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THE RESPONSIBILITY OF PUBLIC OFFICE

ADDRESS

BY

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It was rare good fortune that brought to public office a man of Simon Sobeloff's legal learning, understanding of people, modesty and strength of character. It has been my own good fortune that brought me an associate whose wisdom, balanced judgment, great courage and humanitarian ideals make him so superbly qualified for his present office of Solicitor General.

He has always demonstrated a warmth of personality, elevation of thought, ability and conscientiousness that won him many friends even among his adversaries.

As a boy he worked during the summer for two lawyers and a real estate man who agreed to pay him a weekly pittance of \$2. When pay-day came, he received only \$1.98 for the week because each of his three employers was willing to pay 66 cents but none was willing to pay the extra cent. If I may embellish this story somewhat--when Simon came home 2 cents short of \$2, his mother said--"Simon, I did not know you were going out with a girl".

Next came a job as a page boy in the House of Representatives. He has vividly recalled the historic filibuster of his day when the insurgents led by George W. Norris unhorsed Joe Cannon. On the third night, exhausted by emotion and loss of sleep, young Simon stretched out and slept in one of the alcoves at the north entrance of the House Chamber.

Another page boy at the time, now a successful banker, has described Simon as a boy of 15 "with a burning quest for knowledge". This scholarly quest for knowledge has never ceased burning. To

him, wisdom is the gift of God, a quality which the Hebrew prophets have always exalted. It is said that by a wise man they meant also a good man--one who comes to his daily problems detached from self-interest and gain--devoted to the lofty ideals which mankind holds so dear. And, it is this trait, above all, which distinguishes Simon Sobeloff from many men.

As you know, he brought to his present position the broad background of a civic leader and practicing attorney. But tonight we pay tribute to him especially because of his years of public service devoted to the common good.

One day as a young lawyer in the Corporation Counsel's Office in Baltimore, he was called upon to represent a street cleaner employed by the city, who was having alimony difficulties. The wife was asking the Judge (Judge Morris Soper, then a state court judge, who retired last year after a distinguished judicial career) to increase the alimony. She pointed out that her husband was a very gifted man and undoubtedly could procure a more remunerative position than that of street cleaner. She told the judge that the only reason her husband insisted in continuing his job as a street cleaner was to deprive her of increased alimony. After listening attentively to her plea, Judge Soper leaned forward and gently reproved her saying: "But madam, aren't you overlooking the glamour of public service?"

As Solicitor General of the United States, Mr. Sobeloff has shown that he is not an ordinary advocate. His quick and sensitive humor may liven up even a dull tax case. Last Spring he was before the Supreme Court in a case involving the question whether certain payments constituted income. The statute concerned provided that all gain--with certain exceptions--was income. "The taxpayer does not deny", Mr. Sobeloff argued to the Court, "that these payments represented gain to him. But the taxpayer tells this Court, he said, that these payments "smack" of donations, have a "vague likeness" to fines, "resemble" capital contributions, are "very much akin to"-- At this point the Solicitor General was interrupted by Mr. Justice Frankfurter who said, "now that reminds me of Hamlet's exchange with Polonius-- "Do you see yonder cloud--- *** almost in the shape of a camel---*** like a weasel---*** very like a whale---".

"Precisely", answered Judge Sobeloff, "and you will recall that Hamlet then turned aside and said: "Then will I come to my mother by and by-- They fool me to the top of my bent." The point was not lost. The Government won its case.

As Solicitor General, Mr. Sobeloff deals with problems that invite the most mature judgment and expert advocacy of some of our society's most vital and delicate issues. In this position as in others, he has displayed profound insight into the basis for social tension, a keen sensitivity to our great traditions, an unusual knowledge of our history and struggle for freedom. He has deep faith in our constitutional institutions, and in their power of adaptability to cope with and provide for any contingency, however difficult or novel. We admire him

in our daily contact in the Department of Justice, because of his abiding interest and concern as to how we can best devise new methods of meeting human needs; how we can most judiciously uplift the dignity of man; how we can most wisely reconcile the needs of an ordered society with the rights of the individual. As he continues his search to realize the spiritual values of life, he is never unmindful of its realities.

His own eloquent words sum up his philosophy:

"In striving for liberty we cannot achieve the victory once and for all, and then rest. Ceaselessly and continuously we must dedicate and rededicate ourselves to the defense of those moral foundations of our society. But each advance makes the next step a little easier".

From what has been said, you can readily see that while public service has its measure of glamour, it also has more than its share of awesome responsibility.

Now what minimum responsibility does one who holds office owe to the public?

The responsibility of public officials falls roughly into two classes. One stems from the structure of our Constitution. Under it each branch of the government--the executive, the legislative, and the judiciary--must exercise its powers free from interference from any other branch. Under this doctrine of separation of powers, a public official in each branch--whether he be President, judge or member of Congress--owes this dual responsibility to the

people: On the one hand, he must take every precaution that his action is within the bounds of his own authority. On the other hand, he must take no less care that his rightful prerogatives remain unimpaired by any other branch. Our framers of the Constitution knew that this was the only way to preclude the exercise of arbitrary power and to save the people from autocracy.

The other kind of responsibility that a public official must discharge is of a personal character. It rests not only on written laws, but equally important on proper standards of morality.

First, the man in public office must observe the highest ethical standards. For public service is a public trust.

More than fifty-years ago, a Tammany politician explaining his philosophy, said: "There is an honest graft and I am an example of how it works. I might sum up the whole thing by saying, 'I seen my opportunities and I took 'em'".

