yeah that really made a difference. We were suffocated by their long arms and strong defense. But when we got them spread out, they weren't nearly as tough.

One more anecdote about my boxing career. I came to fight Lecky. I was not very happy about this. Phys ed boxing is different. It's not really like being in there with the other guy after your head. One of my buddies drove me over there and I had my little satchel with my boxing trunks and tennis shoes. I went into the locker room and sat down. There was another GI in there who was going to fight. I was playing under the moniker of "Bud Bayh," so I introduced myself as Bud Bayh. His name was Tim Jones, or something. He said, "Who are you fighting?" I said, "Some guy by the name of Lecky." He turned to me and said, "Where did you fight pro in the states?" I said to myself, "What do I have here?" Well, fast forward, Lecky couldn't handle my left jab – he had a mustache and by the time it was over it was all red. I won that one and he demanded a rematch.

JL: Uh huh, did you play him again?

BB: And I fought him again. That one lasted one minute and thirteen seconds by the watch of my buddy who drove me over. Having fought him once, I knew I could take care of myself. I think I was more interested in not getting hit than hitting the other guy, but the second time I got more comfortable with it. I put him away on a TKO.

One more thing – very important in my life. The home demonstration agent in our county, Mildred Schlosser, was in charge of the rural youth organization, which was a bunch of kids that square danced and did all sorts of things, grow vegetables, and other judging contests. Howard Emme was the assistant agent in charge of the crop part. But when I got ready to go overseas, she sent me a large box full of vegetable seeds. She said, "You ought to help those Germans grow vegetables; they're hungry." The first week we were at orientation there was a corporal, George Rademacher, who was in charge of relations with the German populace. He was

engaged to and later married a German girl from a little place called Hungen 40 kilometers outside of Giessen. Giessen was the quartermaster depot for the E.C. Goods would come in the port of Marlburg and then be shipped up to Giessen for distribution. (I later got transferred over to Wetzlar.) I asked this corporal, “What about helping these Germans grow a Victory garden. Why don’t we try it?” He came back and said they think that’s a great idea. We had 56 kids, some of them were brothers and sisters, and they got a plot of land (2 kids per plot) and a horse to plow it and then they worked their own plots with rakes. Every kid had to have a rake and almost everyone had a rake because they had their own garden at home, which is another part of the story. I supplemented the seeds that Mildred had sent by buying some locally. By the way, when I got ready to ship over there, a sergeant said, “You can’t take these.” So I took them out of the packages and put them into the pockets of my uniform. Shame on me. That was quite an experience sitting on my bed, picking out those carrot seeds; they are the smallest.

JL: It wouldn’t work today.

BB: Yeah, it wouldn’t work today. We got tomato plants locally and I brought a lot of fertilizer out there and they fertilized them and had a fantastic set of gardens. Then we began to notice that something was wrong with our tomato plants – they didn’t look as healthy as they did. What we found out was the parents of these kids sent them back at night – they took the tomato plants out of their house gardens and brought those plants back to our gardens. That was the ultimate sign of success. We had been accepted! That story was written about by a fellow named Karl Detzer in the November, 1948 issue of the Reader’s Digest. “G.I. Ambassador.” He was a cherry grower in Michigan and he interviewed me. He’d come out to the farm, I think the summer before, and he interviewed me while I was farming. Every day that went by in Germany, the farm looked better. So I decided to transfer to agriculture when I got back to school. I loved that. It was part of my life really and became even more so. But in November of late ’48, I went into the bookstore and I saw this plaque about Purdue’s GI Ambassador. I wondered who in the heck that is. I bought the paper and went back to the fraternity house and the guys said, “Hey, did you see the story? Did you see the story about you?” It turned out to be quite a piece; it was very thoughtful and brings back lots of fond memories. I went out for baseball and boxed at Purdue. Made the team in baseball, didn’t set any records there.

JL: And you played what?

BB: Shortstop. And some pitching. We had a semi-pro league in the Wabash Valley over at Terre Haute and Brazil, and down in Linton and up in Greene County. We had our own league there in the summer and I would manage our teams, negotiate with merchants, make sure that all the merchants and anybody else I could find would buy uniforms. I mowed the outfield and all that. And I had pitched – I pitched for that team, and we won the league championship. Not because of me, but we were a good team. One of the major players was a principal of the high school. When I got to Purdue I really wanted to pitch, but I played some third base and shortstop. I had a very good arm and it takes a good arm to play shortstop and third base.

That spring of my sophomore year – I came home from baseball practice. The cook always had

food out – a couple of guys ran track and she'd have food on the stove for us when we got back. We had a Chapter meeting every Monday down in the basement of this place – big old house, a nice house. I was eating my meal up there before I'd go down to catch the tail end of the Chapter meeting. They were sorta dry so I didn't particularly enjoy going to them but I had to. One of the guys came up to me and said, "Hey, Birch, we need you down at the Chapter meeting." I said "Okay, I'll come down as soon as I get through eating." He said, "I think you ought to come down right now." I went down there and when I walked into the room, they all stood up and started applauding – they had just elected me president. I said "What!" That didn't happen to juniors-to-be. So I had two years as president of the fraternity. That was a remarkable year – I was elected president of the student body. I ran against a captain of the football team, an Olympic swimming star, and the star of the Purdue Glee Club. Nobody knew this guy called Birch Bayh; no one had ever even heard of him. But when the votes came in, we won! That was a great experience. I don't mean to make too much of that, but I met people like Wayne Townsend (who is now on the Board of Trustees at Purdue and I served on the State Legislature with him) and John Mitchell, who was the publisher of the newspaper over in Frankfurt and in the state legislature with me. I guess that's all we need to know.

Oh, one other thing – Jake Malling surfaces again, the man who is responsible for all of this. I'm certain that Jake Malling was the one responsible for whispering in the ears of the national ATO officers ("You ought to take a good look at Birch Bayh.") Apparently, they liked what they saw but I think Jake was the one who planted the seed, but he never said so and I never accused him of it. The national fraternity gave the Thomas Arthur Clark Award (one of the early leaders of our Fraternity) and it goes to the outstanding graduate of the fraternity. They had many other campuses, such as here in Maryland. I had been chosen for that award. Again, I could see Jake Malling's fine hand, not accidentally having the president (the grand worthy master) come visit Purdue at the chapter house while I was President. He'd seen me play basketball for intramural league and I'm sure old Jake was whispering in their ear; everybody loved him and I think, without portfolio, he was the campaign manager. I didn't even know that it was going to happen. I remember sitting in our phone booth, I'd picked up the mail (hadn't read it) – was talking to a girl I'm sure, and while I was listening to her, I looked at this letter. I opened it, read it, and put it down. Then whoa, "This is to advise you that you. . . ." The experience there, at the ATO house, was a very maturing thing, the ability to figure out how to lead a chapter of about 60-65 guys, half of whom had been in the war, and some of whom were just beginning to shave. The campus had a no-drinking rule. I didn't drink myself. My military experience was nothing compared to the guy that flew 29 sorties over Germany in a B-17 and things like that. Here, again, like the vegetable seeds, I made a compromise where I said the rules will be enforced and I don't want to see anybody drinking here. I knew some of these veterans had a case of beer in the closet and maybe that was stretching the rules a little too far, but I couldn't say to people who had looked death in the eye "you can't have a beer while you're studying." It's decisions like that and how you deal with people who have different opinions - - they never held it against me that I didn't drink. We'd have a beer party with one of the sororities after a softball game or something off-campus. I'd drink coke and no one would say anything about it, I just didn't drink. Why, I don't know. It's probably because of my father, who didn't smoke or drink.

I graduated from Purdue and immediately went back to the farm. I'd been going there during the summers and taking care of my granddaddy. When I was on the farm in high school, I'd get up before either of them and start the fire in this old coal stove. I'd do chores, have breakfast that Grandmother made, and get on the school bus for the 45 minute ride. (Busing was not a foreign thing for me.) My grandmother had arthritis so that her fingers were all gnarled. She was a champion quilter and she couldn't hold a needle correctly. She passed away while I was in the Army over in Germany. I was in charge of trying to see if we couldn't get a housekeeper in there for my grandfather. It was alright in the summer time because I would be there and I would fix him breakfast, then go out and farm, then I would fix him lunch and do the same thing for dinner. But in the fall and winter time I'd be back at school.

You can see that my wife is right when she says that I never talk in a straight line; I don't, I jump around, perhaps give details that don't matter.

JL: You're doing just fine.

BB: The year I graduated from Purdue was a very important year in my life. In December I went to Chicago to participate in a national speech contest. I had won the Indiana title, and I was sitting there (in the Congress Hotel lobby) having coffee on the couch, pretty much like you and I are now. A young woman was sitting on the other edge of another couch talking to the people across from her. They had Michigan on their name tags but the young woman was not a Michiganiaan; she had a strange dialect. At some point, I asked, "Where are you from?" She said "Oklahoma." I said "Well, Oklahoma, sway around here and get to meet some of us from Indiana." I took her to lunch shortly thereafter and she won the contest. We were inseparable, squired and chaperoned by this cigar-smoking wheat farmer, Delbert Hurt. We immediately started talking the same language about what we wanted to do with our lives. She was a young woman who had been elected Governor of Girls State in this American Legion auxiliary program nationwide. We were married in 9 months; Marvella moved over to Indiana State.

When she was elected Governor of Girl's State in Oklahoma, she had come to Washington and had been elected President of Girls Nation. She got Harry Truman's autograph in the Rose Garden between her junior and senior years in high school (before I had ever met her). She was a straight A student, president of the student body, her dream was to go the University of Virginia. Her application came back – women need not apply.

JL: And why did she want to go to Virginia?

BB: I don't know. I think it had something to do with Thomas Jefferson. I don't know. But she was qualified to go any place and do anything. That was the first taste of discrimination she had ever experienced. It had a profound impact on her. She was at Oklahoma State, it was Oklahoma A&M then. We both got back from Chicago and told our loved ones that we had met the person that we were going to marry, after three days together.

I went out to Oklahoma between semesters which happened then in the latter part of January so

that was quickly thereafter. I invited her to the Junior Prom at Purdue. She was a Pi Phi, so I took her to the Pi Phi house to spend the two nights. Everybody said, "Who is it that with Birch Bayh," because I had known a lot of them in student government. Driving back to St. Louis to catch the train, we tried to decide what we were going to do about our love for one another. She decided she would come and spend that summer in summer school at Indiana State. So she did and we saw each other every weekend. Sometimes I couldn't do it in the evenings because of the demands of the farm. When you work a farm you don't have much time but we spent a lot of time together. Finally, we decided we were going to get married and she would enroll at Indiana State. But she lay off the first semester to get acclimated to the farm. We got married August 24 – that's 9 months after we met.

We took our honeymoon and went right back to the farm. She started the process of remodeling this old farm house, making sure that we had a water system that was good enough that she wouldn't get caught with her hair all soaped up and then run out of water. We both determined we were going to get involved with the political process. A lot of people back in Oklahoma, had she stayed there, said she could have been Governor. This was a profound decision, a statement of love on her part, to give that up and to come back and spend her life with this corn, soybean, and hog farmer. That was a remarkable sacrifice on her part because it was clear she knew more about the political process than I did. I knew what it took to get elected president of the student body or president of the senior class and knew how to relate to people well enough. But her father had been Democratic County Chairman of Garfield County, which is one the only district in Oklahoma that elected a Republican congressman. I think he'd run for Sheriff and lost; tough county for a Democrat. She knew about the rudimentary functions of the political process and I knew nothing.

