

REMARKS

Katherine Bayh

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REMARKS BY KATHERINE BAYH*

The following piece features two addresses given by Katherine Bayh, the wife of the late, former Senator Birch Bayh. The first remarks concluded the program Celebrating the Impact of Senator Birch Bayh: A Lasting Legacy on the Constitution and Beyond, held at Fordham University School of Law on October 16, 2019. The second remarks were delivered at the memorial service for former Senator Birch Bayh, held at the Indiana State Capitol in Indianapolis, Indiana on May 1, 2019. Together, they tell the story of Senator Birch Bayh's legacy as a public servant and as a private man.

I. BIRCH BAYH: A LASTING LEGACY

Dean Feerick and Professor Rogan, Christopher and I thank you for this moving tribute to our husband and father, and we thank all of the distinguished voices bearing witness to his life's work. I would like to address my remarks especially to the students of Fordham. It is what I believe Birch would do. Throughout his career, Birch believed that our country's future was in the hands of the generations coming behind him—whether it was when he was passing legislation to enfranchise the eighteen-year-old vote,¹ or equalizing academic and athletic opportunities for girls and young women,² or teaching and listening to students like yourselves.

Birch would say to you that today's celebration of his legacy is nice—really nice—but he didn't live a legacy; he simply lived his life. When Birch lost his U.S. Senate seat in 1980, he didn't despair. Instead he said to me, "I was privileged to do with my life for eighteen years exactly what I wanted to do. Most people don't get eighteen days to do what they want to do." Then, he got on with the business of the next phase of his life. And so, he would say to you students, "Do what you want to do with your life. Do what you want to do right now. Don't think that you have to define the whole, long arc of your careers right now."

Birch started out as a farmer. He loved farming. Then one day somebody said to him, "Why don't you run for the state legislature?" He said, "Well, okay." He began to see the problems of others: to see injustices, to see unfairness. As he rose to speaker, he reorganized the entire Indiana public

* Wife of the late, former Senator Birch Bayh. The text of these remarks has been lightly edited and footnoted. For an overview of this Tribute, see *Foreword: Celebrating the Impact of Senator Birch Bayh: A Lasting Legacy on the Constitution and Beyond*, 89 FORDHAM L. REV. 1 (2020).

1. U.S. CONST. amend. XXVI.

2. See Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235 (codified as amended 20 U.S.C. §§ 1681 to 1688).

school structure so that rural children could have the same access to education as urban students.³ Simultaneously, he went back to school and got his law degree. Later, as a U.S. senator, his public education continued, and he labored to correct what he saw. He loved his work but—and this is what is so important for me to say—had he returned to farming and a law practice a lot sooner than 1980, he would have been okay because he loved doing those things too.

Birch would say that there are three hallmarks of a good and happy life: (1) seeking ways to help others, (2) appreciating those who help you, and (3) compromise. The first he did by listening. The year before Birch died, I put together a digital photo album of him with constituents. When I got the book back and looked at it with fresh eyes, I was struck that in every single photograph, Birch is doing the listening not the talking. Whether it was at a plant gate, in a living room with an elderly couple, or on a college campus, he is doing the listening not the talking. Title IX⁴ grew out of his listening. Yes, women's equality generally was on his mind in 1972 as he was trying to get his Equal Rights Amendment⁵ out of committee. But as the Higher Education Act of 1965⁶ came up for renewal at the same time, he remembered a call he'd received from a constituent who complained that his daughter had been rejected by Purdue Veterinary School because she was a girl. It was that story—that listening—that led to the thirty-seven words of Title IX that ban discrimination in our schools on the basis of sex.⁷

Birch would tell you that he did nothing alone. Behind every constitutional amendment and every legislative victory, there were others working to make a difference. John Feerick's legal scholarship in the early 1960s⁸—when he was not much older than Fordham Law students—led to the drafting and passage of the Twenty-Fifth Amendment.⁹ Birch's success in defeating President Nixon's second U.S. Supreme Court nominee, G. Harrold

3. See School Corporation Reorganization Act of 1959, 1959 Ind. Acts 451–74.

4. 20 U.S.C. §§ 1681–1688.

5. ROBERT A. BRADY, THE CONSTITUTION OF THE UNITED STATES OF AMERICA AS AMENDED: UNRATIFIED AMENDMENTS & ANALYTICAL INDEX, H.R. DOC. NO. 110-50, at 30–31 (2007) (“ARTICLE—SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article. SEC. 3. This amendment shall take effect two years after the date of ratification.”).

