

INSIDE GAME: GETTING THINGS DONE IN THE SENATE WITH SENATOR KENNEDY

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I'd like to make one overall point today. That is, how exciting it is to work in the United States Senate, and as one example, how great it was to work for Senator Kennedy in the Senate.

I'm looking out at all of the students in this room and thinking, when I got out of law school I didn't have any idea that one day I might work in the Senate; I first worked in a law firm after law school, then served as a federal prosecutor in New York, then taught law. In 1988 I was practicing in a law firm in Massachusetts when Senator Kennedy called me and said, "Would you like to come down and work in the Senate?"

I want to thank Ranny Cooper, Jeff Blattner, Nick Allard, and some of the other Kennedy staffers who are in the audience today; but Ranny actually hired me—a great moment for me. She was Senator Kennedy's chief of staff in the '80s and '90s. I had no idea what it would be like, working in the Senate, working for Kennedy; I hadn't worked in Washington, I didn't know the Senator. But Kennedy had a tradition that when somebody left a position they were supposed to help find their successor, so a trail of departing staff had led to me.

And I went down and became staff director for the Health, Education, Labor, and Pensions Committee—it was then known as the Labor and Human Resources Committee—which had the most extensive jurisdiction of any committee in the Senate, over health care, education, poverty, the arts, jobs, wages, it just went on; it was magnificent. And I had an incredible time and I think I had a part in

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some extraordinarily important legislative initiatives, which I'll touch on.

But my central point is, working in the Congress—Senate or House—can be a wonderful job. It combines great legal opportunities and immense opportunities to exercise power, achieve very big results, and impact untold lives. My colleagues and I on Kennedy's staff all happened to work for a chairman who was magnificent. But you can have just as great an experience and have a sizeable impact working on committees and for members who aren't as historic in the scope of their achievements as Senator Kennedy. You can do that. Why isn't writing the laws that direct programs and that lawyers later on will interpret even more exciting and impactful than quibbling over what the words mean before a judge years later?

When I think back at the legislative agenda of that time, of the ten years that I was there, I think I am the luckiest guy in the world to have worked in the United States Senate with Ted Kennedy. And I just hope that all of you will think about that possibility—of working in a legislative body crafting laws, directing budgets, making policy to change lives—as your career moves along. I like to talk about zigzag careers where you don't pick one job and stay there for thirty years. You go with the flow as it was for me—one job comes along after another and if they excite you and you are open to a new experience, you take them.

And the Kennedy job came out of the blue; but I hope you will be open to something like it. You can get jobs down there in Congress. You can go down, you talk to people who are working there, you talk to senators and staff who are there. And you can get in the door; you're at NYU Law School, you have the résumés that will get you into these jobs. So think about it, the opportunities to do great things, where you can help people, improve lives, and in the intensity of politics and law and strategy and compromise you can have a very intellectually challenging experience, and you can grow in your abilities in so many ways.

Each speaker today has captured a side of working for Senator Kennedy. There's the sense now that the Senate is broken, doesn't work, certainly. Filibusters, secret holds, unanimous consent, nothing can happen anymore, literally. But when you look back at Senator Kennedy's record, those rules all were the same as they are now, the same rules for the forty-seven years that he was there.

And yet there's not a person in America—it's almost fair to say, there's not a person in America and there's certainly nobody sitting in

this room—who hasn't been affected by Senator Kennedy's legislation. The breadth of it is simply extraordinary.

If you are a parent or a child or a family, you have family and medical leave; every education program, every step that the federal government takes in education, Senator Kennedy was behind that. Whether it's Head Start or child care—the first federal child care program since World War II was enacted in 1990—elementary and secondary school reform; you all heard about No Child Left Behind. Kennedy did that legislation with President George W. Bush.

This was a bipartisan effort that Kennedy did from the minority with President Bush. We're going to revise it, we're going to change it, but high standards and holding people accountable, and teachers and schools being judged on how their students do, all of that is part of this bill and that's going to be part of American education going forward.

Student loans, I don't know how many of you had student loans when you went on to higher education and even in law school—well that's Ted Kennedy. The direct lending program, expanding the student loan programs, Pell Grants—Ted Kennedy. Lifelong learning, he's the job training senator. Allow me to digress here for a moment.

I remember meeting Professor John Kenneth Galbraith and discussing job training. One of the great things working for Kennedy is you got to meet these extraordinary people, like Justice Breyer, who all would flock to bring their ideas to Kennedy.

