



Department of Justice

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ADDRESS

BY

THE HONORABLE EDWARD H. LEVI
ATTORNEY GENERAL OF THE UNITED STATES

AT THE

PHILADELPHIA AWARD DINNER

HONORING

JUDGE WILLIAM H. HASTIE

8:00 P.M.
MONDAY, APRIL 7, 1975
THE BARCLAY HOTEL
PHILADELPHIA, PENNSYLVANIA

It is a pleasure to be here for the presentation of the Philadelphia Award to Judge William H. Hastie. A review of the past recipients and those associated with this event indicates the Philadelphia Award is indeed an impressive honor. Nevertheless, it is one which can only be enhanced by being presented to Judge Hastie.

At a time when respect for government is perhaps at a low ebb, you have chosen to make this award to a man who has spent most of his life in public office. On this occasion, it is appropriate to ask what we should expect from public officials, elected or appointed. Equally important, it can be asked what they should expect from those they serve. At the risk of embarrassing him, I should say that William Hastie's life suggests some answers to these questions.

A man can often be measured by what he respects. In speaking last year of Francis Biddle -- a Philadelphian and an Attorney General whom I served and admired -- Judge Hastie quoted Arthur Schlesinger, Jr.'s comment that Biddle "always preserved the integrity of his private standards in the public clamor and tumult." Even for those who believe,

as I do not, that most public officials stand for nothing and fall for almost anything, Judge Hastie is an obvious exception. His life and work reflect defined values, long and deeply held. Paramount among these is a faith in his fellow man and his right to pursue happiness as he himself defines it.

As many of you may know, shortly after graduating from the Harvard Law School in 1932, William Hastie became a leading civil rights litigator, a government lawyer, a Federal judge for the Virgin Islands and Dean of Howard Law School. By 1940 he was an aide to Secretary of War Henry Stimson -- an exciting job at an important time. But in 1943 he resigned that position to protest racial discrimination in the Air Force.

In the past 10 years we have heard many men who have lost similar positions explain how they wrestled inconclusively with what in retrospect are regarded as questions of conscience. But there were few, if any, who resolved their conflicts as William Hastie did.

The danger to those in public office is undeniable. Issues often do not arise in clear moral terms and the consequences of a wrong decision are often great. The difficulty of deciding these questions is further increased by (

our ever improving ability to package almost any proposal to make it appear reasonable, if not attractive.

Consideration of resignation over an important issue is inevitably complicated by the question of whether it is better to continue to work from within rather than without. I am sure that many good public servants have worried about the ultimate step of resignation -- a step which is more difficult, but also more important in our non-parliamentary form of government.

For a public official without rooted and recognized values, including the understanding that no man is indispensable, there will be too many close questions and too much opportunity to drift toward danger while trying to resolve them. William Hastie had to wrestle with a hard question. That he had the courage to resolve it decisively despite its complexity provides an important precedent. The symbolic act of resignation is a vivid reminder that although ours is a system of shared power, public officials are individually responsible and personally accountable for all in which they participate. I hasten to add, however, that I am not suggesting that resignation is the only way to be responsible.

In 1949 William Hastie brought with him to the bench a profound understanding of the proper role of the judiciary and the importance of fairly applying established principles. Judge Hastie has said, and I agree, that "the effectiveness of courts must always depend in large measure upon the respect which their processes command by reason of the integrity they reveal." Any partisanship or deviation from established procedures to promote a particular result can only risk grave injustice and erode the public confidence in the legitimacy of the legal process which is essential to our system of government.

Strict standards uniformly applied are basic to the actual and apparent fairness of the legal process. The integrity of this process was tested in the 1950's in many cases involving alleged illegal action by avowed Communists. As Judge Hastie noted in one of his opinions, judges and jurors generally shared an aversion to totalitarianism which could prejudice the trial of any Communist. In one case, for example, the prosecutor stated in court that he believed four defendants were not guilty, but the jury convicted them anyway. In arguing unsuccessfully for reversal, Judge Hastie recognized that "the disposition to relax requirements of strict proof in trials of suspected subversives

in public positions and the institutional totality of their operations as well -- obey the law. For as Louis Brandeis said, "If the government becomes a law breaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy."

Judge Hastie and I share the belief that courts ought to have a limited role. They are an important element of our democratic system but they are not -- and should not be -- spokesmen for the popular will. As Judge Hastie has said, "The courts do not serve to make our society run. Rather they serve to prevent it from running wild." To perform their function without a popular mandate, courts must rely on the public perception that their decisions reflect the rigorous application of accepted principles, rather than expressions of political predilection.

Our nation has, however, developed a tendency to transform many political or social problems into legal questions. Often we hope that the formal, judicial process will produce a desired result where the political process has failed to respond. This tendency puts the courts, inappropriately, in the forefront on questions which really require statements of policy preference rather than elaboration of established principle. In many respects, we would be better

served if the courts were looked to less. Judge Hastie provides a model for reasoned restraint.

As he has often recognized, however, judicial restraint is not appropriate when the government acts illegally to abridge the freedom of its citizens. This attitude is best expressed in two of Judge Hastie's opinions in which he decided that the government could not use evidence seized in an illegal search or arrest against a defendant. Both positions were ultimately adopted by the Supreme Court.

To a layman, it often seems unfair to permit a criminal to go free even if he is apprehended illegally. But it is necessary to realize that the choice is rarely between illegal apprehension or escape. The government can almost always meet its responsibilities while respecting the rights of its citizens. The courts can play a crucial role in reminding them to do so. As Judge Hastie said in deciding one of the cases to which I have referred, "It is entirely irrelevant that it may be relatively easy for the government to prove guilt without using the product of an illegal detention. The important thing is that those administering the law understand they must do it that way."

From what I have said, it should be clear that we ought

to expect more from our public officials. But it is equally important that we also demand more from ourselves as citizens.

Felix Frankfurter once said, and he was right, that "in our society the most important office is citizen." I believe we would think better of our country and our government if we would all operate on this assumption. To do so, we must recreate mutual trust between and among our public officials and our citizens. This requires candor by those in office. It requires compassion and concern by all of us.

We should not assume, as some seem to, that the government is solely responsible for pursuing the public interest. Such an assumption is incompatible with the principles upon which this nation was founded. I believe we would be happier with our government and with ourselves if we searched less for solutions and more for meaning -- remembering that such a search can only be an individual or communal effort.

William Hastie has always been aware of his obligations as a public official and as a man -- and he has been equally aware that they are inseparable. In honoring him tonight, you are recognizing what should be found in each of us. That you have chosen to recognize him should encourage all of us.