6. Pub. L. No. 89-329, 79 Stat. 1219 (codified as amended at 20 U.S.C. §§ 1001 to 1116aa-1).

7. Title IX states as follows: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” 20 U.S.C. § 1681(a).

8. See generally John D. Feerick, *The Problem of Presidential Inability—Will Congress Ever Solve It?*, 32 FORDHAM L. REV. 73 (1963); John D. Feerick, *The Proposed Twenty-Fifth Amendment to the Constitution*, 34 FORDHAM L. REV. 173 (1965); John D. Feerick, *The Vice-Presidency and the Problems of Presidential Succession and Inability*, 32 FORDHAM L. REV. 457 (1964).

9. U.S. CONST. amend. XXV.

Carswell, could not have happened without the work of Yale Law students.¹⁰ The students had traveled to Washington, D.C., to ask, “How can we help defeat this racist judge?” Birch thought to himself, “There isn’t a thing you can do; we’re not going to defeat a second nominee.” But, not to disappoint the students, he said, “Go back to Yale and research all of the judge’s decisions.” They did. It was those students—your age—who found evidence that every time Judge G. Harold Carswell had a chance to vote “yes” on civil rights, he voted “no.” Every time he had a chance to vote “yes” for fair housing, he voted “no.”¹¹ It was students, not Birch Bayh alone, who defeated a racist judge.

Lastly, Birch would say to practice the art of compromise. Not in the sense of compromising your values but in the sense of figuring out what your opponent needs so that you can get what you need. Sometimes success is incremental, and it almost always involves compromise.

Listening, appreciating, and compromising were present throughout all of Birch’s work and in the way that he lived his life to the end. He would say to Fordham students what Saint Francis of Assisi said on his deathbed: “I have done what was mine to do; now you must do what is yours to do.”¹²

Birch and I met in early 1980, his last year in the Senate. We were married after his defeat. I took no part in the legacy described here today. I knew only the man who was my husband for thirty-eight years.

II. A EULOGY BY KATHERINE BAYH

These eulogies today attest to what the Talmud calls the imperishable “crown of a good name.”¹³

But Birch would not take credit. He would want us to remember his mother, Leah, who was taken from him by cancer when he was twelve years old. He would thank his sister, Mary Alice, for loving him through their shared grief all the rest of their days.

He would tell us about his early childhood years that set his destiny—how his family moved from Shirkieville, Indiana, to Washington, D.C., where his dad had been recruited to be the superintendent of physical education for the D.C. school system. He would tell us about returning to Shirkieville at the age of fourteen in the care of his maternal grandparents while his father was in China during World War II training fighter pilots in physical fitness.

He would thank his father, Colonel Bayh, for his example of service to country and for teaching him to be a feminist. One morning over breakfast, when the family was still in Washington and Birch was about ten years old, his dad told the family that he was going up to Capitol Hill later that day to

10. See generally Bruce H. Kalk, *The Carswell Affair: The Politics of a Supreme Court Nomination in the Nixon Administration*, 42 AM. J. LEGAL HIST. 261 (1998).

11. See *id.* at 274–75.

12. SAINT BONAVENTURE, *THE LIFE OF SAINT FRANCIS OF ASSISI* 150 (E. Gurney Salter trans., 1902) (1904).

13. 9 NEW EDITION OF THE BABYLONIAN TALMUD 142 (Michael L. Rodkinson ed. & trans., 1900).

testify before the Subcommittee on District of Columbia Appropriations. “What are you going to tell them?” Birch asked. He never forgot his father’s answer: “I’m going to tell them that little girls need strong bodies to carry their brains around just like little boys.” That was 1938.

He would credit his grandmother, Kate Hollingsworth, for showing him that women were equal partners on a farm. That was 1940.

He would thank his grandfather, John Hollingsworth, for modeling how it’s always best to listen to your wife—as when young Birch wanted to enter the Campbell’s Soup tomato-growing contest, but his granddad said, “No, we’ll continue to just grow corn and soybeans,” whereupon his grandmother said, “John, if the boy wants tomatoes, he’s going to have tomatoes.” Birch won the statewide contest and the prize money, which, together with the G.I. Bill,¹⁴ put him through college.