She was bright-eyed and bushy-tailed. My grandfather remarked about how she'd come downstairs every morning, all dressed, ready to go to school, fix his breakfast cheerfully, take off and be back in time to fix dinner for us. That was the fall semester; Granddad died in late October.

We were very much in love and the next year we were going back to surprise her parents for her birthday, which happened to be Valentine's Day. As we were coming down a hill on a very crooked road, she leaned over to pour me some lemonade out of a cooler we had there. This guy was trying to pass coming uphill – he just pulled right out in front of me. I tried to get off – he tried to get off, so we had a head-on collision, totaled the car, bent the steering wheel into a horseshoe shape. She hit the dash board and broke her collarbone, which probably saved her life because she would have gone right out the front of that car (this is before seat belts). She had some bruises on her head but the real thing was the whiplash. After she hit the dash, her head flipped over and hit the steering column and damaged a nerve right here that caused her to see double for the rest of her life. For a month, she was really out of it; she'd talk but could never remember what she had been saying. She went back to Enid, Oklahoma to recuperate. She had this body cast because of her collar bone. I had some cuts and bruises but I think the steering wheel and my strength – I pushed the brake peddle clear through the floor.

That was a traumatic experience for all of us, particularly for her. She had this chiropractor in Oklahoma City who was treating her for a couple of weeks. He was able to deal with some of the problems that she had as far as her back was concerned, that helped relieve her some, but he couldn't get around the fact that the eye muscle had been irreparably damaged. Today they would shorten up that muscle. The first six months was not good; you could imagine how she considered her own dreams falling apart. I just lay down on the grass and cried because of the way she was talking to me. And she clearly wasn't herself. But she was so strong-willed that she was able to force herself mentally to see single. I could tell when she was really tired because her left eye would go up a little.

Before we had gotten in that car, we already decided we were going to run for state legislature. The two of us, bright-eyed and bushy-tailed, right off the farm, we sat down with our county chairman - - this good old boy - grey hair and long jowls, he was very kind to us. He said, "Look, you kids do what you want but I have a rule of always supporting the incumbents. So you go ahead and run, that's fine. I'll give you a list of precinct committee people, you go talk to them, but I'm going to have to support the three incumbents." In our county primary campaigns had nothing like grass roots organization. The county chairman and his minions would meet the week before and decide who they were going to support. The Saturday before the election, all the precinct committee people would come in for their equipment for the election as well as the stack of tags of the candidates that they expected to deliver for. The mayor said he'd be for me, but he lied and it's just as well because that Saturday before the election he sent out the police and the fireman to all the precinct committee people and told them what they needed to do. Many of them were on the public payroll.

Marvella and I started down that list of the precinct committeemen and women. We saw everyone. I remember that she had sprained her ankle some way or other and I remember going up on the front porch of a precinct committee member, I'd carry her up on the steps, knocking on the door before I sat her down. What we found was that many of these precinct committee people were old enough to be our parents, even a few probably our grandparents. They had been precinct committeemen for ages. They knew who the voters were and they'd make sure they got the voters that would support them to the polls. They didn't make a big effort to find anybody else. Everyone of them, almost without exception said, "You know, we need young blood." There were three incumbents. Almost every place we went someone wasn't happy with one of those three. We said, "Do what you want about Charlie but we'd just like for you to vote for us." Those that really supported us would not vote for anybody else - they'd put down just one name. We developed the kind of relationships where we were practically like family members. A woman in the northern end of Terre Haute cooked the best peach pie. When she knew we were coming, she'd always have peach pie.

I think I took out one radio ad. Marvella's uncle had died in World War I of spinal meningitis. One of his buddies had been in the Maryland legislature; he was a Republican. They came to visit and he gave me a \$25 check. I decided not to ask for campaign contributions. Legislators got \$1200 a year; I was not doing this for the salary - I'll just invest the \$1200 in radio ads, one of which is me asking people for their votes, nothing fancy at all. We had Birch Bayh signs at

almost every cross-roads in the county saying “Birch Bayh, Vote B.B.” Marvella and I had out-worked everybody; so that when the votes came in, I had more votes than anybody else, lead the entire ticket. People were scratching their heads saying “How did this happen?” “Who is this guy?” To me, it was an example of people really speaking. I think probably two of the most courageous people in that bunch of precinct committee people were two black women who had two basically black precincts. They would vote 95% democrat. Both of these women worked for the public parks and so they were really the county chairman’s (Dutch Leckis) patronage. When the votes came in there, it was 535 for Bayh, 6 or 7 for the other eight. They really brought in that vote. And I thought that took real courage. Particularly the second time I ran; the Mayor was mad at me.

He was actually fighting against me because I dared to introduce a state constitutional amendment that would give Indiana cities home rule, letting local communities decide what the salaries of their officials were or whether they had a park district. Before I was sworn into the legislature, the League of Women Voters asked me to introduce it. It was supported by both parties, had passed the legislature in the previous session, and was coming through the House a second time to go to referendum. And the mayors suddenly got organized and really understood – if this passes, instead of having to influence two or three people that represent them in State Legislature, the mayors would need to be responsible for everybody in their cities. So they convinced the firemen and the policemen that they were going to lose their pensions, which obviously wasn’t true. But they ran a very hateful campaign and we lost that battle. I remember Marvella sitting up there in the gallery looking down and she said, “You know, those people look mean.” One of them I played baseball with, Frank Covelesky, third baseman for the baseball team that I had pitched for in the summer time; he was a fireman. The next primary, the issue was drawn: they were out to get Birch Bayh, and I did not lead the ticket that time. But I won rather handily and these brave precinct committee women brought in a large volume of voters at the risk of losing their jobs; I thought that took real courage.

After my freshman year in the legislature, we decided it would be nice to go to law school, so we came over and talked to Dean Wallace, who was a native of Terre Haute. He’d done some law work for my granddad. He said, “We’d be glad to have you, but you really can’t drop out for half of your first year of law school to serve in the state legislature. Missing 61 days in the middle of your freshman year will destroy you.” Because I’d had this knock down, drag out fight and I had these people who had stuck their neck out for me, I wasn’t going to drop out of the legislature and leave them high and dry. We decided we’d just have to put law school on the back burner, which we did. We won that election pretty handily and I was then elected Minority Leader.

The fall of ‘57 we went back to Dean Wallace. I had started working for Tony Hulman when we determined I was not spending enough time riding the tractor. I was doing too much politicking. We had to do something else, so I got this job. Tony Hulman (that’s a long story too) became almost like a father to me and I a son to him. We had a very close relationship – I worked for him for a year. I remember talking to him, and I said, “Well, Mr. Hulman, when are you going to give me something here that’s a real responsibility to it?” I was doing a bunch of odd jobs; I

was keeping busy, but he said “Look, you decide what you are going to do with this political stuff.” He said, “You get that out of your system; we’ll give you something substantive.” We were living on the farm; I was driving into Terre Haute to work. Coming home one evening, I stopped by to see a good friend, Jack Mankin, who had run for Congress the fall we were married. That’s the first time Marvella and I were involved in politics, putting up signs for him.

And he was still a close friend. He’d been lobbying me to go to law school that first time. I’d just stopped by to see how he was and he said, “I still think you need to go to law school.” He said, “You know law and politics fit very good together.” Lawyers at that time couldn’t advertise, but every political sign you had was a potential message to a client. Being well known is the most important thing for a lawyer and, as I found out later, it’s also the most important thing in politics. I called Marvella and said, “Look I’m coming home right away; we’ve got some stuff to talk about.” She said, “What’s that?” I said, “I’ll tell you.” So, together we decided we were going to law school.

The next morning we went down and had another conversation with Dean Wallace. There was one legislative session during my freshman year. I couldn’t interrupt those four courses that you take for a millennium, and the Dean said well you can handle this freshman year. I said “Look, I have to run for reelection that year but I think I’m strong enough where I can do that without campaigning.” And that’s what we did.

It was a matter of going home, getting a bag packed for me. We sold part of the farm to a neighbor which made enough money to let me pay off my sister for her part of the farm that we had inherited from my grandfather. At least we wouldn’t be having any mortgage payments and we’d be getting a little money from the farm. That \$1200 salary, maybe popped up to \$1800, but we were living on a very tight budget. It was a matter of two days, I think, maybe three after we talked with Dean Wallace that I was on campus and enrolled in law school, two weeks after classes started.

And that was one of the most wonderful experiences of my life; I really loved to study law. I’ve always asked people thinking of going to law school, “why?” “I just do.” I said, “That’s not a good enough reason,” I said, “You’ll hate it.” My goal was to be able to graduate, get a law degree, open up a Birch Bayh law firm right across the street from the court house square. That was my dream. I loved the possibility of doing litigation and thought I would’ve been fairly decent at it. But that wasn’t to be. I did not campaign that first semester, the Fall semester, before the election. However, the election came out ok. I dropped out of the Spring semester. See this is when you still had the semesters into January. The Democrats elected 71 House members and I was chosen speaker.

The way we worked it – I took three finals early and took the con law test (it would be that course) later, after the legislature. The man was very thoughtful. I was on the Law Journal and I would write a couple of notes, one of which was about the state legislative process and what should be done – annual sessions and one thing and another, a lot of that has already happened.

I went that summer and the next summer so that I caught up for losing those credits for the semester dropped. It was just a wonderful experience. We were living in two rooms.

JL: Do you remember where?

BB: Hoosier Courts. For three years. The year I was speaker, I think Marvella cajoled Dr. Wells to see if he could find an extra room for us. But it was tight quarters. I really loved to study law, made some great friends, many of whom were actively involved in my state-wide campaigns.

JL: So you graduated from law school in. . . .

BB: 1960. [Marvella also went back to school and earned her bachelor's degree in Education. We graduated on the same day.]

JL: '60, so you were in the Senate by '62, right.

BB: I was speaker of the House in '59. Thirty years old, going to law school, and Speaker of the House. Pretty heady stuff. That was one of the best legislative sessions education ever had – there were five of us Purdue grads—In addition to Wayne Townsend and John Mitchell, Don Fultz was a farmer, a quasi banker, and he was assistant county agent when I got back to the farm before I got to know him very well, and Bob Rock who is from Anderson.

I decided I was going to run for Speaker and for about a three-day period I didn't go to law school. I just got in my car, calling on these new legislators. I'd seen all but one I think. Don Fultz decided he was going to run for Speaker. He had run for Minority Leader when I ran for the Minority Leader. We were best of friends, elected to the legislator together, but I won that race. I don't know how or why I was chosen minority leader. I must have done something in my first session of legislature to convince my colleagues that I could fight like hell for something and then not pick up my bat and ball and go home if I lost. That's the only reason I chose to speak to a particular person, John Stacey, who was the Ninth District Chairman. Before running for Minority Leader, I went to see Carson King, who was the most senior person who would be logical to run. I was going to defer to him, and he said "Well, what I do will depend upon what John Stacey does." I said "Well, how's that?" "Nine of the legislators are in the 9th District." I'd never realized that. We were in Carson's home in Bogstown having dinner when he told me that.