If there was a subject that Senator Kennedy was going to be dealing with, he would say, "Nick, who are the top five experts in the country?" And I would go off and research them and talk to my colleagues and I would bring a list back and he'd say, "Let's have dinner with all five, at my house, Tuesday night."

It's now Sunday night, and I said, "Well, it's Sunday night, three of them are in California, how can I possibly do this?" We would do it; I would get on the phone Monday morning and say, "Would you come and have dinner with Senator Kennedy, and talk about national service, or talk about job training?" One of those people we met with, many times actually, was Professor Galbraith, and he commented how dense and dry job training issues were. But, even though job training wasn't that gripping politically for the average person in D.C., for Senator Kennedy and thousands of activists around the country it was incredibly important. And it is crucial for America that we have lifelong job training programs for the people in the workforce, for people in jobs to improve their jobs, for people who are out of work to get retrained; and Kennedy would immerse himself in the details of even

these dry issues, and he ended up shepherding the bipartisan Job Training Partnership Act with Republican Senator Dan Quayle.

If you are an immigrant in the U.S., for thirty years Ted Kennedy wrote the bipartisan immigration laws. If you're an artist or a musician, Ted Kennedy rewrote the copyright laws and saved the National Endowment for the Arts.

If you are working, and you are being discriminated against because of gender or race, Ted Kennedy led the fight to change the laws so that discrimination would be prohibited. If you worried about your wages, Ted Kennedy raised the minimum wage almost single-handedly, three times. When I first started there it was \$3.15; it's now \$7.25. That increase was Ted Kennedy in three bills, each year about fifty cents. He worked relentlessly for this.

One time in 1995 after Newt Gingrich had won the House and had his Contract with America agenda, and their agenda was to abolish the minimum wage, Ted Kennedy was so skilled that in the minority—forty-five Democratic senators in the minority in the Senate and with Gingrich leading the Republican majority in the House—Ted Kennedy forced the Congress to pass a minimum wage increase. In contrast to what people are saying today about the broken Senate, Kennedy's achievement is absolutely breathtaking.

When we talk about great legislators, I don't think anybody has ever had the impact on the lives of as wide a group of people in America as Ted Kennedy did. The great senators from the nineteenth century—Clay, Calhoun, Webster—are famous because they negotiated crucial compromises and they dealt with the uniquely traumatic issues of slavery, and they're unquestionably great leaders, and surely great senators. But they didn't pass domestic social legislation, civil rights legislation which impacted the day-to-day lives of their fellow citizens. That's not what the Senate did then. And there's nobody in the twentieth century who's approached Senator Kennedy in terms of the breadth of what he achieved.

I've spoken of education and wages. We must also talk about health care, where every single piece of legislation in health care that the Congress has enacted since Medicare, which was enacted in the Great Society under President Johnson in 1965, every piece since has Ted Kennedy's fingerprints on it.

In the 1970s Kennedy joined the HELP Committee, and in 1986 he became chairman of the whole committee. He fought for universal health care all the way along. And, of course, now we have it, even if some judges would suggest we shouldn't have it, but that will play

out. It's my view that it's settled, that we're not going to lose it, or so I hope.

Anybody out there think they aren't affected by Kennedy legislation, by the way?

Now how did he do it? How did Ted Kennedy do it; this staggering array of legislation? He and I talked about how to do it and we talked about the different buckets of activities that you had to focus on.

Bucket number one, substance; you had to absolutely immerse yourself in the substance of the topic. If it was going to be a new bill, you had to understand the topic better, you had to understand every time anybody had ever tried to legislate in that area. You worked tirelessly to figure out, to be ahead of everybody else on the substance, to get your legislative proposal exactly right, to prepare as if it were your most important speech or debate ever, your most important trial, to know all the arguments, to be able to respond.

And the minimum wage—who did it apply to? What were the arguments against it? Was it going to cost jobs? If so, who was going to say what about that? How many minimum wage workers were there in each state—so that you could go back at the senators who were opposing you. He was deep into the substance, always; that was the first thing.

And, as people have said here, every night he took home a bag full of memos. He read voraciously, and he would meet with the experts. Substance was always a part of it. If you're ever going to do legislation, he wanted to be ahead of everybody else in the room, and he always was.

And second, it's politics. He had two pieces to the politics part; he called it the inside game and the outside game. The inside game was the other senators, the other members of Congress and the administration. And the outside game was all the advocates and interest groups in the communities, the constituents, stakeholders from the private sector. And all of these groups had to be engaged and mobilized.