From those formative years on the farm, Birch learned everything he needed to know for his private and public life. He learned to cultivate—taking care, he said, not to hurt the roots. He learned patience. He learned to enjoy hard work from feeding chickens, milking cows, combining wheat, putting up hay, driving horse plows, washing the linoleum kitchen floor, and being the first up in the morning to light the coal stove. He learned how to harvest. He learned fence-mending. He learned teamwork.

He would credit his late wife, Marvella, with giving him his first education in the prejudices faced by women. He would thank her for those hard years being a politician’s wife—years I never had to endure; instead, I only had to bask in the legacy they built.

He would thank his heroes, Billie Jean King and Edith Green.

He would thank former Attorney General Benjamin Civiletti and his Venable law partners for giving him a second career and for allowing him so many nonbillable hours to continue his work safeguarding Title IX when it was under attack.

He would, through tears, credit the love and comradeship of men he called brothers. Brothers like P. A. Mack, who was his fraternity brother at Purdue University, who was best man in both of Birch’s weddings, who Birch called “little brother,” and who was the first to welcome me to Birch’s life. P. A., himself ninety years old, rushed to a plane and drove himself across rivers and fields to be at Birch’s bedside in his final hours.

Lee Hamilton was a brother of seventy years. Lee, Birch felt your embrace up until the end. He loved your weekly phone calls. He felt loved by you and loved you back.

Baron Hill gave Birch the greatest honor of his life by introducing legislation to rename the Indiana courthouse the Birch Bayh Federal Building and United States Courthouse.¹⁵ We thank you. It is typical of Birch that, about the renaming, he said, “The real reward is not getting your name in a

14. Servicemen’s Readjustment Act of 1944, Pub. L. No. 78-346, 58 Stat. 284 (codified as amended in scattered sections of 38 U.S.C.).

15. 149 CONG. REC. H1604–05 (daily ed. Mar. 5, 2003) (statement of Rep. Julia Carson).

piece of stone on that wonderful building. The real reward is knowing that the lives of people in Indiana—and perhaps throughout the country—that their lives were made different because you were there.”¹⁶

Milan Panic. “Milan, my brother.” I’ll always hear that sweet greeting he had for you. You, too, came at the end, flying all day from California the minute I called. I told Birch you were coming and when you arrived at his bedside, he said, “I waited for you, brother.”

John Feerick worked with Birch on the Twenty-Fifth Amendment half a century ago and, in more recent years, brought Birch to Fordham University to teach a whole new generation of students about presidential and vice presidential succession.¹⁷ Birch always said that people like John Feerick—private citizens who got involved—made everything he did possible. There would be no Twenty-Fifth Amendment without John Feerick and the American Bar Association.

Birch would say that private citizens are always the engine of government—people like the Yale Law students who helped examine the judicial record of a Supreme Court nominee and kept that racist judge off the bench.¹⁸ Birch said it would not have happened without those Yale students.

Birch would say that sometimes in life you just need a “plan b.” When he was trying to get the Equal Rights Amendment out of committee, the Higher Education Act came up for congressional renewal at the same time. Birch thought of the women who were routinely denied academic choice—choice of schools and the disciplines they wanted to study. And, he thought, even if he couldn’t get the Equal Rights Amendment passed, he’d at least take its educational component and attach it to the Higher Education Act. He dashed off Title IX—that one sentence, just thirty-seven words¹⁹—that is now called the Magna Carta of women’s education.²⁰

Birch would say that sometimes it’s simply goodwill among colleagues that saves the day. His last legislative effort—the Bayh-Dole Act²¹—was opposed and effectively killed by fellow Senator Russell Long. But in the lame-duck session after Birch lost in 1980, Senator Long called Birch and said, “I don’t like your bill, but go ahead, you’ve earned it.” And, so, we

16. United States District Court Southern District of Indiana, *Meet Birch Bayh*, YOUTUBE (Dec. 15, 2009), <https://www.youtube.com/watch?v=5nwnEINuiNo> [<https://perma.cc/5DQZ-45AM>].

17. See generally John D. Feerick, *Presidential Succession and Inability: Before and After the Twenty-Fifth Amendment*, 79 FORDHAM L. REV. 907 (2010).

