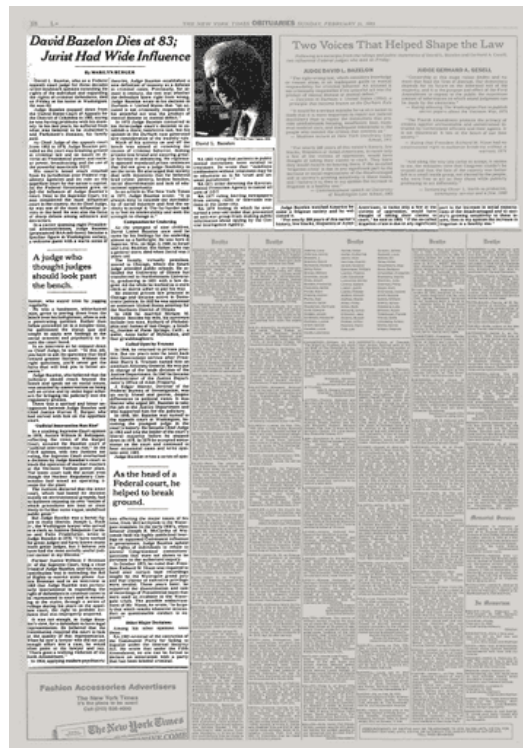


# David Bazelon Dies at 83; Jurist Had Wide Influence

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David L. Bazelon, who as a Federal appeals court judge for three decades wrote landmark opinions extending the rights of the individual and expanding the rights of criminal defendants, died on Friday at his home in Washington. He was 83.

Judge Bazelon stepped down from the United States Court of Appeals for the District of Columbia in 1985, saying he was having problems with his memory. In his last years, he suffered from what was believed to be Alzheimer's and Parkinson's diseases, his family said.

As Chief Judge of the appeals court from 1962 to 1978, Judge Bazelon presided as the court was breaking ground in criminal law and on issues as diverse as Presidential power and nuclear power, broadcasting and the use of the powerful insecticide DDT.

His court's broad reach resulted from its jurisdiction over Federal regulatory agencies and its role as the appellate court for the nation's capital. As the Federal Government grew, so did the influence of Judge Bazelon's court. Next to the Supreme Court, his was considered the most influential court in the country. As its Chief Judge, he was one of the most influential jurists in the land. He was also the focus of sharp debate among admirers and detractors. Pursuit of Fairness

In a career spanning eight Presidential administrations, Judge Bazelon (pronounced BAA-zeh-lawn) became a familiar figure in Washington society, a welcome guest with a warm sense of humor, who stayed trim by jogging regularly.

He was a handsome, white-haired man, given to peering down from the bench over his half-glasses, often to ask a penetrating question. Rather than follow precedent set in a simpler time, he questioned the status quo and sought to apply new findings in the social sciences and psychiatry to issues the court faced.

In an interview as he stepped down as Chief Judge, he said: "In this job, you have to ask the questions that tend toward greater fairness. Without the right questions, you'll never get the facts that will lead you to better answers."

Judge Bazelon, who believed that the judiciary should reach beyond the bench and speak out on social issues, was assailed by conservatives as being soft on crime and by some legal scholars for bringing the judiciary into the regulatory process.

There was a spirited and bitter antagonism between Judge Bazelon and Chief Justice Warren E. Burger, who had served with him on the appellate court. 'Judicial Intervention Run Riot'

In a scathing Supreme Court opinion in 1978, Justice William H. Rehnquist, reflecting the views of the Burger Court, accused the Bazelon court of "judicial intervention run riot." In the 7-to-0 opinion, with two Justices not voting, the Supreme Court overturned a decision by Judge Bazelon's court to block the operation of nuclear reactors at the Vermont Yankee power plant. The lower court took the action even though the Nuclear Regulatory Commission had issued an operating license for the plant.

The Justices declared that the lower court, which had based its decision mainly on environmental grounds, had no business imposing its own "notion of which procedures are best or most likely to further some vague, undefined public good."

But Judge Bazelon was a heroic figure to many liberals. Joseph L. Rauh Jr., the Washington lawyer who served as a clerk to Justices Benjamin Cardozo and Felix Frankfurter, wrote to Judge Bazelon in 1979, "I have worked for great judges and have known many more great judges, but I believe you have had the most socially useful judicial career in my lifetime."

Former Justice William J. Brennan Jr. of the Supreme Court, long a close friend of Judge Bazelon, said his major contribution was in extending the Bill of Rights to restrict state power. Justice Brennan said in an interview in 1989 that Judge Bazelon was particularly instrumental in expanding the right of defendants in criminal cases to be represented in court and in extending to the states, through a series of rulings during his years on the appellate court, the right to prohibit evidence that was improperly acquired.