I don't know whether we went home first – I think we went home and picked up Evan and then went down to see John Stacey. He was a John Deere dealer in Lawrenceburg, down on the Ohio river. Old white-haired fellow. All slicked back white hair and white mustache. We were both elected to the legislature at the same time, but he didn't say a single word in that legislative session, didn't say a single word to any of our caucuses, didn't introduce any legislation at all. He just sat back in the last row like a wise old owl and voted quickly for democratic issues. When we got down to John's house (I remember Marvella had Evan in her arms when we went

to call on him), we told him we'd sure like to run for Minority Leader but before doing that we wanted to get his opinion. He said, "Birch, I've been telling everybody they ought to vote for you. Don Fultz called to ask for my support but I told him to support you." Don still ran against me for Minority Leader. So, the stars were right and I did try for Speaker the following session.

I did the same drill running for Speaker. I left Marvella at home most of the times because of Evan, but I remember we each called on an old farmer, Charlie Clem, and his wife down in Princeton. We found his wife out milking the cow – by hand, you know, old time situation. She said Charlie would be home in about five minutes. So we waited. Charlie arrived and we went in the house. While we were talking – before we had even had a chance to even raise the question about Speaker, we were sitting in their living room and the phone rang. Mrs. Clem said "It's Don Fultz." Mrs. Clem gave Charlie the phone, and Don said, "Hi Charlie, what are you doing?" He said "Don, I'm sitting here talking to the next Speaker of the House."

We had a clique up and down the Wabash River which hung together and he was one of the key members. Another fellow in Knox County, a hybrid corn dealer, Charlie Shenk is the name – they still have that operation and probably the grand kids are running it. I had preempted all those members – I would have the votes from the other two in my own county, and the guy from Clay County [Minnick] who never said a word but always voted "No" – I mean we called him Red Button Rex. I had driven back and forth with him to the session our freshman year so I had a very close relationship. He was the one who really convinced me to run for Minority Leader. So we had every vote in the river clique, plus his. When people like that are with you, you remember them for a long time.

JL: I need to let you get back to work.

BB: Where are we in the process here? That legislative session, when I was Speaker, there were three of us as leaders. Don [Fultz] was the oldest at 32, Bob Rock was 31 and I was 30, and our State Chairman called us the Diaper Patrol. He didn't like some of the ideas that we had; for example, he didn't like this school consolidation. He thought it would be terrible politically to take the schools away from the township trustees, but we did. He didn't like our idea of having a popular vote for Senator and Governor, taking away from the Convention. I mean to lose all that control. . . . Charlie Skillen was his name. He was from some place in northern Indiana, I want to say Starke County, or one of those adjoining counties.

Our party was so fractured. In every district you'd have dissension and the District Chairman was able to control enough county chairmen, and the county chairmen were able to stay in office by limiting the people who vote to those committee men and women who would support them. That rippled on up to the place that Skillen maintained his role as State Chairman and we continued to lose all the elections. We only won once in that period; it was the Eisenhower debacle or the anti-Eisenhower recession landslide we called it in '58 when I ended up as Speaker. I think it was a landslide. We had eleven Congressmen and all of them were Democrats except Charlie Halleck. A lot of those people were voted out the next time. I think of all the things I've done – when we talk about the 25th Amendment over here on the wall or

the 26th Amendment, I think Title IX would have to be in that same category because it has national impact – what we did in that ‘59 state legislature – we doubled the minimum salary schedule for teachers, plowed more money for higher education (about 40 or 50 million dollars back when 50-40 million was real money), and most importantly of all, we re-organized our school systems to eliminate a large number high schools that had 11 or 15 students in the whole school. Every township had a school. I remember going to Jasper County for a commencement speech while I was Senator, it was in a beautiful auditorium, in a beautiful gymnasium, as good a school you could get, the same curriculum as you could get in Indianapolis at North Central. And I just thought well that’s something that we did that is going to continue on as long as the bricks and mortar stand there. And it’s that kind of a lasting impact – if you had the opportunity to have it that makes putting up with all the garbage that you have to put up with worthwhile. So I feel very strongly about that ‘59 session of the General Assembly.

I also got my first taste of racial impact on communities while I was Minority Leader. I was visited by a young black lawyer who was blind, John Preston Ward, articulate young man, and he told me about the discrimination in Indianapolis against black people as far as housing was concerned. I was able to introduce a modern equal housing bill. Even though we have the 13, 14, 15th amendments after the civil war, the vestiges of slavery were still very prominently in 1957. I was very naive about it; I didn’t really appreciate it until I talked to John.

When I got to the Senate, I met a young man, Gordon Alexander, who’d been in charge of Dick Lugar’s housing program. I saw him address a fund-raiser that was held by Black businessmen, and he got up and proceeded to dress down the brothers. He said, “You all can see what’s happening but you don’t know anything about Black history. You don’t know anything about those Black soldiers of the Civil War. You don’t know anything about the Black man that discovered the first paper bag machine or first shoe soling machine.” He went right down the line. I told him afterwards, “You know, why don’t we have a deal here. You come and work in my campaign.” This would have been the ‘68 campaign against Bill Rucklehaus. I said, “I want you to come and work on my Senate staff; I want you to educate me so I’ll know everything that you know about how Black people are being treated, the impact on them.”

I was on a wagon platform, in the hot sun for about five hours in Greene County, Alabama, when they swore in the first Black school board in the history of the State. They had to go to the Supreme Court twice, the second time the Supreme Court said “No, you’re just going to stop doing this kind of thing;” the product was those people then and there getting sworn in. I also went to Jackson State after a police shootout and went to the big voter demonstration effort in Albany, GA. – – wherever things were happening. I saw babies crawling around on dirt floors in Alabama and Mississippi – I didn’t know anything like that existed. Then I was talking to a fellow that ran one of the YMCA’s in Indianapolis. He said, “It’s all good for you to come up here and tell me about the discrimination that’s going on in Alabama and Mississippi, but you don’t have any feel for what’s happening in Indianapolis.” I said, “Well, tell me.” Well, Gordon having lived there, he knew all about it, he took me some of those places, without him I would not have been comfortable, I probably wouldn’t even have been welcome because of the great animosity that existed, understandably, given how they were being treated. Now I have jumped

on to the Senate, but at least I think we got the legislature out of the way.

JL: Were you in the State Legislature in '60-'62?

BB: Yes, until January of 1963. I was Minority Leader again. I worked to get Gov. Welch's program enacted.

JL: I've read an oral history of Gov. Welch where he talks about figuring out who should run for Senate in '62 –

BB: Yes, that was a surprise, a real surprise. I'd gone from wanting his support, to wanting him to stay out of it and letting the delegates decide, because I knew I could win hands down and I think Matt recognized that. He also saw the number of women, the number of young people, and the labor unions. It would've totally disrupted the Democratic party, but there were those around Matt, I don't know if this comes out in his oral history, who were trying to get him to go for [Mayor] Charlie Boswell, because Boswell was a favorite son of the Indianapolis Star. Great guy, I came to consider him a good friend, made him postmaster there. Well, I think that's enough for today.

Second day: February 20, 2004 (with additions from February 18, 2005)

JL: Yesterday we were talking about your career before you were in the Senate, so could you talk a little bit about your early years in the Senate so then we can have a context in which to talk about the Title IX legislation.

BB: It was a spectacular period I think in the history of our country. There I was maybe 100th in seniority and I couldn't have cared less where I was seniority-wise. It was such an amazing experience. I had an appreciation for the last line in The Candidate with Robert Redford when he said, "I've been elected; what do I do now?" I was able to get some exceptional staff people around me and I was blessed to have them with me all the time I was in the Senate. I think my staff was as good as or probably better than anybody up there because they gave it a lot of personal attention. I just got people that were really smart – smarter than me, and the biggest, most important ingredient they all had was that, they might have been hesitant but they all knew the importance of saying I'm wrong – you made a mistake yesterday in that press conference or there was a speech and you missed three good chances to stop that speech yesterday. They were all good.

This was the John Kennedy era, it wasn't a very long era but the ramifications of it went on for decades, I think, maybe even today, where he restored people's faith in the government. He gave them hope that there was sort of a fresh breeze blowing through Washington. I had met him while I was Speaker of the House [in Indiana]. We drove around in the front seat of the car with the three of us scrunched in there and he was signing autographs. I remember on the day after election [to the Senate] we were having lunch back in Terre Haute. We'd had a fire truck drill down Main Street and we were back at the house sitting there with the phones turned off. At last

we were going to have one meal together because Marvella only saw me one time from Labor Day till the election.

We talked every night on the telephone, of course. But there we were; her parents had come up to watch Evan; he was up and around there someplace. There was a knock on the door and Marvella got up and walked to the door. She said to me, "I'll handle it." It was Frank Riddle, the Chief of Police in Terre Haute. He said "Mrs. Bayh, I have a message here for you." She said "Well, thank you very much, Chief, I'll just put it at the bottom of the pile." It was a big pile. He said, "If you look carefully, Mrs. Bayh, I think you'll probably want to move it up some – 'Call the White House.'" We got President Kennedy on the line. His opening lines were "Birch, how'd you do it, you miracle maker?" If you watched that story about the Cuban Missile Crisis with Bobby [Kennedy] and Kenny O'Donnell, they were talking about whether JFK should make a stop in Indiana – he was going from Louisville to Chicago and Bobby says, "We're never going to carry Indiana, Birch Bayh is going to lose that Senate race, but it would be good practice for us in '64."

It's a long story how Kennedy was persuaded to get there, but nevertheless, some of my supporters convinced him that he should make that stop. They had pretty well written off that senate race. But they came. And it was an amazing speech. He crawled clear out on a limb supporting me. The issue of Cuba was the main issue in the Senate campaign as far as Homer Capehart [the incumbent and Bayh's opponent] was concerned. He wanted to send in the Marines a year before there were any missiles before the blockade. After the speech, Kennedy got back on Air Force One, "caught a cold," and went back to Washington. He must have had news about the missiles waiting for him on the plane. When he crawled out on that limb, he could not have known that there were missiles there, because he took a real shot at Senator Capehart. President Kennedy said: "America doesn't need those 'arm-chair' generals who would send other mothers' sons to fight and die in an unnecessary war. Indiana is not served by Homer Capehart; you need Birch Bayh." It was a Kennedy speech. Anyhow, there I was in Washington and I was sort of a surprise to everybody.

And the legislative process was just about the same there as it was in the state legislature. But there is a big difference between Bull Durham and the Minor Leagues and the people in the Major Leagues and the United States Senate. The players were a lot smarter, more experienced, and knew the rules of the Senate inside and out. These rules were an integral part of the Senate. They distinguish the Senate from other parliamentary bodies. One of our first orders of business upon my arrival in the Senate was to do something about the civil rights laws of our country. Before they had always been filibustered because there was a 2/3 rule in the Senate – you had to get 2/3 of the vote in order to close the filibuster. I thought that was very undemocratic. The Southerners, God bless their souls, were always able to get enough votes to continue. They had 1/3 of the Senate, and so it was difficult to get anything like civil rights laws passed. Later [in 1975] we changed the rule – from 67 down to 60. That wasn't the kind of change that we wanted, but that was the only kind of change we could get. It was a lengthy battle. That laid the groundwork for where we are now where there had been filibusters here frequently. At least you had to have 41 members of the Senate, instead of 34, in order to filibuster. And I always

preferred majority rule but that's the difference between the Senate and the House.