And the third bucket of activity was communication; as he used to say, "If it doesn't happen in the paper, it didn't happen," because to move things along, everybody in Washington wants to know that they're working on something that's actually happening and getting attention. So communication was the third bucket.

I want to focus for a moment on politics and on the inside game, because, as both Tom Susman and Justice Breyer have emphasized, it is bipartisanship that enabled Kennedy to achieve the legislative suc-

cesses he did. And this is what has perhaps been lost, among other things, in the present day Senate.

Kennedy worked with nearly every key senator on legislation. Because he realized you couldn't pass legislation in the Senate unless it was bipartisan, he reached agreements on legislation with nearly every Republican senator—moderate and conservative—on some key issue that was important to the country. Strom Thurmond on fetal tissue research, Bob Dole on the Americans with Disabilities Act, Jim Jeffords on minimum wage, Nancy Kassebaum on education, with Lauch Faircloth, believe it or not, a very right wing senator from North Carolina. Black churches were being firebombed in the South and they enacted legislation together to punish the offenders in federal court.

Kennedy would find something that he knew he wanted to advance that he could find to work with these Republicans. And he worked so tirelessly to make relationships and to build these bridges with Republicans. And that was really how he did it.

The key Republican who worked across the aisle with Senator Kennedy during the time I was there, was Orrin Hatch. Now, on the face of it, could there be two more different people than Senator Kennedy and Orrin Hatch? Orrin Hatch is a very straight-laced, Mormon, Utah conservative; Ted Kennedy, Irish, Massachusetts, liberal champion.

But Kennedy and Hatch developed this highly productive ability to get legislation done. A liberal and a conservative joining forces and bringing in the full sweep of the Senate. When I first got there in 1989, they decided to work together on an AIDS/HIV bill. President Reagan, who had been in office until 1988, had not really led in the AIDS/HIV epidemic and the federal government accordingly had done nothing to assist with the AIDS epidemic. And Kennedy and Hatch decided, "We have to do something about HIV because, among other reasons, it's creating an emergency for our hospitals in the big cities; they're overcrowded and closing people out because they are so overwhelmed with people. We've got to get AIDS patients homecare; we've got to get them out of the hospitals."

And so the two of them worked together and within a three-month period, the Ryan White Bill, which some of you know, provides \$2 billion a year, every year now—unanimously re-upped every five years, when it has to be reauthorized—and Republicans and Democrats love it, everybody's for it. And it's \$2 billion a year, and this was a bill that I got to work on with Ted Kennedy and Orrin Hatch, and we enacted it in three months in 1990.

Kennedy and Hatch did bipartisan legislation all along the way. Their grandest achievement was in 1997. They agreed that health care reform had failed miserably under President Clinton, but children still needed to be insured. And so they worked together to come up with the Children's Health Insurance Bill. And, as a way of closing, I'll just offer some stories on how that all happened, to demonstrate the importance of relationships in the Senate to getting bills done.

In 1996 Kennedy, still in the minority in the Senate, decided, "We want to have a children's health bill. We want children's health insurance for all of America's children." And he made the decision to ask a number of Republicans, and hopefully he would find somebody to cosponsor the effort. Kennedy spoke to a number of Republican senators, but it was Senator Hatch whom he persuaded to try to work out a joint bill.

The two of them took about three months to work it out, because Hatch had the conservative approach, he wanted private delivery, state-based, and Kennedy wanted to cover more children. How were they going to pay for it? They were going to pay for it by an increase in the tobacco tax. So there were many moving and interconnected parts to be resolved and it was very complicated.

To work out their disagreement Kennedy and Hatch met every week in Hatch's office in the Senate Russell Building. Hatch had a very palatial office with wing chairs situated around a big nineteenth century fireplace. We would all be ushered in and staff would sit in chairs in a circle around the room. Kennedy and Hatch would sit next to each other in wing chairs looking out at us. Every time, Senator Hatch would say, "Teddy, I have a new song which I've written; I'd like to play this song for you."

Well, I didn't know this, but it turned out that Senator Hatch is a song writer—patriotic songs, religious songs, love songs. He writes the lyrics. And then he has a musical composer who composes the music, and then he engages well-known country and western performers to perform them. He's got a stack of CDs as high as this podium and an impressive sound system in his office.

Well, what are we supposed to do? We come in and Senator Hatch puts on his new song. And this is fine, we're very happy. It's a great way to break the ice and start the meeting. We want to have the conversations go well. We're very enthusiastic about the songs, and they're really pretty good.