It was not enough, in Judge Bazelon's view, for a defendant to have legal representation. He believed that the Constitution required the court to look at the quality of that representation. When he saw a lawyer who did not put enough effort into a case, he would often point at the lawyer and say, "There goes a walking violation of the Sixth Amendment." Redefining Criminal Insanity

In 1954, applying modern psychiatric theories, Judge Bazelon established a new definition of insanity as a defense in criminal cases. Previously, for almost a century, the test was whether the defendant knew right from wrong. Judge Bazelon wrote in his decision in *Durham v. United States* that "an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."

In 1972 Judge Bazelon concurred in his three-judge court's decision to establish a more restrictive test, but his opinion in the Durham case generated new consideration of the insanity rule.

Much of his activity on and off the bench was aimed at removing the causes of criminal behavior, making prisons less brutal and assuring greater fairness in sentencing. He vigorously opposed mandated prison sentences that did not give a judge flexibility to set the term. He also urged that society deal with injustices that he believed bred crime: poverty, broken families, racial discrimination and lack of educational opportunity.

In an article in The New York Times in 1977, Judge Bazelon wrote: "It is always easy to concede the inevitability of social injustice and find the serenity to accept it. The far harder task is to feel its intolerability and seek the strength to change it." Compassion for Underdog

As the youngest of nine children, David Lionel Bazelon once said he came by his feelings for the underdog almost as a birthright. He was born in Superior, Wis., on Sept. 3, 1909, to Israel and Lena Bazelon. His father, who ran a general store, died when David was 2 years old.

The family, virtually penniless, moved to Chicago, where the future judge attended public schools. He attended the University of Illinois but transferred to Northwestern University, graduating in 1931 with a law degree. All the while he worked as a store clerk or movie usher to pay his way.

He entered private law practice in Chicago and became active in Democratic politics. In 1935 he was appointed an assistant United States attorney for the Northern District of Illinois.

In 1936 he married Miriam M. Kellner. Besides his wife, his survivors include two sons, Richard of Philadelphia and James of San Diego; a brother, Gordon of Palm Springs, Calif.; a sister, Anne Safer of Milwaukee, and four granddaughters. Called Upon by Truman

In 1940, he returned to private practice. But six years later he went back into Government service after President Harry S. Truman named him an assistant Attorney General. He was put in charge of the lands division of the Justice Department. In 1947 he became administrator of the Justice Department's Office of Alien Property.

J. Edgar Hoover, Director of the Federal Bureau of Investigation, was an early friend and patron, despite differences in political views. It was Hoover who urged Mr. Bazelon to take the job in the Justice Department and who supported him for the judiciary.

In 1949, Mr. Bazelon was named to the appeals court in Washington, becoming the youngest judge in the court's history. He became Chief Judge in 1962 and was the leader of the court's liberal majority before he stepped down in 1978. In 1979 he accepted senior status on the court and continued to hear occasional cases and write opinions until 1985.

Judge Bazelon wrote a series of opinions affecting the major issues of his time, from McCarthyism to the Watergate scandals. In the early 1950's, when Senator Joseph R. McCarthy of Wisconsin held his highly publicized hearings on supposed Communist influence in government, Judge Bazelon upheld the rights of individuals to refuse to answer Congressional committees' questions that were not shown to be pertinent to the authorized inquiry.

In October 1973, he ruled that President Richard M. Nixon was required to hand over certain tape recordings sought by the Watergate grand jury and that claims of executive privilege were invalid. Three years later, he supported the dissemination and sale of recordings of Presidential tapes that were used as evidence in the Watergate trials. The possible embarrassment of Mr. Nixon, he wrote, "is largely that which results whenever misconduct or questionable conduct is exposed." Other Major Decisions

Among his other opinions were these:

\*A 1963 reversal of the conviction of the Communist Party for failing to register under the Internal Security Act. He wrote that under the Fifth Amendment, no one can be forced to declare an association with a party that has been labeled criminal.

\*A 1966 ruling that patients in public mental institutions were entitled to treatment. He wrote that "indefinite confinement without treatment may be so inhumane as to be 'cruel and unusual punishment.' "

\*A 1971 order directing the Environmental Protection Agency to cancel all uses of DDT.

\*A 1977 ruling barring newspapers from owning radio or television stations in the same city.

\*A 1979 finding in which he overturned a year-old order that prevented an anti-war group from making public information about spying by the Central Intelligence Agency.

Judge Bazelon watched America become a litigious society and he welcomed it.

"For nearly 200 years of this nation's history, few blacks, Hispanics or Asian-Americans, to name only a few of the victims of oppression, would have thought of taking their claims to court," he said in 1983. "If the so-called litigation crisis is due in any significant part to the increase in social expectations of the disadvantaged and to society's growing sensitivity to these issues, then in my opinion the increase in litigation is a healthy one."

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