

Video Tribute to Muskie Awardee Shep Lee
And
Comments on 50th Anniversary of
Brown v. Board of Education
(Video made 3/25/04 in Chambers)

One of Maine's finest products is its citizen leaders. The award we witness tonight honors the memory of one of our best, Governor, Senator, Secretary Ed Muskie. The prior recipients have been sterling examples, drawn from a number of walks of life. But they have been honored, not for their "walk in life," their vocation or professional occupation, but for the time, talent, and commitment they have invested in the public good, in citizenship. And so tonight it is altogether fitting that the honor should go to one who, though a strikingly successful entrepreneur, has, during all his adult life, had his eye on the public good and served it in countless ways.

To participate in this occasion honoring Shep Lee is a source of deep personal joy, for our friendship is now in its seventh decade. We began to work together on community projects in the 1940's.

Shep was a recent Bowdoin graduate, working with his father at Advance Auto Sales on a side street in Auburn. I was a fledgling lawyer, with an office on Lisbon Street in Lewiston, right over the Lamey Wellehan shoe store. As Shep began his apprenticeship in the automobile business, he began to question whether he had made the right choice. Now you have to know a little bit about Shep as a college student. While at Bowdoin he had been irked by the exclusivity shown by the fraternities. So he and a few others came to President Sills, proposing a new fraternity, ARU, standing for All Races United. President Sills was hesitant. Didn't Shep think that time would take care of this, that the fraternities would change in due course? Shep's answer was, "I can't wait till then." And ARU was founded.

So Shep began asking himself, as an automobile dealer, would he find fulfillment? Bowdoin had made much of the concept, "the common good." How could he contribute anything to that goal? Should he go to graduate school and become a professor? So he went back to Bowdoin to talk with his old history professor, Professor Helmreich. The professor heard him out then said in substance, "No, Shep, you stay where you are. If you do well, you will have many opportunities; in ways you cannot imagine, to be socially useful. We need businessmen of your stripe." And so Shep's course was set.

Our first collaboration was, as I have noted, in the late 1940's. We were both active in what was then called the United Community Chest. Shep, I, and a leading Catholic priest, Father Francois Drouin, were a subcommittee charged with doing the initial analysis and planning for a local mental health facility, which ultimately was established.

We soon became friends. I was always impressed by Shep's intimate knowledge of the internal combustion engine. I would drop into Advance Auto Sales with a problem. Shep would think a moment, then say something like, "Sounds to me like you have a loose thingamajig in the whatchamaycallit." Nevertheless, he managed to survive.

In 1956 I ran for Congress. Shep was the Treasurer of the Coffin for Congress Committee and my key fundraiser. The committee raised \$4648 - just enough to get me elected. Then in 1960, when I ran for Governor, Shep was Chairman of my committee. Thus began Shep's long career as friend, advisor, and confidant of political activists. I take great pride in having bequeathed him to such leaders as Ed Muskie and George Mitchell.

My final personal reminiscence takes us to the fall of 1965. I had just been confirmed as a judge on the First Circuit Court of Appeals and was on the way home from Paris, where I had been serving as the United States representative in an international organization. While still at sea on the Independence, I received a telegram from Shep. He had noticed that Supreme Court Justice Douglas was slated to speak in Boston. Talk about chutzpah - he had called the Justice and inveigled him into coming to Maine, indeed, to 10 Labbe Avenue in Lewiston, Maine for a small party in my honor. This is what I call starting a judicial career in style.

So Shep has touched me in a multitude of ways. And others, too, for innumerable folks could tell similar stories. I do not know of anyone else who has demonstrated in quite the same way that a business career can coexist with honor with a life of activism in good causes. Never has his friendship been turned to crass ends. His judgments are of value to the many who seek them because they are not preordained.

And he has not flinched from taking stands that involve controversy, but his very involvement often lowers the decibels. I cite his support of Speak Out and his longtime association with the Maine Civil Liberties Union and his service as a Director of the national Board of ACLU.

I suspect Ed Muskie is looking in on us and saying in his dry way, "Well, I suppose if they're going to give an award in my name, they could do worse." Which, translated, means, "They couldn't have done better." And so, "Salud, Shep!"

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In addition to paying tribute to Shep Lee, this evening gives us an opportunity to reflect on what seems indisputably to be the high point of civil rights jurisprudence in the twentieth century. This was Mrs. Charles D. Smith's case, decided by the Supreme Court just 50 years ago.

Oh, I think I should have used her maiden name, Linda Brown. The other party was the Board of Education in Topeka, Kansas. And they both live in history as Brown v. The Board. And the Court issued its decision on May 17, 1954.

As I leaf through my records of that time, I must say I had other things on my mind. I was Chairman of the State Democratic Committee and Ed Muskie was running for governor. Our aim was that of establishing the Democratic party, to use the Plessy v. Ferguson formula, as a separate but equal party in the state of Maine. My records have us on May 15 in Kenduskeag for a Grange hall dinner, where we had to arrange two sittings to accommodate the unexpected crowd. On the 16th we were in Waterville where I announced that we had hired Don Nicoll as our Executive Secretary and Ed issued the first of several challenges to Governor Cross to debate any time on any subject. Then on the 18th we were in Aroostook County. But I have nothing down for the 17th. So much for our sense of history.