But then after several months of negotiations on the bill things are getting very tense, because Hatch wants a big share of the money from the tobacco tax to go to deficit reduction, not to cover children;

Kennedy wants to cover children. So we're negotiating, it's back and forth, back and forth. But we have a deadline; it was either going to happen or not.

After about two months of negotiating, Kennedy took me aside one Sunday night and said, "We're going to go in and see Hatch tomorrow. Nick, I know you can sing." Incidentally, Kennedy also loved music and had a big powerful singing voice himself. But he is not going to sing. It's up to me! He says, "I want you to learn one of Hatch's songs and we're going to surprise him. And you are going to start off the meeting by singing one of his songs." So we got out the list of the Hatch songs, as best we could figure it out from the CDs he had given us, and we found one called "Freedom's Light."

So we go in the next morning and Senator Kennedy says, "Orrin, I've got a surprise . . . Nick." I sang "Freedom's Light." After it was over, Orrin looked up and said, "Nice move, Teddy." That was it. Shortly thereafter, Hatch and Kennedy reached an agreement on the tobacco tax and we got the bill. We passed it a month later, again with Kennedy in the minority, and we passed it in both the House and the Senate, President Clinton signed it, and now ten million children get their health insurance from the Children's Health Insurance Program, or CHIP as it's known. It's that kind of a relationship.

I want to end by talking about health care, because Senator Kennedy played the leading role on health care in Congress for over forty years. The Affordable Care Act really is in many ways a legacy of Senator Kennedy's. Caroline Kennedy and Senator Kennedy supported President Obama at the key moment in the primary season, just before Super Tuesday. It was an absolutely critical decision. And it was in part, I think, because Senator Kennedy believed, and Caroline believed, that Obama would make health care a top priority.

Senator Kennedy—having lived through the Clinton era when health care failed—had a couple of strategic rules which he wanted to impart to Obama about how to do it. Don't have the bill written off in some secret committee the way Clinton did. Make sure Congress writes it because if they don't write it, they won't own it; if they don't own it, they won't pass it. So let them write it. It's got to be your top priority; it's got to move quickly because if you wait a year there's no chance. You've got to work with the outside private sector stakeholder groups, because if they're going to spend a hundred million dollars against you, they're going to defeat you as they defeated Clinton. Then, he must get all the Senate and House committees to work together, they shouldn't fight with each other; you've got to have one bill basically.

These were the lessons that Kennedy talked about, and he brought to Obama and, of course, he was there, and as chairman of the committee he would have had a key role if he had lived. But he had a key role through the moral force of his personality, through his strategic sense, through being there for key votes, for talking to Obama and other senators and House members, even while he was sick, for the letters he wrote to Obama, for the speeches he gave.

So universal health care in America really in many ways is the great Kennedy legacy. I often think that if Kennedy had lived and been at the top of his game, he and Senator Hatch might have done universal health insurance together. Maybe he would have brought me back to sing, and he and Hatch would have done universal coverage, because it's not too different than children's health.

The model is still private insurance companies in the states providing health insurance for the residents of the state who are eligible and federal subsidies for the people who have to have financial assistance in order to be able to afford insurance. The model is exactly what we did with children's health. Orrin Hatch would talk to us and say, "If only Teddy were here, we could make this happen in a bipartisan way again now."

So the loss is extraordinary, I don't know that there'll be anybody like him again because, as Caroline said, so much of what he brought to the Senate was his own history and family and his work ethic and the relationships he had built over many years with his colleagues and his commitment to public service. When you ask other senators why they liked to work with Kennedy you often heard, "Because he always kept his word." When you think of his mother and his father, and what they taught him about public service, and his brothers, it's hard to imagine there'll be somebody like him.

But in the meanwhile let the history books record that this was the man who achieved more and affected the lives of more people in America arguably than any senator in history.

Having the opportunity to be here with all of you, the students at NYU Law particularly, I just hope you'll think about the opportunity to work in Washington on these kinds of issues. There really is no place where you could have more of an impact.

I think of the Ryan White bill often—\$2 billion a year. Well, Senator Kennedy, and we, his lucky staff members, were able to create this lifeline for people with HIV and AIDS, because we happened to work in the Senate, and we decided to put a bill together, find bipartisan support, and get it passed into law. That's pretty good. I hope some of you will follow that zigzag model through your career, follow

your heart when a job opportunity comes along that seems off the ordinary track, and especially be open to a job in the Senate. If you get lucky, you too might be able to have a hand in expanding health care or fixing the schools or raising wages. And you too might look back on that opportunity as I do and say that was the best job I ever had.

Thank you.