A man's conduct as a public official must be unimpeachable. He cannot serve two masters, his own and the public whom he serves. Usually, a public official needs no primer to distinguish right from wrong, no compass to chart his course. Simple every-day morality will dictate the path to be taken in most cases, as for example: a public official must not engage in any business which impairs his independent judgment in exercise of his official duties; a public official must not engage in activity which will require him to disclose confidential information acquired by him in his official capacity--the person must not use his official position to secure

unwarranted privileges or exemptions for himself or any other. There are many other cases too numerous to mention which are equally opposed to ethical principles and subvert the honest administration of government.

True there will be some borderline cases as to whether conflict of interest exists. In these cases the least to expect is that the public official shall resolve the conflict against his self-interest and in favor of the public interest.

The exercise of trust in public office is as contagious as is corruption. It radiates outward and affects everyone in and out of government. For this capacity for good, like evil, soon generates the same standards for the public at large--and it is, as we know, a reciprocal relationship which soon raises the level of the whole community.

While unethical conduct by any public servant is inexcusable, when indulged in by lawyers responsible for the impartial administration of federal law it is most reprehensible. Those who are privileged to represent the United States assume a special obligation above and beyond the normal professional requirement not to engage in conduct which might in any way be considered unethical or improper.

As the Supreme Court has observed, the interest of the Government "is not that it shall win a case, but that justice shall be done". The United States Attorney, as the servant of the law, has a two-fold aim: "That guilt shall not escape or innocence suffer". While he

should prosecute with earnestness and vigor and "strike hard blows, he is not at liberty to strike foul ones".

Another primary duty of a public official is to reach decisions of his office as objectively, impartially, and fairly as he can.

The differences between competing interests are not always marked out in black and white. Nor are the scales of justice so delicately set as to record whether one choice is to be made over another. The line to be drawn is often so imperceptible as not to be discerned, however we may try. It is in this "no man's land", so to speak, that thoughtful and intelligent men will frequently disagree.

Such honest disagreements are not to be deplored, but encouraged. In business this is a common practice which tends to assure the most considered judgment. Corporate managers, partners, individuals frequently have their full share of differences in producing, marketing, or selling a product. "Give them a slim silhouette" one manufacturer says. "No", his associate insists, "Give them padded shoulders and build them up so they look like football players". One engineer wants to broaden the lines of his car; another prefers them sleek. One editor votes to support a higher tariff policy; another recommends one that will insure freedom from tariffs. So it goes in every phase of life. Out of the accommodation of these many conflicting views emerges a product that is acceptable to the people--and if it does not--we hear from them, as we should.

The same is true in government whether it be on the cabinet level, within a department, division or section. The administration of government would surely be impaired if composed solely of "yes" men.

The Department of Justice might just as well close up shop if its lawyers felt that they had to "pull their punches" in their discussion with me on any issue. Simon Sobeloff and I have always dealt with each other on this frank and sensible basis.

Unless we want responsible officials in government to abdicate their functions, we must expect that they will have reasonable disagreements and exercise independent judgment. This should not be a matter of concern to the people or the basis of suspicion or unfair rumor. Rather it should be welcomed by everyone as the rational process in our way of life by which conflicting views are fully aired and "ironed out". For free exchange of views is an indispensable condition for informed and intelligent judgment within the government as it is so widely acknowledged to be outside the government.

Third, a public official no matter how important his station, must realize that ours is a government of laws, not men; his duty is to serve, not rule.

There is no place in government for a public official who encroaches on the liberties of the people in the guise of exercising official discretion. There is no place in Government for public officials who are arbitrary in their considerations, partial in their

investigations, obstinate in their judgments. Favoritism of any and every kind in Government must be uprooted together with every petty or "stuffed shirt" tyrant who is responsible for it.

Fourth, government officials must cooperate in providing the people with the most efficient operation possible. While ample staffs should be maintained to furnish prompt, effective and courteous service, "empire-building" should not be tolerated anywhere. Every effort should be made to lighten, not to burden, the work of businessmen and individuals in their dealings with the Government. Regulations should be written in intelligible language--yes, so that even a lawyer or judge can understand them. Forms should be simplified and wherever possible, consistent with the public interest, eliminated entirely. Some progress has been made in this direction recently, but there is still further room for improvement. For often these forms are mere impediments to relief which our citizens are entitled to as a matter of right and a matter of law.

Fifth, except to the extent that national security and the proper administration of government may be endangered, public officials should always keep the people fully informed of government affairs. In this way, the people will be able to exercise an intelligent judgment on vital issues, and share in the responsibility of making them.

Sixth, it should be the responsibility of government officials to attract the most competent and devoted men into Government service. Every incentive should be furnished by way of adequate salary, opportunity for promotion, and security for those of demonstrated ability.

We in Government Service must never cease striving to meet the grave challenge of public responsibility. We need the help, the continuing cooperation and enlightened opinion of all the people. By these means we may mobilize and unite our strength, resources and understanding in protecting the foundations of our great Republic; in safeguarding the cherished liberties of the people; and in preserving the inalienable rights of man.

One of the most effective ways of checking abuse of public responsibility is to establish and maintain loftiest standards in the administration of justice throughout the land. This objective President Eisenhower is constantly seeking to achieve in recommending outstanding and qualified persons as federal jurists.

In nominating Simon Sobeloff as a Judge of the Court of Appeals for the Fourth Circuit, the President has selected a man who fulfills these qualifications. In his hands, liberty and law, will be--as they must be in any ordered society--one and inseparable.