I got the two committee assignments that I wanted, primarily because of Vice President Johnson. He had taken Marvella and me under his wing but I don't need to go into all that. I remember he had a dinner party out at the Elms – this was before there was a residence for the Vice President. It was a magnificent house in one of the wealthiest parts of Washington. He invited Marvella and me, a few of his close staff, and a couple of other LBJ confidants. All of the other guests were close to LBJ and we were newcomers on the scene. He had a reception beforehand when he came up and reached in his coat pocket and he said, "You want the judiciary and public works?" "Yes sir, that's what I'd really like to have." "I think you'll be happy with the results when the steering committee meets tomorrow." I'm sure that's what it was. I think it was because of his close personal relationship with Dick Russell, who was the Chairman of the Steering Committee. He was a brilliant man. It's too bad he hadn't been born in Michigan or some place like that. I remember Jim Eastland, the Chairman of the Judiciary Committee, cigar smoker and statesman from Sunflower County, Mississippi. He was a very strong racist, and so we had real trouble getting the civil rights laws out of the Judiciary Committee. The press asked Eastland if he could vote like Phil Hart. Senator Hart was the leader of our liberal, pro-reform group in the Senate. He's from Michigan. He and Bob Dole had been in the same hospital right after World War II.

There was a great deal of camaraderie – you take your best shot and if you don't get it, okay. Now, there's a lot more contentiousness. Then we had another battle on other issues and they will probably change sides and support you. You really try not to irrevocably sever relationships with any Senator. Strom Thurman and I worked together – It involved reforming the flag code. Not one of the most significant pieces of legislation that I was involved in.

When Kennedy was assassinated, then of course LBJ came into the presidency, and I never will know, but I honestly believe that Lyndon Johnson was significantly responsible for the civil rights reform. He'd been a segregationist himself when he was Majority Leader and he realized two things: The present condition could not be tolerated; it was wrong. Second, to be a national leader you had to assume the pro-civil rights role. There was a mix of idealism and strong pragmatism there. I think when push came to shove LBJ's leadership from the White House had a major role in getting the '64 Civil Rights Act passed and the '65 Voting Rights Act passed. That voting rights act, you know, gave people in the South the capacity to elect Black congressmen now and that school board that I'd talked about down in Green County, Alabama.

We could not get the civil rights legislation out of the Judiciary Committee, because the rules of the Judiciary Committee say that one person can speak as long as he wants. The segregationist Democrats and a couple of very conservative Republicans kept the civil right legislation bottled up. We just couldn't get it out of committee. One of the real reasons, I think, that LBJ is a great Democrat—he twisted arms and made it happen. Everett Dirksen was the Minority Leader and the ranking Republican on the committee. I became very fond of him. I was amazed that he took me under his wing and told me what I needed to do to get ready for reelection. Amazing! Here you had the Minority Leader, the opposition. He had a very stentorian voice. The House

had passed a civil rights bill, and it was sitting at the Senate desk – the question is, what do you do with it? The Senate had its own civil rights bills, but they were never going to get out of committee. So what we did was to have the House pass the civil rights bill and when this bill came over from the House then we passed a resolution assigning it to the Judiciary Committee but also ordering that it be stopped at the desk and never sent to the Judiciary Committee. We also ordered that it be passed out by midnight on a specific date about a month later. The final bill was drafted in Senator Dirksen's office. We were all sitting around that table – a little push here, a little give there and we got that bill out at about 11:59. It was swept to the floor at midnight, following orders of the Senate, and it passed. We didn't have a whole lot of votes to spare, in as much as the southerners wouldn't support it anyhow. I think that LBJ talked to Russell, who was the leader of the southerners, brilliant man, and convinced him that this had to be done. "You won't have to vote for it, but make sure that you don't do all the high jinx that you can to use the filibuster" – for example, filibuster the order to proceed and every morning require the reading of the previous day's record. There are a lot of things that you can do, but after a length battle it passed. It was really a glorious piece of legislation. That has been, almost to the day really, that that legislation was passed. So that's what, 40 years?

It still hasn't been fully realized. There's not blatant discrimination but a subtle status quo mentality in all too many of our communities. The ironic thing about it was that in my trip to learn about the plight of the Black citizens of this country, I think I said earlier, there are some places in the United States, up North, we pontificate about how terrible it is for the South to mistreat black people yet in many ways we do it ourselves.

Kennedy was shot on November 22, 1963. About two weeks before that Fred Graham, who used to be commentator for CBS, and was Estes Kefauver's chief of staff on the Constitutional Amendment Sub-Committee, came by my office. He said, "Senator, you may not realize it or not, but you are the only member on the Committee that doesn't have a sub-Committee." Back then everything was by seniority. The senior people, basically the Southerners, had two or three subcommittees. Kefauver had three subcommittees. Graham said, "I just wanted you to know about that – it seems to me you ought to have a chairmanship just like everybody." Sen. Kefauver is gone and I am leaving too, and the Senator has talked about closing this sub-committee down. It has a staff that we have to appropriate for." The judiciary committee had more sub-committees and a larger budget than any other committee in the Senate. It does a wide variety of things such as immigration and anti-trust. It's amazing. I ended up with two sub-committee chairmanships. One was the juvenile delinquency sub-committee – we can discuss that in a minute. The other was the constitutional amendment subcommittee. Graham said, "I don't think the Senator is going to go on with it, but you might ask him."

(Estes Kefauver was a great hero of mine because of the way he took on the establishment. He was very smart, of course. He had a very liberal approach to raise some other social issues, which is not consistent with the views of a lot of people of Tennessee, the same with Al Gore Sr. They were two dynamos right in the heart of the enemy, so to speak. The first speech I made in the Senate after I got there was at the behest of Senator Kefauver.)

Senator Eastland [chair of the Judiciary Committee] and I had a great relationship. It's crazy. He was very seriously ill with cancer; one of the staff people would call me and say, "You know Senator, the Chairman is having a birthday tomorrow, he'd love to hear from you." Being for Birch Bayh in Mississippi was not necessarily the most popular thing to do when I was rummaging around in national politics, but he was hanging in there. Anyway, I went up to see the Chairman about subcommittees. He had this gentleman bring him some ice, got out the bourbon, and wanted to know if I wanted any branch water. Now this was before lunch, so I sipped a little bit there. I told him what I wanted. "Birch," he said, "I'm awfully sorry," (he had a great southern accent); "I decided to close the committee down." I said, "Chairman, I understand you are trying to save money but I could assign somebody from my personal staff to be my staffer, so it wouldn't cost you anything." He said, "No, I think I've already decided." I left disappointed but not surprised. Next morning my secretary said Chairman Eastland is on the phone. He said, "Butch, I've changed my mind; I want you to be Chairman of the subcommittee on constitutional amendments." I said, "Thank you very much." He was a wise old bird and probably asked himself what he as a conservative old-timer from Mississippi could do to maybe obligate this new young pup from Indiana, who was very liberal by his standards. But this was a freebie for him. I appreciated it, nevertheless. I thought it was very gracious. Two weeks later, John Kennedy was assassinated. We had done enough rummaging around that we had, with the help of the American Bar Association which had done a lot of work on this, put the running gears together for our constitutional amendment very much like the 25th Amendment.

When Kennedy died, we had a vacancy in the Vice-Presidency for the 16th time. The whole question of disability was a part of the discussion because you could envision that instead of a dead President what we had was a vegetable as the result of this attack. How do you remove him? I think the original constitution gives Congress plenty of authority to remove him, but if he would recover, how would you get him back. That was always the stumbling block; it always got to that. Plus, tinkering around with presidential power is probably the most difficult thing in our constitutional structure. It is such an enormous force that the people around the President, the people who support the President, are loath to do anything to lessen that or make it easier for somebody to take it away from him. We introduced the 25th amendment and we established a blue ribbon committee with the bar association, a lot of very high level people on there to study this. They came out unqualifiedly supporting what basically was the original 25th Amendment that I introduced in the Senate. The bar association members made a presentation to their convention in Chicago and they unanimously endorsed it. It had a lot of appeal in the sense that a myriad of people just didn't like to think about it.

They think about the Woodrow Wilson situation which was the worst example or the best example of a terrible situation. We got it passed the House and the Senate. In the Senate, the battle was on between me and Sen. Everett Dirksen. The Republicans had an idea that they didn't want to put any of the details or fine print as to how you implement it, in the Constitution, but they wanted to give Congress power to do that subsequently. I said, "You know that's no better than we are now." I said things like this – the best ideas we have need to be in the Constitution before the emergency hits because once you have a disabled President who is going to prove he's disabled? There are a lot of terrible things that you can't deal with in a wise

manner after the tragedy occurred, because then everybody's vested interest – their own personal stake in what happens – will take precedent over what is right. So we defeated that.

I was Chairman of the Conference Committee because I had originated the amendment. The House had taken the same version I had at the insistence of the ABA. Manny Summers was the Chairman that year; his picture is back here. They got it through the House and then we had this conference. I was actually being the Chairman of the conference that would amend the Constitution of the United States. We passed it. We came along later with the 26th Amendment, which gave people the right to vote at 18, which went smoothly.

JL: The 18-year-old vote was without much attention, right?

BB: Yes, it was such a right thing. When I was in the state legislature, I introduced a constitutional amendment to the State of Indiana's Constitution to lower the voting age. We didn't get anywhere with it.

I was a strong devotee of the popular vote for the President, which was the next thing that we undertook. And we followed the pattern of the 25th Amendment and established a Blue Ribbon Committee with Walter Reuther of the Auto Workers, the President of the Chamber of Commerce, the ABA, and the medical AMA. We had several heavy thinkers on that Blue Ribbon Panel. We had Henry Bellmon, conservative Senator from Oklahoma, and the former Governor of Indiana. We had a commission report out the popular vote for President. I had originally had reservations because I thought there were too many Senators from small states so that we couldn't get 2/3 of the Senate to agree, but the more I examined the issue I learned that the real power was in the large states.

Henry came in and we got to studying things. You know I thought I had the advantage in Oklahoma, but I didn't. We had a large number of small state Senators on there and we got the companion bill through the House pretty readily. In the Senate they were filibustering it, and finally we got the matter put to a vote. I had 60 sponsors. But a week before the vote, Strom Thurman, now get the irony of this, sent a number of telegrams to all the Jewish and Black leaders in the country saying that if this constitutional amendment passes the advantage that you as minorities had in the large states that determine who the President is will be lost. And they bought it!

I got so angry with them. You could lay out the Nixon election. We looked at that vote – Illinois went one way, Ohio went the other. New Jersey went one way, New York went the other. Pennsylvania went one way and we went right down the country. In all those areas where they had minority votes, the effect wasn't consistent. I said, "You know I have Gary, Indiana; 90% of that county voted for Hubert Humphrey last time." But not only didn't they have their vote counted, it was counted against them in the electoral college system. And you think you're happy with the minorities and this will help the minorities in New York, but what about Alabama, Mississippi, South Carolina? All those Black votes, they don't count the way they are cast." I felt very strongly about it but they kept persisting. So I said, "Look I haven't been here

all that long, but I have spent every hour I have been in the United States Senate trying (a little demagoguery here) to see that we got the Voting Rights Act passed so that every voter had one vote. Now you're telling me that you want to have 1.0 one vote, or 1.2 votes? Get your butts out of here." I may have not been that kind about it. I was just so angry. I called Vernon Jordan – I had gotten to know him pretty well since I visited him in the hospital in Ft. Wayne when he was shot up there.

