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The Supreme Court Nomination and Partisanship in Congress

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Good Morning. Thank you all for having me here. Dick Mahoney promises me that you're a very lively crowd and that you'll have lots of questions for me. So I hope so.

I was doing a little research before I came here. I came across a story about Harry Truman. When he was president he finally decided that he needed to take a vacation. He was out swimming one day and got swept up by the undertow. There were three boys out fishing. They saw the president was going under. They dropped their fishing poles, rowed over, and pulled him into the boat. He was very grateful. He said to them, you saved my life. What can I do to repay you? The first boy said my father is a soldier, and I would really like to go to West Point someday. The President said done. The second boy said, well my father is a historian, and I would really like to see the Oval Office. The President said come over tomorrow. The third boy said I would like to be buried at Arlington National Cemetery. The President said, aren't you a little bit young to be worrying about your funeral? The boy said my Dad's a Republican and when he finds that I pulled you in out of the water, he's going to kill me.

All of that is to say that partisanship is alive and well and has been going on for a very, very long time, not just in Washington but all over the country. For now partisanship is a big issue on Capital Hill. It's pretty intense at the moment and I would

say that there are two things that are caught in the cross hairs right now and that is Judge Roberts' nomination to the Supreme Court and the need to deal with the aftermath of Hurricane Katrina with legislation on the Hill. Things are pretty unpleasant. The relations between parties have been going on for a long time. They were extremely bad in the 1800s. They were bad around the New Deal. Then there was a long period where Democrats controlled the House, and Republicans were kind of – not to say they were content with their lot – but they just accepted it. That they were in the minority and that's the way it was, and they tried to work the system to get what they could with amendments and working together with Democrats. But one day Newt Gingrich came along, and he was not content. He was very ambitious. He started strategizing and put together a plan for Republicans to win back the House. One of the things he did was accuse Democrats of corruption and arrogance. And it worked. It was an amazing thing. I actually was traveling with him right before the '94 elections during the campaign, a couple of weeks before election day. I said to him, how many seats are you going to pick up? He said I have no idea. He said we might win five or we might win 50, it's really hard to say.

I think right now, Democrats feel like they are in the same position. They feel like Republicans are arrogant and corrupt. Unlike when Democrats controlled the House, they are not letting Democrats offer amendments on the floor. They're barely letting them offer anything in committee. The system is really being controlled from the top down. The leadership is sort of saying, here's how we're going to do this bill. Even committee chairmen don't have that much power these days and so Democrats are accusing Republicans of arrogance.

They're also accusing them of corruption, specifically pointing to Tom DeLay. If you look since 1994, things were really, really ugly at the time of the Republican take over. Republicans were very vindictive. Democrats were very angry at losing power. One of the things the Republicans did was to take away parking spaces. They took away Democrats' staff. They took away their ability to get rooms in the Capitol to have meetings. There was a lot of petty type stuff, not just that you can't bring an amendment on the floor. Those bad feelings have continued on from then.

Just to give you an example, Nancy Pelosi and Speaker Hastert barely talk to each other. Both offices are obsessed with the other. They're just constantly angry. It's like, can this marriage be saved? No, definitely not. There's a lot of bad stuff going on. The Democrats though feel like they have a real opportunity. They think that the issues are on their side. Just to tip off a few for you. Gas prices are at an all time high, as all of us know. The war in Iraq is going badly, I think most people believe. The plan to partially privatize Social Security was a bomb around the country, and Democrats feel like that's something they can take advantage of. There's an ethical cloud over Tom DeLay. Last, and I think the most important at least at this moment; the Republican administration reacted very slowly and badly to Hurricane Katrina. Democrats want to take advantage of that without appearing like they are taking advantage of that.

One of the things that contributed to the Hurricane Katrina atmosphere was Speaker Hastert was sitting down with the suburban newspaper editorial board in Illinois called the *Daily Herald* and he was asked about New Orleans, and he essentially expressed the belief that maybe it wasn't such a good idea to rebuild it. That it's below sea level, it's in a terrible place. Why would you want to spend all of these federal

taxpayer dollars to help these people who are living in this ridiculous area of the country. He also suggested that Los Angeles and San Francisco weren't such ideal locations either in case an earthquake hit. I think all of that kind of contributed to a feeling that the Republicans were out of step.

In terms of the bad relations between Pelosi and Hastert, Mrs. Pelosi suggested right after the hurricane hit that the House should come back into session to deal with this crisis. They were in the middle of their five-week recess. They were at the end of it actually, and the Speaker thought that was ridiculous. Why would you tell everybody to come back from their vacations? People are off visiting other countries and he said absolutely not. By the end of the week the Administration announced that FEMA was going to run out of money over the weekend if Congress didn't do something. Suddenly Speaker Hastert is calling the House back into session and they're passing ten and a half million dollars.