18. See generally Kalk, *supra* note 10.

19. See *supra* note 7 and accompanying text.

20. *Sporting Chance Documentary Celebrates Title IX Anniversary*, NCAA (June 11, 2012, 12:00 AM), <http://www.ncaa.org/about/resources/media-center/news/sporting-chance-documentary-celebrates-title-ix-anniversary> [<https://perma.cc/U468-7UZ4>] (quoting NCAA President Mark A. Emmert).

21. 35 U.S.C. §§ 200–212.

have what *The Economist* has called “[p]ossibly the most inspired piece of legislation to be enacted in America over the past half century.”²²

Historian Adam Goodheart gave Birch a job he loved as much as being a senator—teaching students at Washington College in Chestertown, Maryland. Adam, too, was a brother to Birch and kept vigil at his bedside. And, when Birch’s work on earth was done, Adam wrote for the obituary writers the first draft of history.

Birch would want me to tell you that historic legislation struggled to compete for a place in his heart once his Washington College students took up residence there. Birch believed each of them to be custodians of our nation’s future. He took joy in passing the baton. Jack Bohrer, a former student and now senior producer at MSNBC’s *Morning Joe*,²³ remembers Birch this way: “[Birch] took us through the legislative dogfights he won and lost, but most of all, he inspired us to make a difference like he did. He was a great American and, to me, a loving and loyal friend.”²⁴ Another student, Jeremy Rothwell, wrote to me: “Listening to [Birch] speak reminded me of that line from Tennyson’s ‘Ulysses’: ‘Tis not too late to seek a newer world.’”²⁵

As Birch lay dying, his good friends Clay Railey and Don Wooters wrote to me: “We can’t help but think of Gerard Manley Hopkins on this blessed night, tragic as it is. And so, ‘Kingfishers’ comes to mind, as ‘Christ plays in ten thousand’ faces, including Birch’s.”²⁶

I have received the embrace of my women friends, who loved Birch and whom he loved back: Joyce Kravitz, Jan Smith, Georgeanne Thanos, and Linda Haschen have been my guiding lights through Birch’s final journey, and they are now my companions in my grief. Though he didn’t want to leave me alone, Birch knew I would be held in the embrace of Jill Hall, Ursula Quin, Sue Wellford, and Vickie Wilson. Pam Gardner has taught me, as Shakespeare taught her, to “give sorrow words.”²⁷

Countless neighbors and friends have remembered the pots of soup Birch made for them when they were sick, the ice he scraped from their walks every

22. Opinion, *Innovation’s Golden Goose*, *ECONOMIST* (Dec. 14, 2002), <https://www.economist.com/technology-quarterly/2002/12/14/innovations-golden-goose> [<https://perma.cc/BWM6-8W2Y>].

23. Jack Bohrer is now an executive producer for MSNBC’s *The 11th Hour with Brian Williams*. See *What I Do*, JOHN R. BOHRER, <https://www.johnrbohrer.com/services> [<https://perma.cc/3WSD-768Y>] (last visited June 22, 2020).

24. *In Memoriam: Birch Bayh*, WASH. COLL. (Mar. 14, 2019), <https://www.washcoll.edu/live/news/11946-in-memoriam-birch-bayh> [<https://perma.cc/36UE-3CGK>].

25. Letter from Jeremy Rothwell to Katherine Bayh (Apr. 19, 2019) (on file with author) (quoting ALFRED TENNYSON, *TENNYSON: POEMS 90* (Peter Washington ed., 2012)).

26. Email from Clayton Railey & Don Wooters to Katherine Bayh (Mar. 11, 2019) (on file with author) (quoting GERARD MANLEY HOPKINS: *POEMS AND PROSE 51* (W. H. Gardner ed., 1985) (1953) (alteration in original)) (referring to the poem “As Kingfishers Catch Fire” by Gerard Manley Hopkins).

27. WILLIAM SHAKESPEARE, *MACBETH 60* (W. G. Clark & W. A. Wright eds., London, MacMillan & Co. 1871) (1623).

winter, the chicken wire he built around their vegetable gardens to keep the rabbits out.

Christopher's friends, especially D'Eanté Tolliver and the three Gardner boys—all grown men now—remember the father figure “who enrolled me at Indiana University and stocked my dorm room with essentials from Target,” “who knelt in the warm earth and taught me how to grow lettuce,” “who was a shining example of how we should conduct ourselves as men and citizens,” “who could eat a tomato like an apple!” “who showed me that it was brave for a man to weep from a poem.”