We're still good friends. We had that argument. My theory was we had 60 supporters and once the debate started we'd pick up the other necessary 7. What happened was that we lost some of the votes from the larger states. We got someplace in the 50's, 55, 56 something like that.

JL: If they had to do it over again right now, I bet they would've

BB: You don't think I've thought about that?

And there had been other times when that happened. Jerry Ford and Jimmy Carter – I mean, if there had been a change of less than 11,000 votes in Ohio and Hawaii, Jerry Ford would have been elected President even though Jimmy Carter had 1 million and a half vote majority. Ten thousand votes change in Ohio and Delaware – it would have been a tie vote. In the event of a tie, it then goes to the House and then the small states do have an advantage.

The next sequence in the Constitutional Amendment Sub-Committee was the Equal Rights Amendment. The Equal Rights Amendment had been knocking around a long time, but it languished in the Judiciary Committee because every time it came up, Carl Hayden, who was the President Pro-Tem and in his 90s (I think he left the Senate at 96 or 97. And, of course, when Uncle Carl spoke, everybody else listened. He would always get an amendment on that thing – *this applies except when it is necessary to protect health, safety, and welfare of women.*

But first of all, I want to point out that my wife, Marvella, was the most influential person in my life, bar none. She had been discriminated against and thus had a personal experience. It wasn't that she was overly-sensitive about that, that she was out to get them or something like that. But, she could hear me say things, or respond to a given situation, and she would point out how this really was not right, as far as treating women that way. In fact, I remember it probably was the first spring we had been in the Senate. We returned to hotel from dinner with friends and Marvella said, "I think I would like to go back to work." I said, "Why do you want to do that? What do you want that I haven't given you?" And she said, "Birch Bayh, suppose if you were me, how would you feel if I told you or asked you what do you want that I haven't given you?" I said, "You're absolutely right, absolutely right."

Now, why she didn't go back to work, I don't know. But, I had a sensitivity. I was aware of the important role my grandmother played in the success of that farm. I was aware that granddad was on the front porch smoking his pipe after dinner and grandmother was preparing for the thrashers that were going to be coming in the next day. A man works from sun to sun, a woman's work is never done, I'm sure you've heard that.

In terms of the ERA, it was all those traditions, those laws that were designed to “protect” women, but really weren’t protecting women, they were denying them equal opportunity. So, the amendment just sat there, and finally I decided that we were going to give this a try and, not coincidentally, I announced that at the annual meeting of the Business and Professional Women’s organization. Of course, I was automatically their hero and became a major force in the Women’s Movement. I developed a high degree of understanding because of Marvella and talking to some other women like Betty Friedan.

These women almost destroyed themselves by picketing during the legislative process. Here I was holding a hearing on the constitutional amendment to lower the voting age and suddenly these women raised up in the back of the room with signs and started chanting for equal rights. Fortunately, for me and for them, because I didn’t like that breach of decorum, the vote bell rang and I told my staff (here, Larry Conrad), I said: “Larry, find out what these damn women want, tell them I’ll sit down with them immediately after this hearing is over, spend as much time as they want, but back away and don’t disturb the hearing, so that I don’t have to order them out of the room. I don’t want to do that.” So, he did and we sat down with them. They too had provoked my interest in the subject, even though in a way that I wasn’t comfortable with. But that’s the way, whether it’s the Native Americans, Blacks, or others, sometimes it takes a bit of violence or civil disobedience to get people’s attention. I can’t say that’s an unimportant role in the process. I think it has its limits and it came very close right there.

We were discriminating in the application of criminal laws, the right to own property, the right to transfer property and what happens on the inheritance end, when a woman and a man die they were treated differently, equal pay for equal work. (That’s the only vote I cast in the [Indiana] House of Representatives when I was Speaker. We had that Equal Rights Amendment in the great ’59 Session. The Speaker can only vote if there’s a tie. And I looked down and it was tied and I gaveled and said, “The Speaker votes aye, next business.” But it never passed the Senate.) So all of those things were there as a result of the study. One of the lead groups in that were the Business and Professional Women. There were also Bella Abzug, Betty Friedan, and Gloria Steinem, I mean some of the brassiere burners and those who wanted to throw Mac Carter out of the window at *McCall* magazine because he did not want to take on *Ms* magazine. It was rather a contentious time, as is the case with hostile effort against Native Americans.

We got the Equal Rights Amendment passed but we had a heck of a time getting that out. I was finally able to get Jeremy Stokes to say we’re gonna at least vote on this, and we’re going to have it next Thursday in the Clerk’s Office outside of the Senate, so you could be doing business on the floor and still vote on the amendment. That same day I had proposed the amendment that would have been Title IX to the Education Authorization Bill. It was opposed by a point order. I talked about this the other day [in a speech at the law school in Bloomington].

We decided we would add an amendment, Title IX, to a higher education authorization bill – add an extra title to that legislation, which seemed to be a very appropriate place to put it. Somebody made a point of order that in this bill there’s no mentioning of sex. And, because it

doesn't mention sex, we can't put this amendment in here. But really, how could you say it's non-germane to provide for non-discrimination? Anyhow, we were having a knock-down, drag-out debate, in which the anti-women's people were using the point of order as a way of keeping this from succeeding. (We lost that battle by one vote, I think. They ruled it not germane. Then the following year with Edith Green's help over in the House, Patsy Mink and some of the others, it comes up again. Edith was really a pillar of strength over there on this issue. She was Chairman of the Education Sub-Committee; she was from Oregon.)

Anyhow, I was on the floor trying to get Title IX off and I turned it over to somebody else. It may have been Ed Brooks or Bob Packwood. (Bless his soul, there's a guy who probably did more for women than any other Republican yet his personal life got in the way and just led to his demise.) Then I went upstairs to sit with the Judiciary Committee. The amendment has passed under the constitutional amendment subcommittee but Eastland was running this thing. It was a rather short meeting. In an effort to try to get unanimity, I succumbed to Roman Hruska's suggestion that we put a 7-year time limit on the amendment. That was the only change the committee put on, then it went out on the floor. That time limit was to come back and haunt us. We later realized that the Supreme Court of the United States said you have no power to limit the ratification process in the Supreme Court that was not contained in the original Constitution.

As we were adjourning this meeting of the committee, Strom Thurmond (R-SC) came rushing up the stairs, asking "had we passed that woman's thing?" I said, "Yes, Strom, it was unanimous." "Okay, mark me as 'aye' too." I said, "Sure, you'll be listed as voting 'for.'" (I had a very good relationship with him although on one issue we almost came to blows. That's another story, but in his later years he was always very nice whenever we wanted to see him. His wife Nancy would say "Hi Birch" when she was with friends in the Senate dining room.)

Then, I went back down on the floor [to the Title IX debate] and I noticed Strom came down and walked through the back of the Senate and listened a bit to what was going - - we were talking about admission to Yale, and Strom said, "Does this mean that those girls have to be admitted to the Citadel?" I say, "Strom, if they are taking Federal funds, yes." Then he went into a great oratory about [General] Mark Clark [President of the Citadel, 1952-53] and all the people who had graduated from the Citadel and protected their country - went back years and it was a rather contentious issue when it was passed. But I thought how could you be upstairs voting for the Equal Rights Amendment and downstairs saying "except in the area of education"? Although we lost that year by one vote, we came back next year with Title IX and it was a piece of cake. We had gotten around the original point of order by saying it was included in the bill as it came out of committee, so it was not non-germane. It was in the Bill and so that's its history.

I did not fully realize the significance of the floor discussion of Title IX until I got to reading Supreme Court decisions about Title IX when I was writing a brief to the Court in the last four months. I submitted an amicus brief in this Jackson, Birmingham Title IX case, which is about retaliation. I'll give you a copy of that—

It relates all that. I don't remember whether it was Justice Brennan or who it was in talking about Title IX enforcement. Title IX was rawbone legislation; it was 2x4s and 2x6s of the frame of the house and there weren't any shingles or siding on it, which is often the case. That's why we have regulations.

There were no provisions saying you could sue somebody but we made it quite clear in the debate. Fortunately, the questions were asked – “How are you going to enforce this?” “What vehicles are you going to use to enforce this?” And I said, “Well, it's basically the same provisions as Title VI of the Civil Rights Act.” The Civil Rights Act not only provided the means of enforcing the civil rights legislation but interestingly enough it provided, I think it was in the housing area, that retaliation against someone who had complained was also a violation of the civil rights act. And, I repeatedly said “We're using the same mechanism that has been tried and tested under the '64 Civil Rights Act, and that's what we're going to use on Title IX.” Well, low and behold, here comes the *Jackson* case down, and it is a question of retaliation. [*Jackson* is a Title IX case the Supreme Court decided in 2005].

In putting this brief together, I went back and looked at the record of what I had said. One of these justices says, “This is a unique piece of legislation; the legislative process is not the judicial process. Title IX was not introduced as a bill, it did not go to a committee, there were no committee hearings, there were no committee reports that tell what the purpose of this bill was. The only thing we have is what happened in the debate, and the author of the legislation, Senator Bayh, his opinion is the controlling factor of what Title IX really meant.” And so you go back and see here what I had said about Title VI and all these kinds of things, which I think makes some very powerful briefs there.

JL: For you to write this brief, I think this is terrific. I can't wait to see what the court does with it.

BB: It's going to be 5-4, I'm afraid, and I'm not sure which way; I saw the argument.

JL: Title IX itself never went to committee before it was debated on the floor?

BB: Right. You said you wanted to know supporters and opponents. The conservative Southerners did not support it. Strom Thurmond really had a thing about the Equal Rights Amendment and he got involved in taking me on about homosexuals and all this kind of business. I was very rude and trying to be cute with him. I asked him if he'd yield for a question. He was talking about all these homosexuals and I said, “Senator, tell me, you're talking about how all these homosexuals are going to be able to wreak havoc on the country if this is passed. I know absolutely nothing about homosexuality; will you tell the Senate what your experiences with homosexuality has been?”

You know, the gallery went up in smoke. He flushed and he muttered, “Well, well.” I tried to get him to yield to another question and he said, “No, I won't yield.”

JL: Because if it was about sex, then it was about sexuality?

BB: Well, anyhow, it was a red herring. Some very conservative Republicans were opposed to Title IX, but not all of them. We had some very strong Republican support. The most vocal and obvious in the legislative process was Bob Packwood (R-Ore) and Ed Brook (R-MA). And, of course we could count on Margaret Chase Smith, but I'm not sure she did anything more than read a speech in the Senate. We had Mark Hatfield and Everett Dirksen, this was not a partisan-kind of thing. Just like Strom wanted to be listed right on that constitutional amendment. That was because – he didn't know I knew – that morning he would have a visit from a South Carolina chapter of the Business and Professional Women, urging him to support it. We had equal numbers of women of different groups getting the people back home to let the senators know how they felt and I think it was quite effective. The one thing I did in my legislative career was to be able to harness the democratic process in a way that representative government worked.

I can remember Jesse Helms on another occasion. I had the Juvenile Justice Act which has survived to this day, despite the Reagan era closing down programs which would provide funds to prevent juvenile delinquency as well as look at the offenses of juveniles in a more judicious manner. He came up to me and said, "Hey, Birch, you got this Juvenile Justice bill coming down? I just got a call from my general court judge who I was surprised to hear from. He's an old of mine; I want to be for that bill." Well, shoot, the head of juvenile judges was a Republican judge in Kokomo, Indiana.

