

Presentation and Discussion by Leon G. Billings

*Edmund S. Muskie's Legacy:
Lessons for Today*

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I am delighted to be here this evening to talk about my mentor, my employer and my friend, Edmund S. Muskie. I knew Ed Muskie for nearly 35 years. I worked for him for pay for 15 and for free for 15 more.

I watched him evolve as a politician, as an intellect and as a statesman.

I knew him best and was best known in relation to him with respect to his work on environmental issues. For 12 years of my working tenure I was his chief environmental aide. I spent three years as his chief of staff in the Senate and at the State Department when he was Secretary of State.

My relationship with Senator Muskie was unique in that I was not from Maine and therefore shared none of his political roots. I had little background on what he had done or who he had been before I joined his staff in 1966, seven years after he became a United States Senator.

I knew he was a Democrat. I knew he served on the Senate Committee on Public Works. I knew he was interested in pollution. I knew he was considered a moderate. And I knew that he had a relatively low political profile.

I had no idea of the power of his intellect, the scope of his interests or the magnitude of his temper.

I watched him grow through his Vice Presidential candidacy with Hubert Humphrey in 1968; his failed Presidential effort in 1972; and his evolution as a leader in the United States Senate in the last decade of his service.

I knew of no one who did not respect Senator Muskie. I knew few who did not fear his temper. And I knew even fewer who had any grasp of the breadth of this giant of his times. One of those few was Don Nicoll, his long-time chief of staff, close friend and, of late, manager of his oral history.

Some knew Ed Muskie more intimately than I because they started out when he began his political career. One knew when someone was an old friend because they called him Ed. I told a story at his funeral about a time not long before his death when

we had occasion to have lunch. In casual conversation, I referred by his first name. He looked at me and said, “so, it’s Ed now, is it?” For the rest of his life, I only called him Senator.

Edmund S. Muskie was indeed a giant of his time. He may have been the most prolific legislator in American history. His legislative record is as diverse as it is prolific. Those few who recall his service will remember him best for his initiation of the worldwide environmental revolution. And it is appropriate that he should be remembered for that because, as I noted in a recent speech for his colleague and friend Howard Baker of Tennessee, he took Congress, the country, and soon the world, to a place it had never been before in a way for which there was no legislative precedent. And I will come back to that.

But did you know that Ed Muskie was one of the principal authors of the War Powers Act which intended to define the relationship between Congress and the Executive with respect to declaration of war?

Did you know that Senator Muskie crafted the federal Budget Act which created the Congressional budget process?

Did you know that Senator Muskie wrote the law which has preserved thousands, if not tens of thousands, of historic places in the United States?

Did you know that Muskie was the father of modern public housing legislation which replaced the old projects approach to public housing?

Did you know that Ed Muskie crafted virtually the entire body of law which dictates the relationships between local, state and federal government? Did you know that he wrote the first “sunset” laws which called for periodic Congressional review of myriad federal laws?

I am sure you don’t know, and few would remember, that it was Ed Muskie’s initiative that opened the federal legislative process so that the public could see how laws were made.

Some of you may recall that at one time the United States, as a colonial power, “owned” the Panama Canal. The Carter Administration negotiated a treaty to return the Canal to the Panamanians. In fact, the person who negotiated that treaty was Sol Linowitz, a Cornell classmate and lifelong friend of Senator Muskie’s.

Because the President knew that there would be widespread opposition to his treaty and doubted the strength of the advocacy of the Senate Foreign Relations Committee, he asked – at the behest, I suspect, of Sol Linowitz – Ed Muskie personally to take on a major role in securing ratification. Muskie argued that his role in the Senate

was currently predicated on knowledge of economic policy and suggested that he make the economic argument for approving the Treaty. And Carter agreed.

Eventually, the Treaty was ratified over the deep and strenuous objections of veterans groups all over the country. Muskie knew that the veterans groups in Maine were powerful and noisy. So he told President Carter that he would not publicly endorse the Treaty until he had done his homework in the State of Maine.

I recall, because I was his chief of staff at the time, that he instructed me to set up a weekend in Maine where he would make a couple of speeches to the general public; a speech to Democratic Party activists; and he would meet with the editorial boards of the Bangor Daily News and the Portland Press Herald. He also scheduled a couple of radio shows.

We came to Maine and he kept his schedule, including dropping in on out-of-the-way radio stations to just chat on the air. Shortly after we returned to Washington, the Portland Press Herald ran a strong editorial in support of the Panama Canal Treaty. Muskie had announced that he would support the Treaty and, even faced with the opposition of the Veterans of Foreign Wars and the American Legion, he stuck to his guns. His then colleague, Senator Bill Cohen, was furious because he felt that Muskie, by going to Maine and gaining public support, had trapped him into supporting the Treaty too. And he did.

