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REDISCOVERING SENATOR EDMUND MUSKIE

The Honorable Kermit V. Lipez

REDISCOVERING SENATOR EDMUND MUSKIE

*The Honorable Kermit V. Lipez**

I wish to begin my remarks by congratulating the *Maine Law Review* for sponsoring this important symposium on the legislative achievements of Senator Muskie. It is a well-deserved tribute during this 100th anniversary year of his birth. I also want to thank the Law Review for inviting me to give the opening remarks for the Symposium. It is a privilege to do so, and to speak in the presence of former Secretary of State Madeline Albright. We are all honored by her presence.

I must acknowledge, however, that it is a daunting task to present these remarks in the presence of distinguished panelists who either worked closely with Senator Muskie for many years in Maine and Washington, or have studied and written about his career with such care and insight. My association with Senator Muskie was far more limited than theirs. Thus the challenge for me is to add value to the superb presentations that you will be hearing from our panelists. I will try to do that by sharing briefly some recollections of Senator Muskie and some history that hopefully will be relevant to the discussion that follows.

I came to Maine in September 1968, to work for Governor Kenneth Curtis as a legislative aide, arriving in the wake of the stormy Democratic National Convention in Chicago where Senator Muskie was chosen by Hubert Humphrey to be his Vice Presidential running mate. Although that selection itself inspired excitement and pride among the admirers of Senator Muskie in Maine, those feelings intensified throughout the fall as Senator Muskie won accolades for his performance during the campaign. In a superb essay on that campaign written by Professor Joel Goldstein, one of the moderators for today's program, he notes that Senator Muskie, speaking against the backdrop of the divisiveness over the Vietnam War, established a theme in his acceptance speech that he would return to over and over again during his campaign—the need “to trust each other, to work with each other, to think of each other as neighbors,” and to “diminish[] our prerogatives by as much as is necessary to give others the same prerogatives.”¹ In striking this trust theme, Senator Muskie often invoked his Maine roots, saying that, “[c]oming from Maine, where people don't get too emotional . . . when they think, they think in terms of common sense.”² He repeatedly told the voters that the basic issue in the election was whether “Americans of many different kinds can live together in complete trust, confidence and harmony.”³ Senator Muskie's campaign helped to reduce the Nixon-Agnew ticket's large lead at the beginning of

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1. Joel K. Goldstein, *Campaigning for America: Edmund S. Muskie's 1968 Vice-Presidential Campaign*, 4 NEW ENG. J. POL. SCI. 153, 156 (2010).

2. *Id.* at 157.

3. *Id.* at 159.

the campaign to a slim victory on Election Day.⁴ Theodore White, the presidential historian, described Senator Muskie as “an almost immeasurable asset to the campaign.”⁵

Given this performance, Senator Muskie emerged from his 1968 Vice-presidential campaign as a leading contender for the Democratic nomination for President in 1972. However, he first had to take care of some business at home—reelection to his Senate seat in 1970. My boss, Governor Curtis, was also up for reelection that year. All of us involved in the Governor’s campaign were acutely aware of the importance of Senator Muskie winning a resounding victory in his 1970 senatorial reelection campaign as a way of advancing his presidential prospects. Therein lay a problem. Having successfully won passage of a state income tax in July 1969, Governor Curtis was unpopular with the Maine electorate. An Oliver Quayle voter profile delivered to the Governor in early 1970 was full of bad news.⁶ Worried that voter hostility towards him might diminish Senator Muskie’s winning margin in his Senate race, Governor Curtis recalls asking Senator Muskie “if he thought my candidacy would drag him down in his Senate race. If it would, I wasn’t going to run. But he didn’t think anybody else could run as close a race as I could.”⁷

As it turned out, closeness was the operative word. Governor Curtis won reelection by about 500 votes, after a lengthy recount that lasted until mid-December because Maine was still dependent on paper ballots. Happily, Senator Muskie fared much better, winning 61.7 percent of the vote, a margin compatible with his presidential aspirations.

Indeed, the 1970 election confirmed Senator Muskie’s ability to help other candidates on the ballot. At that time, Maine used the so-called “Big Box,” which allowed a voter to check a box at the top of the ballot for either party and thereby vote for all of that party’s candidates. The recount revealed that Senator Muskie’s presence at the top of the ticket had given Governor Curtis badly needed votes.⁸ All of us involved in the Governor’s reelection campaign were grateful to Senator Muskie for encouraging Governor Curtis to run again, and for the electoral strength that was so important to Governor Curtis’s reelection.