JL: I read that the original plan for Title IX was to amend Title VI [add sex to existing statute] but that African American groups were reluctant to have Congress amending Title VI.

BB: Yeah, they didn't want to fool around with perfection. Not necessarily perfection, but an acceptance that their equality should be implemented by law.

JL: Was there some real worry?

BB: Oh, I don't think it was real

JL: Nervousness? I certainly understand nervousness.

BB: People that sit-in in the restaurants, and face Bull Carter and all the things that the activists had done. . . . In fact, I was an activist, I guess you would say, in the Civil Rights Movement, but I couldn't see how this would really affect them. But we just decided – let's do it a little differently.

JL: I know the Equal Rights Amendment came to you because of the Constitutional Amendment Subcommittee. Title IX came to you because of what you'd been doing with ERA?

BB: I had inherited the mantle – rightly or wrongly – as the number one defender of women’s rights. I was proud to have it. I’m sure there are others who were equally deserving. One of the most stalwart, outspoken champions of women’s rights was Bob Packwood. Yet he fell prey to some of his bad habits and to alcohol and did not treated women on his staff properly. He shouldn’t be excused for that, but I think maybe people’s memories ought to be at least balanced, as far as what he has done to help women.

JL: Would you guess that more people were opposed to the Equal Rights Amendment than were opposed to Title IX?

BB: Yes, the Equal Right Amendment was sort of an invidious kind of thing. It would change laws in some states where you had the ability to take my farm. My grandfather could inherit the farm if grandmother died, but she didn’t have the same right he did to inherit it if he died first. So, we go right into the inheritance laws –. Or the criminal laws. Michigan had a criminal statute that treated women who committed the same crime more severely than man; a man would only get six months, a woman would get three years for the same identical crime. Why? Well, I suppose men in the legislature didn’t think women should do that sort of thing. In Michigan women were denied the right to be bartenders. Why? Well, they wanted to protect women from evils of alcohol, but that didn’t apply to waitresses, who weren’t protected by the statute. You know, bartenders got higher salaries than waitresses.

JL: Waitresses are in a little more dangerous position too, right?

BB: Yes, yes, there’s no rationale to some of this, you know.

JL: Right. There was also at the same time legislation affecting the EEOC, right? And, does that feed into any of this?

BB: Not really.

JL: Okay, they’re really all kind of separate because they’re separate committees, is that partly why? Education [committee] is over here and Labor [committee] is over there–

BB: The EEOC provision against discrimination on the basis of sex would have accomplished the same thing as equal rights amendment would have for women employees in universities.

JL: Right. It’s all happening at once and in hindsight it’s not organized.

You said passing Title IX was rather easy. I also read that the education establishment and the sports establishment didn’t really care until it got to the regulation stage. Were they all supportive or at least silent?

BB: No, no, they weren’t. After I introduced Title IX, Moose Krause, the revered Athletic Director from Notre Dame and his counterpart from Alabama appeared in my office. They had

played in the Sugar Bowl, I guess it was. It was on New Year's Eve and it was decided in the last few seconds – so it was dramatic. So there they were adversaries on the field, but finding common cause as enemies of Title IX. Moose said, “Senator, you are going to destroy the Notre Dame football program.” I said, “Help me understand – I've read this piece of legislation several times, and where does this mean that the next time you play in a bowl game that your adversary is going to have 12 men on field and you're going to only have 11?” Of course, they were expressing the feeling that a lot of athletic directors still have. The real problem, I'd say the hurdle, was getting equality of participants between men and women because of the number of participants in their football programs and the amount of dollars spent in that program. It's a very expensive program. The general fallback is that the football program is necessary to support all the other athletic programs. I don't know whether the number is 20 or 30, but some place in that range, of the hundreds of institutions of higher education, there are only maybe three dozen that more than break even on football. The rest of them are money losers. They bear a heavy expense but the big ones have TV contracts and things like that. Notre Dame would have been one of the football programs that brings a lot of money. Well, we could discuss that issue until dawn.

JL: When, as you say, the statute is timber without the shingles, the Department of HEW wrote the regulation and then they are writing the more substantive policy about athletics and the question is how to decide when women's athletics are equal to men. The proposed policy interpretation talked about per capita expenditures and then the final policy interpretation talks about proportionality and the like. Were people talking to you about how to define this issue?

BB: No, not then.

Richard Nixon didn't really want to sign Title IX, but we were finally able to put enough pressure on him that he did sign it. And he wasn't implementing it during his administration. The Carter administration was very slow in implementing it also.

In fact, I remember taking Donna de Varona, Billie Jean King, Susie Chaffee, and a couple of others into the bowels of the White House and talking to Fritz Mondale about it; he was the vice-president. We were urging the Vice President to use his power in the White House to get the Department of HEW to move more aggressively. Here you had a Democrat House, a Democrat Senate, Democrat President, and too much of the status quo in the Department. We just had to do something to get this administration to shape up its act or get HEW moving. There was a lot of foot dragging because of covering entirely new territory.

JL: So, what happened at this meeting with Fritz Mondale?

BB: Well, he said we'll get on it. And there was activity, but there wouldn't have been if we hadn't kept riding them. I think they did improve it then, but geez, I believe during the Reagan administration there was absolutely no attention given to enforcing this. I think there was significant improvement under the Clinton administration but not as much as there should have been. You know whenever you have significant social change, it's sort of a sliced bread

operation: you don't get the whole loaf when you first get started. It's incrementally in every court case, every congressman who continues to be talked to – I mean once they've reached a conclusion that this is something I better deal with, and I had to politically, it would be suicide for me not to, I think slowly but surely we're going to get the change. Whether the advocacy groups are now as actively involved as they should be, I just don't know. I assume that they are doing everything that they can, but I also assume that there is a real let down, satisfaction. Was it Jefferson who said that the price of liberty is eternal vigilance? That it is.

And I wonder, there just really was nobody else around that had the fervor that I did. I'm not bragging about it –

JL: No, I think that's right.

BB: I wonder what in the name of Sam Hill happened even at that point if I hadn't have been in the Senate, because they had to deal with me. I wonder what would have happened because it was like taking on the elephants here to get it to happen.

JL: Since we talked last year, I've talked to some staff people for women in Congress. What I find interesting is that each of them would say an individual congresswoman was interested, but they didn't seem to have coalitions. Everyone I talked to has said, "And of course Birch Bayh in the Senate," but they don't talk about anybody else, any of their colleagues in the House as being supportive. It's really quite remarkable.

BB: Edith Green, who was the chairman of the education [sub]committee in the House, was really the very first person to deal with this. And, I think she would get it passed in the House and it would not be taken up by the Senate. So I came along. Edith should get a great deal of credit for her initial thing.

Patsy Mink came along and you hear people talking about her being the mother of Title IX. That may well be true, but I have no recollection of her really playing all that an important role. There were five or six women over there; she was one, Bella Abzug was another, Pat Schroeder was there, and Martha Griffith from Michigan. Their interest was more in the time extension of the ERA.

I remember sitting down with some of them. You know, I'm sort of a play-by-the-rules guy. My father, the referee, insisted that I play by the rules. When I started talking to them, I really had reservations about whether this was one we just lost and we have to pull up our britches and go on? But, they and I and a staff person had done a lot of homework on this to show what the Supreme Court really said about the time limits. The Supreme Court said it was irrelevant. So, I became enthusiastic about the time extension, as I had been about the original legislation.

That's floating around out there now, you know. If we get three more legislatures to ratify, it would be part of the Constitution. They would not have to start from scratch. Some of the states, I think Oregon was one, had rescinded their ratification. But the Court has spoken to that,

saying the Constitution gives to the state legislature the authority to ratify. No place does it give the legislature the power to rescind. Once they've ratified, they are discharged of any responsibility or authority.

JL: And there was that constitutional amendment that just got enacted, about salaries or something, that had been around for 200 years? That's interesting. Do you think it's possible that there would be three states that would do it?

BB: I think we could do it, but we'd need somebody that can do what I did.

JL: Well, there's another Senator Bayh in the Senate at the moment –

BB: Well, you wouldn't have to be in the Senate. If we're talking about Title IX, do you want to know what's happened in the last couple of years?

It started when Senator Kennedy held a hearing on Title IX in the Health, Education, Labor, and Pensions Committee. I think maybe it was on the 30th anniversary of the Title IX. Secretary Paige [Education] was the first witness, and totally without any knowledge at all, he dropped this bombshell that he was going to establish a commission to study Title IX and to make recommendations. I had a little familiarity with commissions while I was in the Senate (of course this was several years afterwards). My observation was that there usually are one of two kinds of commissions: One that takes a very contentious issue and studies it ad nauseam till it cools down. You put the papers away in a closet, lock the door never to be returned to again. The second one was that a commission is established with a certain definite goal in mind and not surprisingly the commission usually came to the conclusion of reaching that goal. I had established a commission or two during my time in the Senate.

JL: One of each kind?

BB: We established an alcohol fuels commission, and I was Chairman along with former Congressman Dan Glickman from Kansas. He and I were good friends, he later became Secretary of Agriculture. He was House Co-Chairman, and we ultimately established an ethanol industry, which is now greatly subsidized, maybe too much so, I don't know. But, that was the first baby step in that we had an ethanol plant in Northern Indiana, and Dr. George Sowell at Purdue was conducting tests in which he was able to produce ethanol in 100 gallon lots from cellulose. Instead of corn, you can use stalks, you can use garbage. I still think that is a tremendous opportunity. I don't know what happened to him. But we did put the running gears down to subsidize the industry till it could compete with others. At the time we really didn't realize the way in which the ADM's [Archer Daniels Midland Company] of world would really control large chunks of the industry.

My speech before Kennedy's committee was on "hip, hip hurray, 30 years, we still have things to do." Paige's remarks were four pages of laudatory expressions of support for Title IX. Then he said, "But since some questions are being raised" – big word "but" – "I am going to establish

this commission to study Title IX.” He got a whole bunch of athletic directors, a couple of right-wing women, and lawyers like the Phyllis Schlaflys of this world. (Phyllis Schlafly, she is one woman I really despise. She is the personification of evil in my mind because she was responsible for killing the ERA by going into state legislatures with housewives who’d bring baskets of just-baked bread onto the floor – I remember the Illinois legislature – and say, “Senators, Senators, don’t make me have to go to work; I want to stay home with my children.” We came up three votes short because of her.)

JL: What do you suppose Paige thought the best outcome would be for that commission?

BB: I think he probably wanted the status quo. I think he wanted a formula where walk-ons would not be counted in the football program. I don’t know how he would have dealt with the wrestlers’ complaint. The wrestlers perceive that Title IX was a quota program and they were discriminated against. However, eight different appellate courts have said that you’re wrong. You don’t have a case; this is not discrimination against you. I have gotten to know these guys pretty well. They are great guys and, as I told them, I had great sympathy for you. You think – *I’ve won the county 160 weight wrestling program or I’m the state champion. I want to go the University so I could become more proficient and become the Olympic champion. And, drat, I go to this University, and six months later, there’s no program.* I can see that is a very unfortunate situation. But, as I told them, “Your problems are not with Title IX. Your problems are with other men’s programs where the sports of baseball and soccer are more important and popular than wrestling; you’ve got to face that.” Plus, I guess it was Minnesota where they really were having problems with wrestlers, I mean some of them were not nice people. That doesn’t characterize all wrestlers but they shut down that program for reasons that had nothing to do with equality.

