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**Address by Senator Edmund S. Muskie at the Red Mass
Sponsored by Catholic Lawyers' Guild of the State of Maine**

Edmund S. Muskie

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ADDRESS BY SENATOR EDMUND S. MUSKIE (D-MAINE)
AT THE ANNUAL RED MASS SPONSORED BY
THE CATHOLIC LAWYERS' GUILD OF THE STATE OF MAINE
SUNDAY, SEPTEMBER 16, 1962
AT SANFORD, MAINE

I am not here to preach to you tonight, for there are others, obviously more qualified than I, to perform such a function. And my credentials would be particularly suspect in a political year among the few here who are of a different political party than mine. I would not presume to suggest to them that God has chosen a Democratic Senator this night to speak his word.

I am not here to lecture to you; for that would presuppose a superior knowledge of my subject, which I hereby disclaim for reasons which will appear.

I am here to share with you, and to expose to our common attention at what appears to be an appropriate time and place and occasion, some thoughts we have all had from time to time about the role and responsibilities, of the lawyer in a free, democratic society.

There are several approaches I could take to this subject.

I could speak of the need for trained lawyers, and the adaptability of their skills in the law-making processes of our legislative bodies.

I could describe the challenges and the opportunities which exist in the executive agencies of government and which create an ever-present and never satisfied demand for top-flight legal talent.

I could describe the governmental and civic chores in our communities, in our counties, in countless places all over America, which require the services of lawyers.

I could speak of the lawyer as a potential leader by reason of his profession; as a potential mobilizer of public opinion by reason of his training; as a repository of the sacred and vital traditions of a democracy by reason of his knowledge and understanding of its institutions.

And so, I could plead with you to consider public service, in either appointive or elective office, as a full-time vocation or part-time avocation; and I do make that plea in passing. If you are adapted to it, you will find it a kind of fulfillment which cannot be matched in any other expression of the spiritual and intellectual motivations which prompted you to become lawyers. You will pardon me if I express the hope that, if any of you are moved by this plea, there is a reasonable division as to Democrats and Republicans so that the game will not become too one-sided.

What I have chosen to speak about tonight is the role of the lawyer in creating and influencing the climate in which a democratic society works, forms its judgments, and makes its decisions.

We are gathered here, in furtherance of a noble tradition extending back at least as far as the 13th Century, to invoke God's blessing upon our efforts to assist in the administration of justice. The administration of justice in a modern free society is a task so solemn, so important, and, at the same time, so burdensome, that we must continually seek divine guidance and inspiration if we are to succeed. For, as Mr. Justice Frankfurter has said, "The law is all we have standing between us and . . . tyranny." As members of the bench and bar, we hold a sacred trust to preserve and perfect our legal institutions, for upon them rests our very existence as a free and democratic republic.

Since the earliest days of recorded civilization, men have united in groups of one form or another and have prescribed rules to establish and maintain peace and order. In our time, the groupings are by nation, some based on ethnic grounds, others on geographical grounds, while still others, unfortunately, have been arbitrary impositions upon subjugated peoples.

The rules now generally take the form of a constitution, usually written, and a lesser body of civil law implementing the broad outlines of the constitution. Thus, all over the world today, our nation-states

are, ostensibly at least ruled by governments operating under an established, and higher, body of law. As we all know, however, there are important de facto differences between nations, and it may fairly be said that we now live in a world half-free and half-slave.

The core of the free world resides in the Atlantic community, where we can trace our legal heritage back over thousands of years. We can go back at least as far as the early experiments in limited freedom of the Greek city-states, and coming forward over the pages of history we can follow the ever-expanding thread of individual dignity and freedom through the statutes and jurisprudence of the Roman Law, the great documents of the Middle Ages like Magna Carta, the treaties that brought peace out of the religious wars, the charters of religious freedom of the early American colonies such as that in Maryland in 1634, the Bill of Rights of England in 1689 and of the United States in 1789, the Declaration of Independence and the Emancipation Proclamation. These are but a few of the great milestones that have marked the steady advance of mankind toward increasing satisfaction of its material and spiritual needs.

Thus, the tide of history is truly on the side of freedom. But it would be foolish and dangerous for us to rest upon the assumption that we will inevitably triumph. For democracy is an extremely exacting system of government, and, at least as it is practiced in the United States, will not succeed unless there is a highly developed degree of knowledgeability and responsibility in the people who make up the nation. In a number of newly born nations, experiments in democracy have failed and some form of dictatorship has emerged. Why? It is not the system, for that system has, here in America, given us the greatest measure of individual liberty and material success ever attained. Among the causes of these failures has been the lack of an educated and responsible public, the lack of experience in the practices of self-government, the lack of people equipped to operate the government, and the lack of a deeply-ingrained tradition of personal freedom.

