

ON DAVID BAZELON'S 25TH YEAR
AS A JUDGE

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David Bazelon entered upon a judicial career at the age of thirty-nine. Though he had been an Assistant United States Attorney, a successful practitioner, and an Assistant Attorney General, he had devoted little time to developing a detailed perspective on the judicial function. His experience was more in the world of affairs than in scholarship and reflection.

What he did have, in full measure, was vitality, an appetite for new ideas, and a determination to be great. I can remember, as if it were yesterday, our meeting when he interviewed me for a position as his first law clerk. At the time, I had some difficulty seeing how anyone only fifteen years older than I might become one of the great figures discussed so often in the classrooms I had recently left. It is a commonplace, however, that we rarely recognize greatness, or the promise of it, close up. Within a very few years, Judge Bazelon made his mark as a powerful force on one of the nation's most influential courts, and through it on American law.

In the beginning, he devoted a great deal of time to learning his job. The work of the United States Court of Appeals for the District of Columbia Circuit had far more administrative and criminal law business than he had encountered in either Chicago or Washington. His time was taken up with concepts like "standing" and "primary jurisdiction," the attitude of reviewing courts towards "facts" and conclusions found by administrative agencies, trial judges, and juries. In these years, he proceeded cautiously, trying to get a full sense of one area after another—not only its doctrinal outlines but its significance in the legal structure and in society. He soon established credibility as a judge who could satisfy the best sense of judicial craftsmanship while at the same time not taking old assumptions or doctrines too much for granted. He was intense—in his work

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habits, in his relations with his colleagues and law clerks and lawyers. One sensed an impatience to get past the preliminaries and find out what it was all *really* about, to get beneath the words and phrases which lawyers often repeat so ritualistically in their briefs—as if citation of precedent, even when inapplicable, were all there was to law.

He quickly demonstrated a remarkable ability to project himself into the situation of persons affected by law—from the lowliest defendant in a criminal case to a public utility wrestling with problems of ratemaking. This capacity for projection made him sensitive to others—whether they were colleagues he had to persuade or litigants whose cases he had to decide. His intensity was reformist in its direction, but he was rarely a zealot and never iconoclastic. Instead, he seemed always fired by a special kind of innocence and idealism, a faith that somehow or other if we would but try hard enough to bring intelligence to bear on human problems, life could be improved—albeit still less than he might like it to be.

To him, there were, and are, no sacred cows, only problems not yet honed enough by the right mix of compassion and intelligence. In one area after another, he has tried to apply a unique combination of the wide-eyed and the hard-eyed approach. He was among the first, for example, to question closely what administrative agencies were doing, at a time when many were persuaded that these agencies should be left almost entirely alone by the judiciary. Looking into their records, he was startled to learn how often their findings of fact were questionable, how often their rulemaking proceedings were skimpy, how suspect were the claims of special competence. Before it was fashionable to worry about bureaucracy, he saw the risks of undue reliance on administrators, especially when little attention had been paid to assuring adequate standards for decision. While criminal law and procedure were still relatively undiscovered, he played a major role in opening to view the problems of the poor, the inadequately represented and the mentally disordered.

In his twenty-five years on the bench, David Bazelon has acted with the courage and sense of history required of a judge who is determined to do justice.