JL: So maybe I’m naive, but why doesn’t Paige just repeal the regulation? It’s his regulation. What the Court is interrupting is this policy interpretation that the Department of Education wrote, he could just un-write it.

BB: If you read the report, it gave the President and the Secretary broad discretion to make changes that he thought were important to make Title IX more effective. I don’t know what the magic words were, but there were a couple of those proposals that had that nice little clause in it that would give him the chance to do that. And that’s a catchall phrase that says he could do anything.

JL: Right, but he didn’t need the commission to do this, right?

BB: He could have done it himself, but I think he recognized then that Title IX was popular. He didn’t recognize how popular. When he established this commission, and I’m being incorrigible about this, I thought okay, we all know there are some things that could be done to make Title IX more effective because we’re still way behind as far as the participation rate, compared to the enrollment rate, and the money spent. There are some men’s sports that were being terminated, which is unfortunate. But there were 71 percent of the schools that had

conformed to Title IX. I'm sure they had more work to do but at least they fell into prong two of having made significant progress without closing down a single men's sport. I remember this wonderful athletic director from Washington State, who established a rowing program for women that has as many women in the rowing program as they had men on a football team.

I was thinking, okay commission's there – let's see how they do it. The witnesses who were asked to testify were, two to one, opposition witnesses. As were the athletic director commission members, except for Cary Groth of Northern Illinois University. I thought it was so good the first game of the season here was the University of Maryland playing Northern Illinois and Northern Illinois beat them and you had Cary Groth over there supporting Title IX and Deborah Yow, over here at Maryland, wanting to put in her recommendation that equality can be satisfied with a 7% differential. That would mean that 57% men and 43% women was equality.

JL: I read one of your quotes in the newspaper went something like, "I can understand if we can't do it, but you know equality is equality."

BB: Well, that is so lame, bogus on its face but she clearly was more interested in plowing money into her national championship women's lacrosse teams than she was in establishing another sport – like the women's ice hockey team. I made a call to a friend, who is chairman of the Ways and Means Committee in the Maryland legislature. I said "Could you help us get a sit down with the Women's Caucus?" He said, "Sure." So I went over there on a snowy day and sat down with about 15 women. All of them were very disturbed that their athletic director would do something like this. I was very subtle and not "go get Deborah," but these were smart women. I remember I happened to be within hearing distance at one of the commission hearings here in Washington. Deborah Yow was over there and her face was red and she was screaming into her cell phone. It was probably one of the women legislators she was talking to. She changed her position; I think she cut it back to 5% and I kicked myself because we had that session a month too late with those women. I kept saying I was going to do it, but I didn't. I was still fighting battles elsewhere and we should have gotten to her before she proposed this 7% solution.

JL: Secretary Paige said he was only going to enforce the unanimous recommendations?

BB: First of all, the commission came out, I think, with the recommendations pretty well manufactured in Gerald Reynolds' [OCR] shop. There was a guy sitting there as Assistant Secretary; they couldn't get the votes to ratify him so he was acting. He was the one who decided which witnesses would be heard. He'd draft the recommended proposals.

But Julie Foudy and Donna de Varona said, "this isn't what we agreed to." They had a running battle all during the drafting period. They were the dissenting votes. And Cary Groth and Muffet McGraw from Notre Dame– I talked to both of them and they said you know we're under pressure here but in both instances, they said our presidents said, "You do what you think is right." And I said okay. I said if you think it's going to hurt you, you can abstain and that will have almost the same impact and that's what they did. But everyone knew where their hearts

were. After the establishment of the commission there was the development of a tremendous grass roots program in reaction to changes.

There was a group of about 8 of us, Donna Lopiano of the Women's Sports Foundation, Marcia Greenberger and Jocelyn Samuels from the Women's Law Center, and several of the key women's group, i.e., AAUW. Every Thursday for almost a year we would have a recounting session of what our various groups were doing – Have they talked to their congressman when he was in town? Have they talked to him in his office? I kept asking “what are you doing back home? What are you doing in the district? What's the grass roots?” I know they got so tired of hearing me badger them about the grass roots. I said, “There's an election coming along in '04, and we have to make it in their interest to be for us with this. So, the more grass roots activity, the more publicity we get, the more public notoriety we get, the more good grades we get in the polls, and the better chance we had of doing it.” They won't pay any attention, they said, but I said believe me they will. I'm sure they decided that I've gotten old and long in the tooth and having fond memories of what used to be.

The public became more and more aware because of what these women's groups were doing. Title IX was sort of a forgotten issue to a lot of folks. It was like things we think are working, but this was really threatening. By the time Paige came down with that report, or shortly thereafter, I think the figures were, 80% of the people in the country supported Title IX and 66 percent would support taking money from men's programs to make programs more equal.

We had a strategy session the very night after the meeting of the commission to try to figure out what we would do because it was clear that we didn't have the votes to stop them. We finally decided on a minority report, which they refused to accept, but I said, “Submit it anyhow. Get a press release out that you've submitted it, make something of the fact that they are refusing to even to accept the minority views and let them know they're not going to get away with this quietly.” I remember saying, “Not very many people can brag about being down on the floor of the Washington Hotel with Donna de Varona and Julie Foudy at 2:30 in the morning.” We had all of us crammed in at the session with our coats off; we're going at it.

So, that's what they did and Paige said, “Well, I understand there is some disagreements here, but we're not really going to accept anything that doesn't have a unanimous support.” But, they refused to recognize the fact that there were three critical provisions that included Donna and Julie as for them where they hadn't been.

He knew the poll numbers but he had all of these recommendations, which were drafted in his own house (by his Office for Civil Rights). He recognized it would be a political problem for him and the administration if he supported them. The report was issued in the morning; before noon, there had been a press release from the Secretary of Education saying he was going to only enforce those recommendations that were supported unanimously.

JL: Didn't have to study the report very long, did he?

BB: It was clear that they had understood and we were getting their attention, or that he never would have said something like that. He had the press release ready to go at the same time they submitted their reports. So, it was clear they were trying to figure out, okay, how can we get away with something here. And I told the group one of the Thursdays, “Look, this is being orchestrated out of the White House and it’s only going to be solved in the White House, and we got to find a way to do that.”

I told the group that I was going to meet with Jay Leftkowitz, the President’s domestic counselor, with Pat O’Donnell, who was a major fund raiser for the Republicans (he was working in the White House) and Dan Lungren, who was a Congressman from California, and then the Attorney General out there, who ran against Gray Davis and lost. He was one of our partners. He is now back running again in the primary which I guess will be decided on super Tuesday. Anyhow, the three of us went down there and talked to him. I think their presence gave me bona fides with this fellow, who was a very delightful guy. I went down there myself and had another meeting with him. I would report these meetings and I’d say it went positively, that’s all I could really say. The whole time, what’s positive they say, what’s to say it went positive, and I’d say I think they are beginning to see the light.

I got a call from him saying tomorrow afternoon could you come over, we’ve got something we’d like for you to look at. I think this was Thursday afternoon, and we had shown them all the poll data. Lefkowitz could quote the poll data and he knew he had a real problem. He really didn’t understand how to deal with this; nobody down there did. I think he and the President and the Secretary wanted it to become a non-issue and how dedicated they are at the bottom of their hearts that Title IX is a good thing. I don’t much care – our mission right now is to keep this train from running over everybody and put it back in the barn some place. So I went over there. I told the women they’d asked me to come over – I wanted them to know about it but this had to be kept confidential and so I arranged to go over there. Marcia, bless her heart, called and said, “Birch, I ought to go over there with you.” I said, “Marcia, you know how much I respect your thought processes and all you have done for this movement, but if we’re trying to get our position adopted, it’s imperative that we have a peaceful environment, and you’re responsible for suing people all over the country to make them conform to Title IX. Your very presence is going to create issues even if you don’t open your mouth. The fact that Women’s Law Center is represented here is going to cause Lefkowitz to go underground, to retreat.” She wasn’t at all happy about this and I said I’m sorry.

I went to this meeting, and he had a wonderful young woman there, from the general counsel’s office at the justice department, so they’re really serious about this. One of the last phrase in the memo was sort of a catch-all phrase that they were going to suggest we wouldn’t count walk-ons. And I said, you all are well-intentioned, but you also don’t understand the nuances of this issue because you’re suggesting things, no matter how well-intentioned you are, the women’s group and the women in general in America are going to get the wrong idea. And I went through point by point by point. Andy Card [Bush’s chief of staff] even stuck his head into the meeting. He didn’t stay very long, but I thought that was evidence of how serious they were taking this. Jim had to go someplace, so I said, “Can I hole up here someplace to go over this in some

detail.” Basically, I wanted to make sure I could make some notes as to what was in this darn thing, and the recommendations I made which I left behind with him in the point-by-point.

I went back and reported to the group and said, “Look, I think this meeting went very positively. It would be disastrous if this were leaked because they are about to do something on their own and we don’t want to make it impossible for them to do it.” I think there was general recognition but there were some who were reluctant. So the next morning, which would have been Friday, we thought this thing was going to go to press. He had scheduled a press conference for Friday. I called this young woman and I said, “Do you think it would make any sense for me to come back over to the White House and maybe see if anything needs to be tweaked?” And she said, “Well, Senator, I don’t think that’s necessary; we took all of your advice.” I said, “What about the football walk-ons?” “Well, we took that out all together.”

When that letter came out, the women could not believe it; it was as if they had written it and they couldn’t understand how it happened.

JL: But, they did understand how that happened, right?

BB: The ones in-the-know knew that Birch Bayh had been to the White House. They didn’t know what transpired, but suddenly things had changed. Marcia Greenberger knew. So that’s the most recent history.

JL: Do you know what Speaker Hastert wanted to happen? If he could have written the letter, what he would have done?

BB: I think he would have given special dispensation to small, less popular men’s sports like wrestling, gymnastics, maybe even swimming. My heart went out to the wrestlers, but when I talked to their lawyers and representatives, I said, “Yeah, I’m with you guys but you don’t understand. Take the University of Notre Dame, in my own state; they closed down gymnastics, they closed down wrestling, and then they added a new soccer team and a new baseball team. Your battle is with the athletic directors. It’s a dispute between the men as to how you’re going to spend the resources. Are you going to spend all this money on football, instead of setting aside some for gymnastics? I think it’s tragic that you wrestlers are being discriminated against in this way, but it had nothing to do with Title IX, it has to do with the ability of the athletic directors to make the decisions.” We found out, for example, in Minnesota, where the wrestlers sued the University of Minnesota. Some of those wrestlers had gotten into deep trouble. They were involved in drunken brawls in bars and they really want to shut down the program, for reasons having nothing to do with Title IX.

And if you look at the number of people that go to a gymnastics match, or a wrestler’s match, they are small compared to those that go to football and basketball, and perhaps to a lesser extent, baseball and soccer. So, the athletic directors were trying to look at where’s the greatest interest, and where’s not as much interest. There ought to be some way that you could protect

the minority sports within the majority group of men. Although they are not the majority anymore.

JL: At least the majority of athletes; it is a puzzle to try to figure out what equality looks like in an athletic program. I think that is a puzzle.

BB: The administration is coming at it again.

JL: Are they?