This story tells us perhaps as much about Ed Muskie as any I can think of. It tells us that he was a crafty and clever politician. It tells us that he didn't rush into difficult political decisions. It tells us that he knew that he was safer if he solicited and obtained broad support then if he took a position and hoped the electorate would catch up with him. And it tells us that he had the skill to shape an outcome with little political risk.

His handling of the Panama Canal Treaty may indeed have been the reason why President Carter was so comfortable in appointing him Secretary of State in 1980.

Muskie will probably always be best remembered because of the "tears in New Hampshire" event, which occurred on the eve of the New Hampshire primary in 1972. What few will remember is that he won the New Hampshire primary and in fact got more than 50 percent of the vote. Today that would be a major victory for any Presidential candidate, but in 1972 the press characterized it as a defeat.

What few will forget is that in defense of his wife's reputation and integrity, he became emotional and attacked the Manchester Union Leader.

I recall, and would prefer others would remember, his performance in Washington, Pennsylvania early in his Vice Presidential campaign in 1968. Because of

the Vietnam War and the boisterous and sometimes violent protests against it, few politicians would engage the public directly. Before he pulled out of his re-election race, President Johnson campaigned on military bases and in controlled environments, much like George Bush did in the past election.

No candidate for President or Vice President had appeared on a major college campus. And few went to any uncontrolled events. Muskie started out his campaign by appearing before a college crowd at the University of San Francisco. It was a smashing success, reported on favorably by the national media -- because it had occurred on a college campus.

Shortly thereafter, Muskie made the appearance in Washington, Pennsylvania. It was an open air event on a stage before a large crowd -- who didn't have to have tickets to attend. One very loud and obnoxious young man kept interrupting Muskie's speech, heckling loudly and trying to shout him down. Muskie asked the young man to come up on the stage, which he did. He then said to him, "you clearly have something to say. I will listen to you if you will then listen to me."

Both had their say. Muskie received enormous praise for his handling of the situation and it diffused much of the heckling that would otherwise have occurred during the remainder of his candidacy.

Muskie had a rare ability to grasp the moment. And he didn't need staff to tell him when the moment was or how to grasp it. I recall on one occasion, during debate on the Defense Department appropriations bill, someone on the Muskie personal office staff called me and said, "You've got to get over to the floor. The Senator is having a fight with John Stennis on environmental policy."

I rushed to the floor to find he indeed had engaged Stennis, a Mississippi Senator who was chairman of the defense committee, on the issue of a Defense Department exemption to the National Environmental Policy Act. Stennis wanted to include an amendment in his bill.

Senator Muskie's staff had informed him of this amendment by a two-page memo. We had not received any response to the memo, so we had no indication that he intended to debate the issue, nor did we have any opportunity to prepare extensively for a debate should it take place. When I got to the floor, Muskie was engaged in a furious exchange with Senator Stennis. At the end, Stennis withdrew his amendment; Muskie prevailed; and he turned to me and he said, "Why did you come over?"

I was very proud to be working for Ed Muskie that day, though my ego was a little singed.

During and after Muskie's service, many of us told stories of his much-feared temper. His colleagues were reluctant to take him on during debate because they feared he would explode. He once told me after such an event on the Senate floor, "Don't you think I use my temper well?" I had no idea that he was faking, and I'm not sure he did.

My own experiences with his vaunted temper were many. Because I lasted with him almost as long as any other staff person other than the late Gayle Fitzgerald Cory and my friend Don Nicoll, I saw him and his temper from virtually every perspective. I know that at times he used his six foot five inch frame and the volume of his voice to intimidate. I know that he at times used a demonstration of temper to make a point or try to overwhelm his adversaries. But I also know that often his temper was real and very, very scary.

Another dimension of Ed Muskie of which I wasn't aware for many years was the breadth of his political philosophy. Because I came from Montana, was raised in Montana politics and had had no exposure to Muskie as a legislator or as a Governor and spent very little time with him personally for many of the years I worked for him, I was not aware of the philosophical underpinning which drove his policy direction.

During his ill-fated Presidential campaign, we had occasion to hold a hearing on the coast of Delaware at the behest of his friend and colleague, Senator J. Caleb Boggs, a Republican and the Ranking Member on his Subcommittee. We were accompanied on the plane to the hearing site by Senator Clifford Case of New Jersey, a moderate Republican, and Senator Bill Roth of Delaware, yet another moderate Republican.

In the course of that trip, I made an observation about the avaricious role of banking in our society. And I suggested that while it was likely that Senator Muskie held views similar to Senator Case about banks, I was a prairie populist and came from a background which simply didn't trust banks or bankers. Muskie, in the presence of Case, gave me a lecture about his anti-bank populism as a Maine Democrat, something I wouldn't have known had I not chosen to be provocative.