The other thing Mrs. Pelosi did, and I truly believe that she did both of these things to get under the Speaker's skin, she said we need an independent commission. We've got to investigate what went wrong and it needs to be independent and it needs to be like the 9/11 Commission. The Speaker sort of dismissed it. The public opinion just kept mounting that what is wrong is that everyone is seeing these pictures on television from New Orleans. This is a terrible crisis. There are dead bodies in the street. Why did this happen? One day Speaker Hastert and Senate Majority Leader Bill Frist come out before the microphones, after making us wait for an hour, and they announced that they were creating a bi-partisan and bi-cameral committee to investigate what went wrong. Only it was supposed to be bi-partisan and there were no

Democrats standing there with them. It was just the two of them and they would not answer any questions. They came out, said what they had to say, they turned on their heels and they walked away, and we were all calling after them: what about the Democrats, where are they and why are you suddenly doing this? They wouldn't answer.

Guess what? The Democrats said that's not good enough. They said the Republicans wanted to set up a committee just like every other committee because they control the House and the Senate, where Republicans would be in charge. They would have more people on the committee than Democrats. They would have the votes to do what they wanted to do. Essentially they would control the investigation, and the Democrats said, well we can't trust you. The Republicans control the Administration. The Administration botched this whole thing so why should we trust that you're going to really get to the bottom of what went wrong? They just kept up this pressure because they're trying to undermine the Republicans. They're trying to show the public that you can't trust the Republicans who control the Congress and the Administration.

The Republicans sort of buckled a little bit. They basically have suddenly agreed that just the regular order will stand. The committee in the Senate and the committee in the House will head their own investigations. They won't have this special committee anymore. I think one of the reasons they did that is because the Democrats weren't going to show up. They weren't going to participate and then it would be really embarrassing. But Mrs. Pelosi has kept up the pressure saying we need to have an independent, 9/11-style commission to really understand what happened and we need this commission to have subpoena power and really have their only mission be to

understand what went wrong. While these things may be good goals, I do think that this is all a part of them trying to irritate the Republicans and score political points even while they're trying to do it in the disguise of good government.

The two big debates right now besides Hurricane Katrina and Judge Roberts have to do with what role our government is going to play in society. If you look at Hurricane Katrina, President Bush's first reaction was to call for private donations. He was really kind of slow off the mark and he asked former President Bush and he asked former President Clinton to come and help raise money. The Democrats, and I think most Americans, if you look at the opinion polls, really expect more when they see such a disaster going on. At the moment, Republicans are kind of scrambling to get out from under this PR disaster. I mean this is really a PR disaster for Republicans.

Republicans on Capitol Hill believe their fate is tied to the President's and the President's approval ratings are an all time low. People kind of view them all as one. Part of the reason for that is the Republicans on the Hill have always done what the President has wanted them to do for the last five years or so. He sends up a bill and says this is what I want, and they say okay, we'll do that for you, for the most part. There have been a couple of instances when they realized they were going to go off a cliff if they did what he wanted.

One was the President's initial proposal for Medicare prescription drugs. Initially he wanted to say if you want a prescription drug benefit through Medicare then you need to go into managed care, some sort of HMO plan. The Speaker said to me, you know, you can not tell a grandmother that she needs to leave the doctor she's been going to for thirty to forty years and do something completely different. That is just not

going to work. He had some very, very strong language, which after he told me these things and I put them in the paper, then he said, well I don't exactly mean that. I think he got yelled at by the White House. He didn't exactly back off of it. He just said it was taken out of context. But then suddenly the White House had a new proposal, and they weren't proposing that senior citizens go into managed care if they want prescription drug benefits. I think the same things have really been true on the Social Security debate. The President sent up some type of plan, not in written form but an idea, and a lot of Republicans had been slow to embrace it.

One Republican from the Chicago suburbs, Mark Kirk, was saying, I need to see this plan. I'd like to take his plan and put it on my web site with a calculator so that people in my district can go to it, can punch in their information and can really see how this is going to benefit me. How is this going to work? What's the bottom line here? They won't trash what the President is proposing exactly but they aren't really embracing it other than a few ardent conservatives who believe in this as a concept. It hasn't gone any way. In fact, Chairman Reynolds, who runs the NRCC and is responsible for getting Republicans elected to the House and keeping the House in Republican hands, he has said we need to just dump this Social Security idea at this point, otherwise we are going to lose a lot of seats. I think Democrats know this is a winning issue for them and they've been sort of like, yeah, just keep talking about it. This is great.