BB: Yeah. Trying to toy with the regulations. At least that's what I've picked up. I guess it was Jocelyn Samuels, at the Women's Law Center, where I heard all this. She said, "Can't you do something about it?" I said, "Well, get me some evidence here, don't rely on rumors or speculation." And, there was one right-wing woman on the commission, who was very much for expanding the influence of the third prong [of the policy interpretation] which deals with interests of students. If you satisfy the interest of the women on a given campus, and going back to the early stages of Title IX, I'm not sure where those interest polls would get you now, because of the soccer dads and all of this kind of thing. That's what they're up to; I don't know for sure but I'd like to find out. They just won't let it rest. [In March 2006 OCR issued a clarification which expanded the use of the third prong in this direction.]

Is Title IX is being enforced? I'm not sure given our present state of mind that we've won this one. But we have made progress as far as making sure that they continue to improve the enforcement of it. I really was representing the NCAA. Myles [Brand] had asked me shortly after he became [NCAA] President to come on board and see if I couldn't help him deal with this problem, and his first speech after he became President, you may recall, was a ringing endorsement of Title IX. I think that was a meeting of athletic directors; I mean you talk about throwing the raw meat out into the lions; he did it. I also worked with the WNBA. Now out of necessity I am forced to spend my time doing things other than making sure that Title IX was being enforced. I would like to be able to do that, but I just I can't.

JL: Even in the best of times the Department has not been the best enforcement mechanism. Private lawsuits are probably the best. All those circuit court cases you mentioned, they were all private individuals bringing suit. It seems like grass roots enforcement of Title IX is probably the most effective, just like your message about grass roots support of the regulations.

BB: We have one thing going for us. There is a mass of people now that are running with the ball in the local areas that we didn't have before. I think they probably will convince members of Congress, House and the Senate, that this is an issue that needs to be dealt with and there can be no retreat on it. Right now there are so many subtle ways that you can have a retreat here and there. Or at least not aggressively go forward.

JL: When you talked at the law school in Bloomington a few weeks ago, you said that when you were working on Title IX originally you would have thought that it's biggest impact

wouldn't be sports but that it would be other areas.

BB: It has been!

I don't know what the numbers are on the Indiana University campus but I do know graduate numbers. I know that the professional schools are now admitting women who are in the top 10%, almost any law school is going to be at least half women or even more. And the smartest ones are going to be women. I got my alumni magazine from Purdue that had a picture of the new Dean of Engineering, Linda Katehi, on the front cover page. Hot damn! There was an institution, my alma mater; I knew early on when I was in the Senate that there were no women in the School of Veterinary Medicine. I got to investigating and found out that the Board of Trustees and the Board of Admissions to the Veterinary Medicine school said, "Well, we don't believe that little girls like animals." I was brought to examine that because of a remarkable young woman who grew up in Terre Haute. I was very close to her family. They had two beautiful daughters, and one was a champion horse woman, championship showman, riding. She never liked small animals. She liked big animals, and her application was turned down. She was admitted the following year, and now has a small animal practice out here in Virginia. But the way I get it, and you could speak to this better than I, there are still some of the high tech professions, the more sophisticated engineering and technical skills areas, where women are not appreciated as much as they should be. There are professors in some of those schools that would just as soon they didn't have to deal with women students. Probably the most obvious problem exists in the faculty areas where tenure is concerned.

You can't deny that it is inequitable treatment of woman professors. One example from a system that I know exists – I don't know what it is in Indiana - - that a woman professor cannot be given tenure unless she is supported by a majority of the faculty. And the majority of the faculty is men and the vote is a secret vote. That is a system that's doomed to discriminate against women, in my judgment.

JL: You gave some testimony recently about women and science and engineering fields and proposed that the Department of Education develop some kind of guidelines like they had in athletics to deal with woman and science and engineering.

BB: Yes. You could apply the guidelines to all areas but just know that you had to put most of the emphasis in those areas where you knew there was discrimination.

I don't know what you sense, but I think the fact that you are sitting here with your position is as good of evidence that Title IX is working as anything I can think of. There was one woman student in my law school class.

JL: Nine in mine and now it is about 50%.

BB: A lot of people should get the credit for this because there are a lot of Title IX orders out there, but there is an aura of expectation here that I think is in every household in America right

now. When you see the number of little girls playing in Little League Soccer or at the grade school level compared to what it was twenty-five years ago (sort of dates me). . . . When I am jogging around this track it used to be all little boys, now there are equal numbers of little girls playing. I think fathers understand that it is as important that their daughters be treated equally as it is their sons, given an opportunity. Case in point: I was working on a case with one of our other lawyers. He was involved with an FDA matter and after we got through he said, "Someday when you've got the time, I have to talk to you about this Title IX issue." "Okay, what about now." "Okay." "Let me ask you a question first. You have a family, don't you, David?" "Yeah, yeah." "Boy or Girl?" He said, "I have one of each." "When you talk about Title IX, do you have greater expectations, do you want to provide more opportunities for your little boy than is available for your little girl?" "Of course not." "Then we don't need to discuss it any further."

My son just got home last night to spend the weekend with his parents here. I remember when he was in kindergarten, he was riding along in the back and his mother was driving and they were talking back and forth. Kitty expressed some opinion about something, and he said, "You know, that's great Ma, for a woman." Kitty drove this vehicle off to the curb and started lecturing the boy about – "How can you say that?" "Well, it's true, there are just some things that women can't do." I said, "Who told you that?" He said, "Well, Ms. Bitters," who was the kindergarten teacher. The fact that Ms. Bitters was going to be his teacher in the first grade is one of the reasons that we pulled our youngster out of the public school system in Montgomery County and started looking elsewhere. We still have got some teachers that believe it, just like we have some professors that believe it. But I'd like to think that in academia as well as on the gridiron, you advance by getting results. Take a mechanical engineering professor or a computer sciences professor who doesn't think women ought to be treated equally. If they see that their associate is a woman who is coming up with really bright ideas that make them look good, I think they are slowly but surely going to incorporate them and their thinking is going to change. You'd like to believe that a scientist has to believe in the facts. What's in the test tube? What comes out of the computer? I'd like to think that people who are reared in an environment where the facts speak for themselves, here again my incorrigible optimism comes in, are going to change.

The main reason I got involved in Title IX is when you looked at all the discriminations in the Equal Rights Amendment discussion the one that leaped out at me was education. Education has been important in my whole life beginning with the state legislature. I thought the number one contribution of Title IX was not to athletics, but academics. And I think that has been the case. The most attention has occurred as far as women athletics because that makes the sports pages. The fact that you have woman dean of engineering at Purdue may make the front pages of Purdue Monthly Magazine but it doesn't warrant a blurb in the paper.

But there's still moments of discrimination in academia going on there. One is that women have to struggle to get tenure. I don't know what the situation is in Indiana and I hope it's not the case, but if it is, it ought to be changed. Some institutions say the only way you get tenured is by a majority vote of your peers and sometimes the voting is secret. And because of the past in equality, most of the people tenured are men. Does that exist in Indiana?

JL: The ballots are secret but the votes are public. But we have many levels, many layers which helps. So, it's not just, for example, male chemists making the decision. There are probably three different votes with public membership of different groups. I think we do a pretty good job when it comes to the tenure decision. Where we don't do such a good a job – women tend to drop out before the tenure decision in higher rates than men do.

BB: Why?

JL: Either because they think it's too hard or they're not willing to make the sacrifice. Or, they think they're not going to be successful; they're much more willing to back off.

BB: What I've found or what seems to be the case is that who gets tenured and who doesn't depends on the kind of department. Let's say if you're in home economics or you're in liberal arts, nursing, or other "women's occupations" that there would not be as much hesitation to grant tenure than if you're in nuclear science where the core of the faculty are men and many of them don't like women around. And some of this comes out even when they teach their classes. They make it uncomfortable on women students. So, it's hard for women students to graduate and become professors in that discipline, so obviously it's going to be harder to get tenure.

JL: Let me ask you one more question about Title IX and a current issue with single sex education. Again with the Department of Education is encouraging proposals to offer more single sex classes. Are you surprised?

BB: I don't know. I have mixed feelings. I'm not surprised that they would do it for the wrong reasons. I think there is some evidence to suggest that young girls, and young women, who are grade school, or high school perhaps, have a more comfortable environment where they are with other girls. Where they are with boys, there is a sense of competition. I guess I have no problem with that. I don't think public money should go into something like that. You get into Brown v. Education, and separate but equal is not equal. I think we have to be very careful. For one thing, parents should have a choice, but I don't think that choice should be done at the expense of other students, like the voucher system. I frankly I don't support that. But I've got to tell you, Julia, I am really deeply depressed at our inability to really change.

You have pockets here [in Washington, DC] where the educational system is totally inadequate. It is not capable of adjusting to the environment that exists today. We don't have the little cottage with the big mortgage and Mom and Dad and Johnny and Suzie, who have a nice gentle life and they go to public school where they do all the things they think of. That doesn't exist in some of these areas and that has dramatic social consequences going beyond what we're talking about here with Title IX. You have human beings of all races at a very tender age, trusting to an environment over which they have no control where the institutions that are the only support system available to them are totally inadequate. I just think in terms of what could be. Sometimes I wish I didn't have to practice law so that I could go out and roll up my sleeves and really crank into that because there are those same volunteers that are excited about Title IX.

There are groups of very dedicated men and women of modest means who are forced to confront this system on a daily basis. I think we could mobilize an army of volunteers that would do what my dear friend, John (his father is a columnist with the Washington Monthly) McCarthy did. Here's a young man who played professional baseball in the Orioles farm system. I first met him when he was coaching the opponents to my young son's little league team which I was coaching. We got there sort of late so that our team had already had batting practice. John said, "Why don't you step in there and take a few swings." He has devoted his life to putting together a recreational program headquartered out in NW Washington. He brings kids out of the inner-city into summer baseball programs and he's recruited a number of so-called VIP's and others that will tutor those kids. Unless they stay in school and get good grades, they can't play on the team. This mentoring exists after they put the glove in the closet and the time comes to deal with school work. We're establishing a system like "No Child Left Behind" and totally ignoring the economic environment in which that school and teachers exist. A while back Kitty was a volunteer for one of the Anacostia schools. And she needed to go to the bathroom and she asked one of the girl students "Where's your girl's bathroom?" She said "You want to go to the faculty bathroom." Kitty asked why. She said, "We don't have any toilet paper here in our bathroom." And you can't tell me, money wasn't appropriated for that toilet paper. Something as basic as that.

JL: Unless it's like your gardens in Germany, where the people are taking the toilet paper home because they don't have it at home.

BB: Either that or somebody is pocketing the money and not buying any.

JL: That's right, that's right.

BB: Well here I am, 76, and so that's a battle that's got to be fought and I really feel guilty that I'm not helping to fight it. But that's another story.

JL: Thank you very much. I really appreciate your taking the time, sharing your thoughts with me. This is terrific.

BB: I appreciate that you and the University are interested in that. Maybe something can be gained by studying my mistakes.

JL: I don't think we're studying your mistakes.

BB: Well, by mistake I mean, as I mentioned to you when I talked about the state legislature, you start at the bottom. Marvella and I spent a lot of hard work becoming successful at the lowest level of the political process. One step up the ladder, and yet I found that, you know I was dedicated to this little thing, and we got soundly defeated. But I think people observe how individuals react to adversity and I think the fact that I took my licks and went on – didn't have a sour lemon complex - - I think that's something people can learn by.