Tonight, with the benefit of hindsight, we can improve our sense of history. In a very few minutes I want to share with you some idea of the origin of Brown, what it said, what has happened since, and what might lie in the future. While Maine might have been remote from the particular problem faced in Brown, state supported segregation in schools, it shares with others both the legacy and the future of the concept of "equality."

As far back as 1938 there had been some attention paid to racial equality in education. In that year the Court ordered Missouri, which had no law school for blacks, to make available "equal facilities in separate schools." By 1950 the pace had picked up. The Court issued two

very pregnant decisions. In one it ordered Texas to admit a black man to the University of Texas law school, even though there was a separate school for blacks, and in the second it forbade the University of Oklahoma to force a black Ph.D. candidate to eat, attend classes, and do library research in a space set off from whites. The Court was ruling that separate but equal facilities in higher education were not equal. But it stopped short of applying this principle to grade and high school.

On the heels of these cases came Brown. Notice the influence of Fate, or Lady Luck. Vinson was Chief Justice and though he had authored the two opinions I've mentioned, he was very cool on applying the same thinking to lower education. Oral arguments took place in December of 1952. But because the Court was badly split, it called for reargument. At Frankfurter's suggestion, it decided not to hear reargument during election year. So 1952 came and went. In the Summer of 1953, Vinson died and Earl Warren was quickly appointed by Eisenhower. The reargument took place in December of 1953 before the brand new Chief Justice.

At the end of argument, Warren did two things. First, he said he was committed to abolishing racial segregation in schools. Second, he "said he would not call for a vote until everyone could give the case careful deliberation. In the meantime, he and Frankfurter lobbied. As Justice Burton, a Bowdoin graduate, later wrote, Warren did a "magnificent job in getting a unanimous Court. (This would have been impossible a year ago - probably 6 to 3 with the Chief Justice [Vinson] one of the dissenters.)."

Apart from unanimity, another remarkable thing about the Brown opinion was that Warren made it short and clear; he wanted papers to print it and people to read it. I don't know how many read it in 1954, but I suspect very few have read it recently. On this 50th anniversary, I think we may profit by hearing a few words from Chief Justice Warren's opinion. He made three important points. The first:

In approaching this problem, we cannot turn the clock back to 1868 when the [14th] Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation.

His second point spoke to the value of education:

Today, education is perhaps the most important function of state and local governments. . . . It is the very foundation of good citizenship.... In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

And, finally, after referring to the two cases decided in 1950, he wrote:

Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

Then: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

The aftermath of Brown was rocky. A year later, in 1955, Brown II called for implementation "with all deliberate speed." But in 1958 a roadblock was posed by Governor Faubus in Little Rock and troops had to be sent in to force the admission of blacks to Central High School. In the same year a young Chicago black boy was hideously murdered. White citizens' councils sprung up like weeds. The 1960's continued to be rough but by 1971 the Court took on a North Carolina case where schools were 99% black although whites were 71% of the total school population. It ordered district wide busing to eradicate the dual school system. That was the high point, but in 1974, with Chief Justice Burger succeeding Warren, the Court backed away from Brown. It faced a case where white flight had left the inner city black. By a close vote, it vetoed multidistrict busing between a suburb and the inner city where the suburb had not practiced de jure segregation.

This was the year when, in our court, we began to deal with appeals from District Judge Garrity's rulings centered on desegregating Boston schools. They kept us busy for more than a decade.

Now, fifty years after Brown, we cannot claim overwhelming victory on the ground. From one fourth to one sixth of all black students in the northeast and midwest still attend segregated schools. Not only white flight but residential boundaries, patterns, tax laws and land use restrictions, largely excluding minorities, have frustrated attainment of the goal. Yet Brown stands as an ideal. It stands behind the forces that have resulted in many laws forbidding discrimination on the basis of sex, age, disability, and sexual orientation. It has been the engine behind affirmative action. One commentator has called Brown both a culmination and a beginning.

That beginning is where we come in. Just this week we learned from the newspapers that by midcentury less than one half of the population of the United States will be white. We already know that blacks are a very sizeable minority and that Latinos are expanding at a rapid rate and may even outpace the blacks. Asians are also a substantial presence. In Portland we have experienced over the past decade or so an influx of people from Asia. Lewiston has had its substantial increment of Somalis. Other parts of the country are in a similar situation.

The result is that a debate has begun. The traditional view of Brown is that in its view of the centrality of education as a precondition of effective citizenship, it stands for social cohesion. It is, so some observers say, based on the need to assimilate and integrate all students in the values, traditions, policies, and practices of the country. Others, concerned about the well being of ethnic, religious, racial, and cultural minorities criticize Brown for precisely that analysis. They argue for multicultural diversity, bilingual education, ethnic studies, even special schools. They seek a safe haven for their group, cultural autonomy and identity, group solidarity, security. This, one advocate labels as a "robust multiculturalism." Others think this is voluntary segregation. In any case, the two views are in tension.

The challenge of the future, now pressing hard upon us, is to meld, if at all possible, the old Brown goal of cohesion and widely shared values of citizenship with sensitivity to the needs and desires of the impending majority minorities. The new era may be seeking an old fashioned melting pot that leaves components with their original flavors, scents and tastes.

As one commentator, Professor Ford of Stanford, has put it, "Brown's relevance is less to our history than to our future." I have the feeling that we in Maine shall be closer to this future than we have been to its past.