Another aspect of Muskie which is little known is that he was not pro-choice. The issue of choice, of course, was not significant during much of his political tenure. It came up from time to time in two respects: a Constitutional amendment to ban abortion; and Medicaid funding of abortion.

While the Senator questioned the wisdom of amending the Constitution for social purpose, we were never able to convince him that Medicaid funding for abortion was appropriate.

He was, after all, a lifelong and devoted Catholic. He did not bring his religion to the office. In fact, I didn't even know he was a practicing Catholic until an occasion on which we were out of town at a field hearing on a Sunday. He disappeared early on Sunday morning and I found out later that he had gone to Mass. I had been on his staff for four years.

Never once during my 15 year tenure with Senator Muskie did the issue of religion come up. I infer from his opposition to Medicaid funding of abortion that it was a function of his religious views, but he never said so. Later in life, long after he left government service, he changed. Not only did he change on the issue of abortion, but he conveniently forgot that he had ever been other than pro-choice.

This makes an important point about Ed Muskie. Many believe people's personalities are fully developed when they are very young and their intellect matures when they are in their twenties. For example, most really brilliant physicists and mathematicians are said to peak in their post-graduate years.

Ed Muskie's intellect, perception and creativity grew throughout his public life. I watched him change dramatically after he returned from the Vice Presidential campaign. While he would disagree, clearly the things he saw, the places he visited, the people he heard made a deep and significant impression on him. And it changed his public policy views.

I once irritated, if not outright angered, him by suggesting that the Vice Presidential and Presidential campaigns had turned him from a small state Senator to a truly national statesman. He, of course, argued vociferously that he'd always been a national politician and that he'd never just been a small state Senator.

Again, because I was from "away" and had not seen this man evolve through the state legislature and the Governor's office or his early years in the Senate, I could only apply the perspective I had from meeting him in 1963 and joining his staff in 1966. And I can tell you that from my perspective the Ed Muskie who entered the decade of the environment was a very different Ed Muskie than the man I first met in 1963.

When I first went to work for Muskie, he struck me as being cautious to the point of being conservative. I did not understand that he felt the need to carry his colleagues along the journey on which he had been embarked. I was much less wise and had much less appreciation for the need to build a foundation before you build a house. So, it could have been part of a grander plan that caused him to take the giant steps which he initiated following the Vice Presidential campaign or perhaps it could have been that he was emboldened by the experience of that campaign. Likely, it was some combination of both.

He came back from the near victory in 1968 to pass a piece of legislation which created the concept of strict, joint and several liability for pollution. Even before Earth Day he and his intellectual peer, Republican Senator Howard Baker of Tennessee, crafted legislation governing cleanup of oil spills, which established a standard in federal law which far exceeded admiralty law and which guaranteed that the people responsible for oil pollution would pay to clean it up. That bill was as radical as any enacted but the Clean Air Act. When years later Superfund was enacted, the standard for liability was the standard that Muskie and Baker established in April of 1970.

He understood the politics of Earth Day and he understood the politics of the national environmental movement and he grasped the opportunity.

Later, in 1971, he did for clean water what he had done for clean air. He shifted ground from his earlier objective of establishing water quality standards and building pollution controls to meet these standards to requiring pollution controls and then measuring to see whether quality standards had been achieved.

The 1972 Clean Water Act is known primarily because it established a regulatory program which created a federal discharge reduction program and a similar regulatory program to protect the nation's wetlands. What is not known widely is that the 1972 Clean Water Act also created the circumstances under which the Congressional budget process became essential.

For many years Muskie and his colleagues on the Committee, in both houses and on both sides of the aisle had wanted to increase the level of federal funding for waste treatment plants. Republican Governors from the Northeast, like Rockefeller of New York, Sargent of Massachusetts, Agnew of Maryland, all appealed to the Committee to find a source of waste treatment plant funding so they could make critically needed infrastructure improvements. Congress enacted the limited federal grant program in 1966, but the money was distributed largely to small towns in rural areas rather than to the big cities where the real pollution problems existed.

In 1971, Muskie and his colleagues in the Senate made two critically important decisions: first, that the pool of federal funding should be increased to \$18 billion; and second, that it should be authorized in a way that made it certain to be appropriated and spent.

While there are many other details associated with that legislative initiative, the most important point is that Richard Nixon, knowing that Muskie would not be his opponent in the general election, vetoed the bill and then when, for the first time in his four years in office, the veto was overridden, impounded \$9 billion of the construction grant money.

This impoundment led to litigation by the City of New York and others. A little known historical fact is that much of the brief before the Supreme Court that was filed by the City of New York was crafted by Muskie Subcommittee counsel, now a member of the Maine Law Court, Don Alexander.

