

A TRIBUTE TO CHIEF JUDGE DAVID L. BAZELON

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The editors of the Law Review have wisely decided that the most appropriate way to honor Chief Judge David L. Bazelon is to publish in this dedicatory issue outstanding articles dealing with the relationship of law to medicine and psychiatry. This subject is dear to Judge Bazelon's heart. No judge, present or past, has contributed more to the exploration of this important subject than he.

The Review editors, however, have given me the liberty to write about the Judge in a broader dimension. This I am privileged to do, having been a personal friend for more than four decades. This fact alone calls for a caveat. Mine is taken from Salvemini, the great Italian philosopher: "We cannot be impartial. We can only be intellectually honest—that is, aware of our own passions, on our guard against them and prepared to warn . . . of the dangers into which our partial views may lead. Impartiality is a dream and honesty a duty."

I am not impartial about Judge Bazelon, because of our long and friendly association, but I shall attempt to be honest in appraising his judicial and personal character.

As the major articles in this issue demonstrate, the Judge's name is, more often than not, identified as a pathfinder in the specific area of law and psychiatry. In a sense, this is regrettable. In his twenty-five years of service on the bench, Judge Bazelon has made significant contributions to many other areas of our law. Limitations of space do not permit the evaluation which these contributions deserve. Perhaps, however, my brief comments can serve to illuminate his judicial philosophy which reflects both his attitude to law in general and the manner of man he is.

It is fashionable these days, but overly simplistic, to refer to judges in terms of their adherence to "strict construction" or "judicial restraint." I believe that it is not profitable to speak of judges in these terms. Nearly every judge worth his salt con-

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siders himself a strict constructionist in the sense that he tries to apply the Constitution in accordance with its words, spirit, and intent, and the law by principled adjudication.

Thus, Judge Bazelon, like the late Justice Black, believes that the Bill of Rights means what it says: Free speech is not to be curbed, nor are political dissenters; unreasonable searches and seizures are prohibited; wiretapping is a dirty business; in all criminal prosecutions, the accused enjoys the right to a speedy trial; no person shall be put in double jeopardy; bail is a right, not a privilege; no one shall be subject to confinement in a jail or mental institution without due process; children have rights, too; and, above all, those in authority, whether the President or the heads of regulatory agencies, are under the law and must comply with the Constitution, statutory requirements, and agency regulations.

For twenty-five years, Judge Bazelon, in his decisions, has adhered to these principles. He, therefore, is a strict constructionist and need yield to no other judge that honorable title.

Another simplistic labeling of judges is to term them liberal or conservative. Here, too, I do not believe that it is profitable to speak of judges as liberal or conservative. The term certainly has no meaning with respect to Judge Bazelon's judicial performance. His decisions demonstrate that he protects the constitutional rights of any person or group, right, left or center; that, as prescribed by Scriptures and the Constitution, he prefers neither the rich nor the poor, but rather accords to all equal justice; and that, like Chief Justice Marshall, he never seeks "to enlarge the judicial power beyond its proper bounds, [nor fears] to carry it to the fullest extent that duty requires."

But surely some label must fit this outstanding jurist. Perhaps the most appropriate is that he is a judicial activist. This is scarcely a term of opprobrium. Chief Justice Marshall, Chief Justice Hughes, Chief Justice Warren, Justice Holmes and Justice Brandeis were all judicial activists. They possessed judicial courage in vindication of fundamental rights. So does Judge Bazelon. He is mindful that our country can sustain far greater injury from judicial timidity in vindicating a citizen's fundamental rights than from judicial courage in protecting them.

It is the essence of Judge Bazelon's judicial and personal philosophy that an unjust society breeds disrespect for and disobedience of law. He understands that people obey and respect

law not solely out of fear of punishment, but primarily because of the justifiable expectation that the just processes of law will right their wrongs. The most common theme running through his judicial opinions is that all the police power in creation cannot long uphold a system of law that does not correct the legitimate grievances of people. Who can deny that this is the case?

Chief Judge Bazelon has a deep understanding of what law is all about. He is at one with Justice Cardozo, who once said: "The inn that shelters for the night is not the journey's end. The law, like the traveler, must be ready for tomorrow." Judge Bazelon is not afraid to be ready for tomorrow.

On March 9, 1931, Justice Holmes, on the occasion of his ninetieth birthday, made his one and only radio address. In this address, the great Yankee from Olympus said this: "The riders in a race do not stop short when they reach the goal. There is a little finishing canter before coming to a standstill. There is time to hear the kind voice of friends and to say to one's self: 'The work is done.'

"But just as one says that, the answer comes: 'The race is over, but the work never is done while the power to work remains.'

"The canter that brings you to a standstill need not be only coming to rest. It cannot be while you still live. For to live is to function. That is all there is in living."

Judge Bazelon is a young sixty-five. His work is not done. For him, the power to work remains. For him, the best is yet to come.