There was a sequel to that 1970 campaign which inspired a memorable observation by Senator Muskie. Voters angry about the income tax had put an income tax repeal measure on the ballot in November 1971. That vote would be the first time in the nation’s history that the citizens of a state would vote on repeal of an income tax already being collected.⁹ Although the conventional wisdom was that the income tax would be repealed, that prediction proved to be wildly wrong. By a stunning margin of over three-to-one, the people of Maine decided to keep the income tax. That outcome prompted a congratulatory call from Senator Muskie to the Governor, which included the comment that “the [income] tax is more popular

4. *Id.* at 166.

5. *Id.*

6. KERMIT LIPEZ, *KENNETH CURTIS OF MAINE 77-78* (1974).

7. *Id.* at 78.

8. *Id.* at 90.

9. *Id.* at 96.

than you are.”¹⁰

Although 1971 was an off-year for candidate elections, Senator Muskie had been busy preparing the groundwork for his 1972 Presidential campaign by traveling throughout the country to meet party leaders and activists. In August 1971, however, he had returned to Maine for the Democratic Party’s annual clambake at Thomas Point Beach in Brunswick. I was at that event, and I vividly recall Senator Muskie’s enjoyment of the occasion.

Dressed casually in bright slacks and a short-sleeve sport shirt, he mingled easily with old friends and party stalwarts who shared so much history with him, including his improbably successful campaign for Governor in 1954, when, at the age of forty, he ousted the incumbent Republican Burton Cross with the indispensable help of the youthful Executive Secretary of the Democratic Party, Don Nicoll. Although these friends were proud of Senator Muskie’s national prominence and excited by the impending Presidential campaign, they treated him with a familiar irreverence that delighted the Senator. In his remarks, however, he turned serious, telling the crowd that he would need their friendship and support more than ever as he embarked on the difficult campaign ahead.

In December 1971, I went to Washington to work for Senator Muskie during that campaign as a legislative aide in his Senate office, writing position papers and statements about current events and working with task forces attached to the campaign. Senator Muskie was then considered the front-runner for the Democratic nomination for President. As many of you know, that status turned out to be precarious when Senator McGovern, riding a wave of anti-Vietnam War sentiment, ran ahead of Senator Muskie in a string of primaries in the spring of 1972 and forced Senator Muskie to withdraw in April from active participation in the remaining primaries.

Senator Muskie then resumed his day-to-day Senate duties and I functioned as a traditional legislative aide, advising him on votes taking place on the Senate floor. This role often required me to meet the Senator for a quick briefing as he was about to enter the Senate Chamber. These were always anxious experiences for me because I knew that my knowledge of the issue would never satisfy all of the Senator’s concerns. He saw complexities in issues that made him resistant to simple “yes” or “no” answers. It also did not help that the Senator’s commanding presence, penetrating gaze, and visible impatience with my answers sometimes left me tongue-tied.

Indeed, as I reflect on my interactions with Senator Muskie, I realize that I never lost my awe of him, whatever the setting. This feeling was not just a function of his legendary status in Maine or his national fame. It was also a function of his physical stature (the Senator was six feet four inches tall) and his forceful manner, both of which were political assets.

In his richly detailed autobiography, Judge Frank Coffin, also an architect of Senator Muskie’s 1954 gubernatorial triumph, writes that the newspaper reports of the day could not:

convey the impact that Muskie made as his lanky, six-foot-plus figure ambled along the sidewalks into the stores of small towns, some of which had seen few top

10. *Id.* at 98.

candidates and never any serious Democrat . . . [S]omehow his long, craggy and Lincoln-esque face, and towering appearance left a deep impression wherever he went.¹¹

Leon Billings, in a wonderful essay about Senator Muskie, also notes the Senator's imposing figure: "The superficial memories of Ed Muskie are large. He was physically imposing. His flashes of temper were legendary, although overstated. He had a powerful voice, strong opinions, and sizeable political ambition."¹² In short, in every way that matters, Senator Muskie was a commanding presence.

Of course, it was not just Senator Muskie's physical presence and manner that induced awe and respect. As described by Leon Billings, there was also the commanding intelligence that made him a great legislator: "Whatever the committee, preparation was his first demand. Senator Muskie never went to committee or to the Senate floor unless he knew the answer to more questions than anyone else would think to ask. He would beat his colleagues into submission with details. Few would even try to compete."¹³ Don Nicoll, in another essay about the Senator, adds that Senator Muskie's intellectual discipline and work habits were exemplary. He was "an intense preparer, pushing himself and the staff to the limit in search of every pertinent fact and every potential argument . . ."¹⁴

These recognized gifts as a legislator led the Johnson Administration to ask Senator Muskie, in 1966, to manage its floundering Model Cities legislation on the floor of the Senate, an episode that will be the subject of one of the panel discussions this morning. As Don points out, Senator Muskie used his position of leadership on the Model Cities bill to broaden its application to cities such as Portland and Lewiston.¹⁵ Both cities can cite buildings and improvements traceable to this legislation that enhance our lives today.