The Supreme Court held that the President did not have legal authority to impound appropriations made by the Congress. This was dramatic and enormously significant because for generations Presidents had simply refused to spend money Congress appropriated. The fact that the President could no longer just refuse to spend money Congress appropriated meant for the first time Congress would have to better discipline itself in its spending habits.

Historically, Congress voted all manner of expenditures knowing that their carefree ways would be disciplined by an Executive Branch which had to keep an eye on issues like the capacity to spend appropriated funds and the federal deficit.

Faced with the Supreme Court's decision that the Executive Branch did not have authority to not spend Congressionally appropriated funds, Muskie crafted the Budget Act. The Budget law was intended to establish the parameters which would govern the appropriation of funds by the Congress. In theory, the Budget Act would say how much could be spent and how much the deficit would be and what, if any, new revenue had to be generated to balance the books. Because there was no Constitutional requirement that the budget be balanced, the latter was more an exercise in controlling the size of the deficit.

Like pollution policy, Muskie mastered budget policy. His diligence, his attention to detail and his sense of Senatorial responsibility made him a perfect choice to develop and implement the initial budget process. For a liberal Democrat he had – perhaps unique among liberals – a rare capacity to sit through endless hours of hearings on economic detail. As he had, for so many years as Chairman of the Environment Subcommittee, listened to endless hours of technical detail on science and technology of pollution, he now listened to economists and accountants and the policy people who wanted to spend federal money.

He would go home at night lugging two and sometimes three 3-inch binders containing memos on every subject area of the federal budget. It was his habit to get up early in the morning, often around 5:00, and read this material until he left for the office around 9 am. He was better prepared than his colleagues and he insisted on knowing more than the witnesses that would appear before him.

It was often said of his presidential running mate and close friend, Hubert Humphrey, that Humphrey had more answers than there were questions. Muskie always had more questions than there were answers and it well behooved his staff to be able to respond.

The budget process wasn't just an exercise in balancing the books. It required a political skill and it engaged his social conscience. With respect to political skill he had, as his Ranking Committee Member, a conservative Republican from Oklahoma named Henry Bellmon. Bellmon may have been the most conservative of the allies Muskie engaged over his tenure. He was at least as conservative as Senator Jim Buckley of New York, who served as Ranking Member on the Environment Subcommittee for several years.

Muskie knew that in order to keep Bellmon on his side on issues like defense spending he needed to compromise on social spending. He chose to take a stand on the school lunch program. Then Senator George McGovern had a budget amendment which would have added funding to the budget for school lunches.

To the surprise and dismay of his liberal colleagues, Muskie opposed McGovern. But he gained the cooperation of Senator Bellmon in opposing excessive increases in defense spending. So successful was this gambit that Senator John Stennis, the Mississippi Senator who controlled defense spending, solicited and received a private meeting with Muskie. He asked for and received a commitment to a 3% increase in defense spending – far below what Muskie had any reason to expect him to request.

But Muskie would not waiver on his commitment to Social Security. In 1979 his Budget Committee staff, both policy and economic, urged him to place limits on the growth of Social Security payments.

He argued, with force, that too many seniors relied on Social Security as their primary source of income; that he would not be the sponsor of limits on their payments.

Let me conclude with yet another perspective on Senator Muskie. The people of Maine knew him as a national leader, as a creative legislator and as a partisan Democrat. He was one of a very small group of people who built the modern Democratic Party in Maine. He was intensely partisan in his effort to elect Democrats from local government to the White House.

In the 1970's there was a state Democratic convention at which Muskie was honored. He was presented with a telephone booth to memorialize his oft-repeated comment that when he began in Maine politics the eastern Democratic Party could fit into a phone booth. I don't know how many times I heard that comment.

The legislator Muskie was very different. It was almost as if partisanship stopped at the Maine border. Muskie not only worked with his Republican colleagues, but he sought out special relationships in order to accomplish his legislative objectives.

While he would do everything in his power to defeat a Republican running for office from Maine, he had a remarkably good relationship with Senator Bill Cohen. But more important was the extent to which he would go to build bipartisan support for his legislative endeavors, whether it was Government Operations, where he built a working and productive relationship with Senator Bill Roth of Delaware; or the Budget Committee, where he had a special working relationship with the conservative Henry Bellmon from Oklahoma; or the Environment Subcommittee, where variably he had constructive and productive relationships with Republican Senators like moderates J. Caleb Boggs of Delaware and Howard Baker of Tennessee or conservatives like Jim Buckley of New York.

Muskie had a unique skill at developing a relationship with these political adversaries which led to frequent and consistent unanimous support for his legislative initiatives. In so doing, he did not compromise principle. He personified the concept that legislation is the art of the possible.

He insisted that the man who was in the middle was in control and was an absolute master of defining the extremes so he could place himself in the middle. In so doing, he brought his colleagues in support of progressive and innovative legislation, much of which passed the Senate without dissent.