On John Roberts, the issue is also a question about government but it's a little different. He has this philosophy of judicial restraint and everybody on the Senate Judiciary Committee is trying to figure out is that a good thing for what I believe in or is it

a bad thing for what I believe. As you know, with judicial nominations the nominee doesn't always come right out and say I will vote to uphold *Roe v. Wade* or I will vote to throw out *Roe v. Wade*. *Roe v. Wade* is pretty much the whole ballgame for anybody in the Senate. It's an issue but even Senator Schumer, who runs the DLCC which is responsible for electing Democrats to the Senate, even acknowledges that this issue is not even in the top five, maybe not even in the top ten of things that voters care about.

On one hand he says people shouldn't be worrying about the voters so much when they decide how they are going to vote on Robert's nomination, but at the same time if you're a Democrat and the President has sent up this nominee do you want to be responsible – do you want the voters to watch and see Judge Roberts go to the Supreme Court and he votes to throw out *Roe v. Wade* and he's the deciding person and it's gone. Do they want the voters to come back at them a year, two years, three years from now and say this is your fault? You should have known he was going to do this. On the other hand, he's really smart. He's very patient. When they talk about judicial temperament, anyone who can sit there for twenty hours and deal with the kind of – and in some cases – idiotic questions that were asked of him, that's pretty impressive. I was there the whole time from early in the morning until late at night every night last week.

I'll give you one example of what I thought was not too bright. He had thousands of pages of memos that he had written when he was a lawyer in the Reagan Administration. Most of those were made public before the hearings. In one of them, he's fairly absurdist in his writing. He's clever and he made a lot of jokes and one joke he made was a lawyer joke. It had something to do with equal pay and civil rights and

he was talking about homemakers. Would the world be better off if we had more homemakers becoming lawyers? Something like that. Senator Feinstein, who declared herself the representative of all women in America, is outraged and she is grilling him about this. How can you say this about homemakers? He was very gentle trying to say to her I was making a lawyer joke. I wasn't knocking homemakers. I was saying there are too many lawyers in the world. Finally, she said well I'm glad to hear that your view has changed on this.

Going into the hearings, a lot of people assumed that all the Democrats were just going to vote against him. That really wasn't the case and a lot of people assumed when Harry Reid said we all need to hold our fire, let's wait for the hearings. I don't want any Democrat to be declaring how they are going to vote before we have these hearings. Let's just go through this. A lot of people thought that was sort of a pose. That they weren't really going to consider his nomination.

Senator Durbin, for example, who's on the Committee, said he has a clean slate with him. Senator Durbin voted against his nomination when he was nominated to the D.C. Circuit Court of Appeals, but he said nope, starting fresh, whole new ballgame. I'm going to really consider this. I didn't really believe that. When I talked to him in the middle of the hearings, he remarked that he was really, really impressed that he said Roberts believes in the right of privacy. That was a threshold issue for him. I said, Are you really thinking of voting for him? He responded, I want to be able to. I said, but a lot of Democrats are saying they're frustrated that he's not answering their questions. He said, oh yeah, I'm frustrated. I'm frustrated and the Administration isn't giving us all the documents we need. This was before the last day.

I don't know how many of you were watching this, the last day of the hearings the Democrats were openly wringing their hands. It felt like a therapy session. Feinstein said I just don't know what to do. What kind of judge will you be, Judge Roberts? Senator Schumer was saying, I've been staying up at nights. I can't sleep. I really want to vote for you but I'm so worried. At one point, Feinstein said to him, I have another question but I know you're not going to answer it. They were just on the floor. They don't know what to do. I was talking to someone who works for Senator Schumer. On Friday I made a round of calls to all the Democratic staff on the Committee saying when is your boss going to make the decision. I want to make sure I know. I want to be on top of it. You can call me all weekend. You can call me anytime if they suddenly decide. I want to know. They are voting this Thursday on the nomination in Committee. Senator Schumer's guy said, I really, really hope that he decides by a certain point because I can't take it anymore. They really feel this weight on them.

On the other side of the Committee, the Republicans' reaction was that if you can't vote for this guy that means you are never going to vote for any Republican nominee from a Republican president. It just means that you refuse to do it and you are a total partisan. Nobody wants to be accused of partisanship. They don't want to look like they are just mucking up things for the sake of it. I believe the torture is real. I believe that they really believe this is a smart guy. He's an expert on the Supreme Court but they are so worried about the balance in the Court. They are so worried that he could be the tipping point. Then the other factor that they're considering right now is what to do about the second nomination because they don't know who President Bush is going to nominate, and they feel that this is probably the best person we're going to

get. One of the things going through their minds that they are not saying out loud is John Roberts is from a Washington establishment. He's from a big Washington law firm. He's practiced law in Washington all his life. He can't be a total wacko. He actually knows what he's doing. On the other hand, they just don't want to be held responsible for what he might do on the Court. But then if President Bush sends up someone that's completely unacceptable to them, they need to be able to muster all that outrage to say this is completely unacceptable. The person doesn't have the credentials. So wouldn't it be easier to do that if they could say John Roberts is okay, this person isn't.