Here, then, is where our greatest responsibilities as lawyers lie. While every American must bear the burdens which freedom imposes, there

is an added obligation upon those who would call themselves leading citizens. They must equip themselves to meet the challenges presented by the rapidly changing period of history in which we live.

From Colonial days to the present, lawyers have played an extraordinarily prominent role in the formation of our national institutions. In no other nation in history has the judiciary been accorded so prominent and crucial a role in government as here in the United States. Through the principle of separation of powers and the doctrine of judicial review, our courts have been invested with great powers in the constant struggle to maintain a free society. As officers of the court, each of us is a partner in that struggle. Each of us must, throughout our professional lives, lend our weight to the cause of freedom and the proper administration of justice.

De Tocqueville, one of the most penetrating of the early commentators on American institutions, believed that the prevalence of lawyers in our society was one of the reasons for the success of our system. He said that American society had developed in its lawyers a class of people who provided the stabilizing influence which every good society requires and the lack of which was so greatly feared by earlier critics. He believed that American lawyers had acquired an instinct for applying a brake to the easily aroused emotions of public opinion and that they had a record of largely shaping this nation's development at most of the important stages of its history.

I believe these observations to be true today. But De Tocqueville said something else which I also believe to be true today and which forms the basis of the great challenges now facing us. He said that we had been helped considerably by the fact that our national life was isolated, that we had a relatively simple economy, unburdened by the need to establish a great military establishment, protected by two great oceans and unexposed to the great international forces which determine the fate of nations. As long as these conditions continued, our economy and institutions would grow strong and self-reliant. But, he predicted,

the day would surely come when those conditions would cease to exist, when we would emerge from the geographic shell in which we had been safely nurtured. Then our institutions would be forced to stand or fall on the contemporary spirit of the nation, not upon what our Founding Fathers had wrought. Great as were our accomplishments, he believed that greater tests were still to come, and he accurately predicted that the United States and Russia would emerge as the two great powers of the world.

As we all know, the early conditions have long since vanished. The greater tests still to come are here, for into American hands has been placed the burden of carrying for all humanity the torch of liberty in these perilous times.

B / No longer are the issues few and simple and generally local in nature. With the almost unbelievable development of communications, the issues are now many, complex and world-wide in nature. The once simple task of being informed has become a major problem. And the burden of maintaining freedom becomes greater with each passing day. Instead of periodic crises upon which concentrated national attention can focus, we now commonly face series of crises, continually overlapping, the answers to which are becoming harder and harder to find.

And so the burdens of citizenship and the strains upon our institutions become greater and more difficult. The frustrations increase, the self-doubts grow. Suspicions of the motivations and opinions of others become more widespread and intense. The failure to find answers to all our problems through the processes of reason tends to generate answers which are the product of emotion. Emotion leads to prejudice. Prejudice creates divisiveness.

And the great democracy whose remarkable advance over 175 years has reflected the capacity of an increasingly enlightened people to work and to support common decisions in the common interest of all faces dangers.

How great are the dangers? / *B*

great problems are, they can be met and solved

^ ~~They are not great~~ if we can work together to govern ourselves. They are not great if we can trust each other, even when we disagree. They

are not great if we have confidence in the capacity of our institutions and the system of law under which they operate to meet the demands placed upon them.

Let me illustrate.

The extraordinary power which has been vested in the Supreme Court as the result of the doctrine of judicial review has generated some controversy over that court throughout our history. We are all aware of the great dispute between Jefferson and Hamilton over the proper role of the court and the role which Marshall played in establishing the Hamiltonian view; of how that controversy flared repeatedly whenever a strong President - such as Andrew Jackson, Lincoln, Theodore Roosevelt and Franklin D. Roosevelt - felt that the court's role constricted his authority; and how in each instance the court's essential role was preserved intact.

Such controversies are inevitable - and I think they are healthy - in a system which relies upon the checks and balances of the separation of powers to prevent any person or group from acquiring absolute power. The constant, open conflict of ideas has always been, it seems to me, one of the best methods we have to protect against stagnation and to insure that new ideas will be listened to and accepted if sound.

In recent years, we have witnessed a renewal of the controversy over the supreme court. Beginning with the school-segregation decision in 1954 and continuing up through the school-prayer decision this year, the court and its decisions have been consistently in the news. The court has been alternately praised and damned in the most extravagant terms.