Of course, we also enjoy the benefits of Senator Muskie's great legislative achievements in the environmental field, the subject of another panel discussion this morning. In his 1972 book *Journeys*, Senator Muskie connected his commitment to this environmental agenda to his hometown of Rumford, described as "a paper mill town where pollution seemed an inevitable, if ugly, reality,"¹⁶ where "the mill wastes were visible" in the Androscoggin River, and "[t]here was a tremendous stench, and the paint on houses began to peel."¹⁷ Yet, Senator Muskie noted, Maine was also a place of great natural beauty. That paradox—ugly pollution surrounded by natural wonders—moved him to action:

My journey toward a place in the environmental sun began in my backyard, in the environment of the place where I was born and raised. There you were, viscerally, an outdoorsman and a conservationist. If you were born in Maine, you got

11. 2 FRANK M. COFFIN, *LIFE AND TIMES IN THE THREE BRANCHES* 304 (2004).

12. Leon G. Billings, *The Founder*, THE EDMUND S. MUSKIE FOUNDATION, <http://www.muskiefoundation.org/founder.html> (last updated 2000).

13. *Id.*

14. Donald E. Nicoll, *Ed Muskie and the Art of Patient, Persistent Persuasion*, 4 NEW ENG. J. POL. SCI. 130, 148 (2009).

15. *Id.* at 135-36.

16. EDMUND S. MUSKIE, *JOURNEYS* 79 (1972).

17. *Id.*

interested in doing something about it when that beauty was threatened. . . . There may be no stronger motivation.¹⁸

Senator Muskie's roots in Maine also account for one of the last great causes of his life, also to be discussed today—his work on access to justice in Maine. Although Senator Muskie was always careful not to overstate his own experience with discrimination, he was keenly aware of the historical significance of his election as Governor of Maine in 1954, at a time when no Polish American had been elected as Governor of any state. He also had been told that a Catholic could not hope to be elected Governor of Maine at that time. "In that sense," he said, "I've been aware all my life of limitations enforced at one point or another on Poles, Catholics, Democrats, poor people, and foreigners. I was aware of these limitations because I was a member of each of these minority groups"¹⁹

To help determine the extent of the access to justice issues for the poor of Maine, Senator Muskie agreed in 1989 to chair the Maine Commission on Legal Needs. This was no honorary post for Senator Muskie. He was a working chairman who presided in October and November 1989 over eight public hearings around the state, where he heard poor Mainers describe the difficulties of their lives, aggravated by the lack of legal representation. His work culminated in the May 1, 1990, *Report of the Maine Commission on Legal Needs*, a seminal document that still informs the ongoing effort to provide access to justice for Maine's poor.

There was a touching valedictory quality to Senator Muskie's work on the Maine Commission on Legal Needs. His political career was now over. He had no constituencies that he had to please. He only had to apportion his time and energy among causes that truly animated him. As he chaired those public hearings in Machias, Houlton, Caribou, Rockland, Lewiston, Bangor, Augusta, and Portland, he heard about problems similar to those that clients brought to him when he opened his law practice in Waterville in 1940. That tour of the state retraced steps from his earlier campaigns for Governor and Senator, when he was asking the people of Maine for their votes. Only this time Senator Muskie was not asking the people at those hearings for anything. Instead, with his concern for the difficulties of their lives, he was thanking them for all that they had given him.

I recently had a conversation with my three new law clerks about my appearance at this Symposium. They range in age from twenty-seven to thirty-four. Two are from the Northeast, one from the Midwest. To my dismay, two of them said that they had never heard of Senator Muskie and one acknowledged only a dim awareness of him. That conversation underscores the importance of this Symposium. As you will hear today from our panelists, Senator Muskie was an extraordinary legislator, one of the greatest ever. I know that there are many political science theories about the systemic forces that will defeat the efforts of any gifted legislators in Congress. I question those theories. I continue to believe that brilliant, disciplined, forceful legislators, in the model of Senator Muskie, can overcome those forces and achieve great things in Congress. The need for such greatness is self-evident. Our hope is that today's Symposium, and the thoughtful

18. *Id.* at 95.

19. *Id.* at 117.

papers that will emerge from it, will begin to acquaint today's generation with the exceptional example of Senator Muskie, and, in that way, he will continue to be the inspirational and transformative leader that he was in his own day.