One of the last points I'll make on that, that I find so interesting, firming up my impression was that Justice Rehnquist was really on the far right of things when it came to being on the Supreme Court. Suddenly all the Democrats are saying, well if John Roberts is going to be like Chief Justice Rehnquist, that's okay; but if he's going to be like Clarence Thomas and Justice Scalia, forget it, cannot vote for him. So suddenly Rehnquist has moved into the main stream and he's okay. He's like mainstream conservative, but those other guys are just ideologues and can't do it. The Democrats are very, very conflicted. They are concerned that the public is going to perceive them as bickering and quarreling and not being amiable. A lot has changed.

Years ago in the House, Tip O'Neill and Bob Michael used to get together at the end of every day and have a drink and just talk about their day. Whenever Congress would take a break, Bob Michael and Dan Rostenkowski, who was – you have to say “powerful” – Chairman of the House Ways and Means Committee, would drive a station wagon back to Illinois. One person would drive, the other one would sleep in the back.

They'd take turns. They'd just drive straight through the night to get back home. That stuff just doesn't really happen anymore.

On September 11, 2001 in the Capitol, you could see the smoke rising up from the Pentagon. Senator Byrd, who is in the line of succession to the presidency, was just all by himself, no security. This very old frail man, and he was just standing around talking to me. There were Senators and Congressmen outside. Nobody knew what to do and where to go. At one point the Capitol police started screaming at us to run. They wanted us all away from the building. They actually thought that another plane was coming to the Capitol. So we started running for the Supreme Court. Finally, a big Cadillac pulls in, some security people scoop Senator Byrd into the car, and they whisked him away. Thank God, but he had been out there for like half an hour or so. It was obviously an incredible day for the whole country. It was pretty strange. Just talking to members of Congress, they just didn't know where to go or what to do. That night on the steps of the Capitol, it was dusk, and members of Congress came out and they just said we're not going to be deterred by terrorists and they started singing *God Bless America*. They were holding hands. It was an incredible sight. It was genuine but it was incredible. These people most of the time hate each other and they finally had this common purpose.

It's not like that anymore. It didn't last very long. Even in the days of Hurricane Katrina, it's still not there. One of the biggest obstacles right now is how to pay for all of this. The President realized his legacy is at stake and he has jumped in and committed the nation to paying for the rebuilding and doing everything that it needs. Even Republicans and Democrats are divided on this issue because Democrats think we

need to pay for this, we should get rid of all of these tax cuts. They cost a lot of money. They benefit the top one percent of taxpayers. President Clinton was on TV talking about that. Among Republicans they are really divided. Basically the leadership has decided we're just putting this on the government credit card. We can't deal with this. We just need to get this money out and that's that. There are a band of conservative Republicans who are beside themselves. They say it's fine to spend this money, of course we have to do these things, but we need to find a way to pay for it. We need to cut other things, because the deficit is sort of everything to some people in Congress. Republicans promised that they were going to get this thing down. They had been making some progress, but right now the expectation is that it could go up a couple hundred billion dollars more, maybe up to five or six hundred billion dollars. People are really stressed out about it.

I was talking to Congressman Flake from Arizona, who's one of the leading fiscal conservatives, and he said they had a meeting, the whole Republican Conference, to talk about what they were doing for Katrina. They had Administration officials in to explain what they were going to do. He said he stood up and he said, we need to pay for this. We need to find some cuts. What are we going to do? He said I felt like a Martian. There was stone cold silence in the room. Nobody wanted to deal with it. I think that this group of Republicans is going to become more and more vocal on this issue. So far they've spent over \$60 billion. That's just the beginning. The Democrats are going to continue to use the deficit as an issue against them in the midterm elections. The President promised to cut the deficit in half and they are going to say yes, he took us to war in Iraq and we had to pay for it, and yes we had to pay for

Hurricane Katrina. But we're not really paying for it and he's not cutting the deficit in half. They're going to hold Republicans' feet to the fire. I think their hope is that in the second term of a presidency, in the midterm elections when the party in power typically loses seats, that they have a real opportunity. In the House, at least, Democrats need fifteen seats to pull it off. Its not easy but right now I think they feel somewhat emboldened. Just to conclude on this issue of partisanship, I don't think it's always a bad thing. I actually think it's like a check and balance. Sort of an unintended or informal check and balance on power in government and it stops partisan power from maybe going too far. Clearly you saw how public opinion caused Republicans to come back to town to spend money on Hurricane Katrina. You saw them responding when they got criticized on the Committee, on investigating the issue but at the same time it makes things pretty bitter and nasty in Washington. That's where things stand right now despite the fact that there's a national crisis that the government needs to be responding to.