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IN MEMORIAM*

The Honorable Frank Haswell

April 6, 1918—March 12, 1990

The passing of a great man or woman invites us to learn what lessons we can from their life and times. I am sure Frank Haswell would rather have us consider these lessons than light up the sky with fatuous praise.

How, then, can we profit from the privilege we have enjoyed of knowing and associating with this extraordinary man? What has he left us that can enrich our lives, and from which we can, perhaps, make a better world? If you consider it carefully, you will find the gift is not a modest one.

First and foremost, he reassured us, compellingly, that an individual can make a difference. Consider. For 26 years he provided judicial leadership and guidance amidst changes in the law of the State of Montana and the nation that can only be described as seismic. When he became a district judge in 1958, the United States Supreme Court was poised on the threshold of what was to become a revolution in federal constitutional interpretation. As district court judge and supreme court justice, he rode this revolu-

* Editor's Note: The Montana legal community has mourned the loss of six distinguished jurists. In the 1991 Winter and Summer editions, the *Montana Law Review* will publish tributes to the Honorable Frank Haswell, retired chief justice of the Montana Supreme Court whose distinguished judicial career spanned 26 years; the Honorable William W. Lessley, chief water court judge, who had served 33 years as state district court judge, Eighteenth Judicial District—the longest judicial tenure in Montana history; the Honorable Wesley Castles, a Missoula County attorney from 1950-1953 and a Montana Supreme Court associate justice for 20 years; the Honorable Russell E. Smith, U.S. District Court judge for Western Montana, who served with distinction from 1966 to 1989; the Honorable William Jameson, the legendary U.S. District Court judge who perhaps was the most decorated jurist ever to serve in that position; and the Honorable Arnold Olsen, two-term Montana attorney general, five-term western district U.S. Representative and a 15-year state district court judge.

Publication deadlines and space limitations prevent publication of each of these important tributes in a single issue. Therefore, tributes to Judges Haswell, Lessley and Castles will appear in this edition, while tributes to Judges Smith, Jameson and Olsen will appear in the 1991 Summer Edition.

tion out and adapted Montana law to federal decisions that radically revised the rights of criminal defendants, required legislative reapportionment, mandated equal education and employment opportunity, created new rights of privacy, attempted to deal with obscenity and launched the law of the environment.

During his tenure as Chief Justice, the Montana Supreme Court dealt with our 1972 Constitution and the laws made under it, the reorganization of the state government and the far-reaching changes made in it by the administrative procedure act, a cluster of entirely novel environmental laws, and the never-ending travail of the workers' compensation system.

In these many and diverse fields of new law, he wrote clear, concise opinions that provided direction as well as decision. This new work, together with the ever-mounting traditional work, multiplied the court's case load three times during his tenure on it. He responded to this challenge by developing the court's administrative capability, increasing its membership from five to seven—all with ceaseless, intensely concentrated hard work and splendid leadership. Indeed he made a difference. He shaped our laws as much as anyone has and his mark will be indelible.

In all this, Justice Haswell taught the bench, the bar and the public a good deal about what judges and courts can and should be. For he was as close to a model judge as we have ever seen, and he ran an exemplary court. A large majority of Montana lawyers consistently gave Frank Haswell the highest marks as a judge and justice. They and their clients liked his common sense, warm humanity, legal ability, promptness, sense of humor, patience and understanding. There were no "minor cases" in his court. He spoke seldom and with great economy. If he had a deficiency, it was an excessive tolerance for windy idiots. These judicial virtues lent great dignity and credibility to his district court—from the day he mounted the bench, I am told—and it enhanced and maintained the standing of the Montana Supreme Court with the bar and the public.

Frank Haswell taught us that public service could be an honorable calling, to be pursued with dignity, grace and creativity. In an increasingly cynical world, where public service and those engaged in it seem to have fallen into deep disrepute, he has stood as living and highly visible proof that people in politics and government *can* be honest, efficient, well-motivated and devoted to the common good.

Somehow he managed to rise above politics. Under the laws of Montana, a judge must be a politician and run for office. But he or

she is not permitted to run for office as a partisan—as a Republican or Democrat. Frank was a champion at complying with these incongruous requirements. The late John Bartlett, one-time chairman of the Democratic State Central Committee, whose most fundamental working principle was that there was a place for Republicans—but it was not in public office, was one of Frank's earliest and strongest supporters. Governor Babcock appointed Frank Chief Justice. At this point a curious Democrat understandably inquired of John Bartlett as to whether Frank was a Republican or a Democrat. Without hesitation, John replied: "He's too nice to be either."

Frank's dedication to the judiciary and public affairs was total, and I suspect he turned down many an opportunity to enter a much more remunerative and much less stressful private practice. Even after his retirement, he continued to serve both federal and state courts and independent commissions with characteristic distinction.

What, you may ask, were the wellsprings of this extraordinary man's inspiration and dedication? I do not know. Maybe June Haswell knows, she lived with him for nearly 39 years, but she has not explained them to me. And so I will break a fundamental rule of evidence and speculate, because I believe there lies in the answer to this question the key to Frank's character and the final lesson his life teaches. Frank believed in people. He trusted them, he hoped for them and he was willing to sacrifice for them. He had faith in their judgment and good will. He believed they were more important than the laws and institutions they created—that their ultimate salvation was in themselves.

In this, he shared a sentiment with another great jurist, Learned Hand. Hand was a United States circuit judge in the first half of this century and was considered to be the leading candidate for the United States Supreme Court for many, many years. Because of political mischance, he never made it, but he is remembered as one of the great writers in American jurisprudence. He appreciated, as Frank did, that the primary function of judicial power is the protection of liberty. But he also believed we may place too much hope in constitutions, laws and the courts for the protection of liberty. "These are false hopes; believe me, these are false hopes," Hand said. "Liberty lies in the hearts of men and women; . . . no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies

there it needs no constitution, no law, no court to save it."¹

The life of Frank Haswell, it seems to me, is testament to a belief that liberty is secure only in the hearts of those who embrace it. We should accept that belief and honor his memory by protecting it. And what is the nature of liberty? In a statement that has become a classic, Judge Hand went on to say:

What then is the spirit of liberty? I cannot define it; I can only tell you my own faith. The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded; the spirit of liberty is the spirit of Him who, nearly two thousand years ago, taught mankind that lesson it has never learned, but has never quite forgotten; that there may be a kingdom where the least shall be heard and considered side by side with the greatest.²

This statement not only defines the spirit of liberty; it also describes what must have been the most fundamental belief of Chief Justice Frank Haswell—because he lived by it. And he will rest in peace with it.

—Gordon R. Bennett, Associate Professor of Law and retired State District Court Judge³

1. L. HAND, *The Spirit of Liberty*, in *THE SPIRIT OF LIBERTY* 190 (I. Dillard 3d ed. 1963).

2. *Id.*

3. This is an edited version of the eulogy that Judge Bennett delivered at Chief Justice Haswell's funeral on March 15, 1990, at the Cathedral of St. Helena. A similar version was published in the April, 1990 *Montana Lawyer* at pages 3-4.