As I said a moment ago, I think open debate is healthy, But I am concerned about this debate because it has so often degenerated in wild name-calling and emotional outbursts which have been, in most cases, completely devoid of reason or logic. Although I would not for an instant deny to the lawyer - or to anyone else - the right to disagree with the decision of any court - Supreme or otherwise - it seems to me that lawyers have a larger responsibility to defend the integrity of the judicial system itself. If anyone is to lift this debate from the gutter to the intellectual level it deserves, it will have to be lawyers. For only they are trained to consider all aspects of each case - the procedural as well as the substantive, the

legal as well as the emotional. Here is one area where the lawyer can and should be informed; where he can help channel public debate into constructive channels, so that something constructive may emerge from public discussion, rather than the rigid, unthinking positions so often assumed now. For as each one of us knows, there are very, very few cases which reach the Supreme Court in which the issues are so clear-cut, so black and white, that reasonable men could not differ upon them. Here, the maxim that there are two sides to every question is literally true.

So I think that we have a major responsibility to work for the continuing internal improvement of our judicial system, while at the same time we have a responsibility to defend that system against unreasoned and intemperate attacks. Criticize if you think a mistake has been made, but do it intelligently and constructively, and work to channel the general public discussion in that direction.

Again and again, as the tempo of events quickens, we see established principles challenged, the capacity of established institutions to meet unanticipated problems tested, and the temptation to abandon tradition and principle for the expedient answer to new difficulties. Change is necessary, adaptation to new circumstances a must, flexibility an indispensable condition, if our system or government is to long survive. However, must not the changes be orderly? Must not the adaptations be rational? Must we totally abandon the stability, the security, and the guidance we can achieve for our judgments and our actions by relying upon what is established and proven?

To build the future upon the past - this is the great test which has confronted our system of government from its beginnings. It is the test which is subjecting our institutions, and the capacity of our citizens for self-government, to unprecedented pressures today.

As we struggle with these internal pressures, our institutions and our people are subjected to unprecedented external pressures.

The world-wide Communist conspiracy, centered in the Soviet Union and China, with the avowed purpose of world domination, now embraces over one-third of the world's population. Guided by a political system wholly antagonistic to our own, they are emerging explosively from a long, inert history during which they had little or no impact upon us as a nation.

In the short space of less than fifty years, the Soviet Union has become a highly industrialized nation, second only to the United States in the world. And now, their every action has a profound impact upon what we think and do.

The rapid development of the Common Market points up another area of great concern to us. We have worked hard for many years for a united Europe, and now that it is no longer a dream but almost a functioning reality, we wonder if we are ready for it. Each of you has an actual or prospective client who is or will be directly affected, economically or otherwise by what happens to the Common Market.

The communization of Cuba and the continuing ferment in Latin America are and must be of cardinal concern to all of us. I could go on and on -- to Africa, containing hundreds of millions of people getting their first taste of freedom -- to the Far East, where continued tension between the two Chinas threatens to erupt at any time -- to Southeast Asia, where in far-off, strange sounding places men with American names like Smith and Jones are now fighting and dying for freedom.

These are but a few examples of the latter-day pressures on our institutions and the challenges to our viability as a free society that de Tocqueville foresaw through his genius as threats to the ultimate flowering of the great American experiment in self-government.

Other wise men throughout our history and into the present have postulated similar intellectual doubts. They resolve really into a single basic question:

Can we maintain our heritage of individual liberty and still preserve our national security and the continuing growth of our economic and social order?

Inherent in this question are all the subsidiary doubts of our time:

Whether a nation of 188 million individuals can be capable of grasping and understanding the challenges of our era both externally and domestically?

Whether such a mass of individuals are capable of responding rationally and wisely, with sufficient speed and sensitivity, in a fast-moving world to all the challenges and demands?

Whether we as a people have the qualities to do all this as effectively as a small oligarchy making decisions at the top and imposing them with the ruthless disregard for human rights that we see today in the Soviet Union or Red China?

To all these grave and towering questions lawyers must inevitably play a major role in finding positive and affirmative answers that will both prove and insure the validity of our institutions. Why?

Because the lawyer, by training and practice, is a rational man -- an analytical man -- an objective man -- a man trained in understanding the true nature of our heritage and the eternal values of individual rights.

Beyond these qualifications the lawyer must offer the searching mind, the ability to see and grasp the meaning of new problems and the inclination to cope with them and to relate them in forms of dynamic adaptations to the living body of precedent on which freedom and progress are built.

Lawyers and the law are freedom's first line of defense against the endless pressures to destroy our system and the people who make it work. Lawyers and the law hold the primary responsibility for maintaining confidence in the strength of our system through their courage and ingenuity in adapting our basic principles to new times and to the changing conditions that characterize the world in which we find ourselves.

For if the American people ever lose their respect for the Constitution and legally constituted authority, or if we prove incapable of resisting the onslaughts of external totalitarian systems on freedom throughout the world, then our democratic institutions will inevitably collapse, for the only alternatives will be anarchy or administration of law based upon terror and fear. Therefore we must, and with God's help, we will succeed.

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