The poet Mary Oliver wrote, “Tell me about despair, yours, and I will tell you mine.”²⁸ My despair is losing my husband of thirty-eight years.

The writer Donald Hall spoke of what he called “third things” in a marriage—the things that couples do together, essential things that “provide a site of joint rapture or contentment.”²⁹ Such “third things,” Hall said, can be “the Boston Symphony Orchestra, or Dutch interiors, or Monopoly.”³⁰ One of the “third things” that Birch and I shared was a love of poetry. We read to each other. We cried over lines of verse, sharing why a particular metaphor resonated with us. We met every Friday at noon with a group of other poetry lovers.

Poetry was one of Birch's ways to the promised land. He wrote it and read it. He loved Walt Whitman. He stood with Whitman, who said of his countrymen, “Not till the sun excludes you, do I exclude you.”³¹

Jane Kenyon was a favorite poet. Birch loved her poem “Let Evening Come,” especially its farm imagery: “Let the light of late afternoon / shine through chinks in the barn, moving / up the bales as the sun moves down. . . . / Let it come, as it will, and don't / be afraid. God does not leave us / comfortless, so let evening come.”³²

He stood with poet Mary Oliver, who wrote, “I look upon everything as a brotherhood and a sisterhood.”³³

But it was William Cullen Bryant's poem “Thanatopsis” on how we should approach death that Birch committed to heart and memory:

So live, that when thy summons comes to join / The innumerable caravan,
which moves / To that mysterious realm, where each shall take / His
chamber in the silent halls of death, / Thou go not, like the quarry-slave at
night, / Scourged to his dungeon, but, sustained and soothed / By an
unfaltering trust, approach thy grave / Like one who wraps the drapery of
his couch / About him, and lies down to pleasant dreams.³⁴

28. MARY OLIVER, *Wild Geese*, in *DREAM WORK* 14, 14 (1986).

29. Donald Hall, *The Third Thing*, 185 *POETRY* 113, 114 (2004).

30. *Id.*

31. WALT WHITMAN, *To a Common Prostitute*, in *LEAVES OF GRASS* 399, 399 (Boston, Thayer & Eldridge 1860) (1855).

32. JANE KENYON, *Let Evening Come*, in *OTHERWISE: NEW & SELECTED POEMS* 176, 176 (1996).

33. 1 MARY OLIVER, *When Death Comes*, in *NEW & SELECTED POEMS* 10, 10 (1992).

34. WILLIAM C. BRYANT, *Thanatopsis*, in *THANATOPSIS AND A FOREST HYMN* 10, 19–20 (Boston, Joseph Knight Co. 1892).

Mine was the man who always carried a wallet full of five- and ten-dollar bills for the homeless at his subway stops; whose garden harvest was so large that the neighbors would draw their curtains when they saw him coming with more cucumbers; who planted his marigolds and tulips in rows like they were corn; whose life was bookended by flying his own plane in his twenties and walking three miles each day in his nineties; who never talked about himself; who had a beautiful tenor voice, sang in a barbershop quartet, played guitar (mostly Peter, Paul & Mary), and taught himself a bit of piano (mostly Scott Joplin); who was a light heavyweight boxer and who also loved to dance in the kitchen to the Statler Brothers.

The man I loved was a man of many enchantments, leaving me love notes by the coffee pot when he left the house early and notes under my pillow when he had to be out of town; was a great listener; had a voice that was a library of kindness; never asked anything of me, which made me want to give him everything; a man of no complaint and no argument.

Birch was a man of faith—of belief, yes, but faith as a verb. As our priest, Fr. Frank Wade, always reminded us, “belief is hearing the music, faith is dancing to it.” Birch *was* a Good Samaritan. He *was* a servant. He *was* the fruits of the Spirit. At the communion rail on Sundays, while receiving the Body and Blood of Christ, Birch always prayed, “That I may be worthy.”

Christopher and I kept vigil at Birch’s bedside for seven days. It was a sacred time. Christopher shaved his father, just as Birch had shaved his own father on his deathbed. We prayed alongside Fr. Bill Ortt when he administered the Last Rites. We witnessed Birch speaking to God and his wonder and awe at hearing God say to him, “It’s okay. It’s okay.”

I loved you for forty years, Birch. You were my kingdom come.